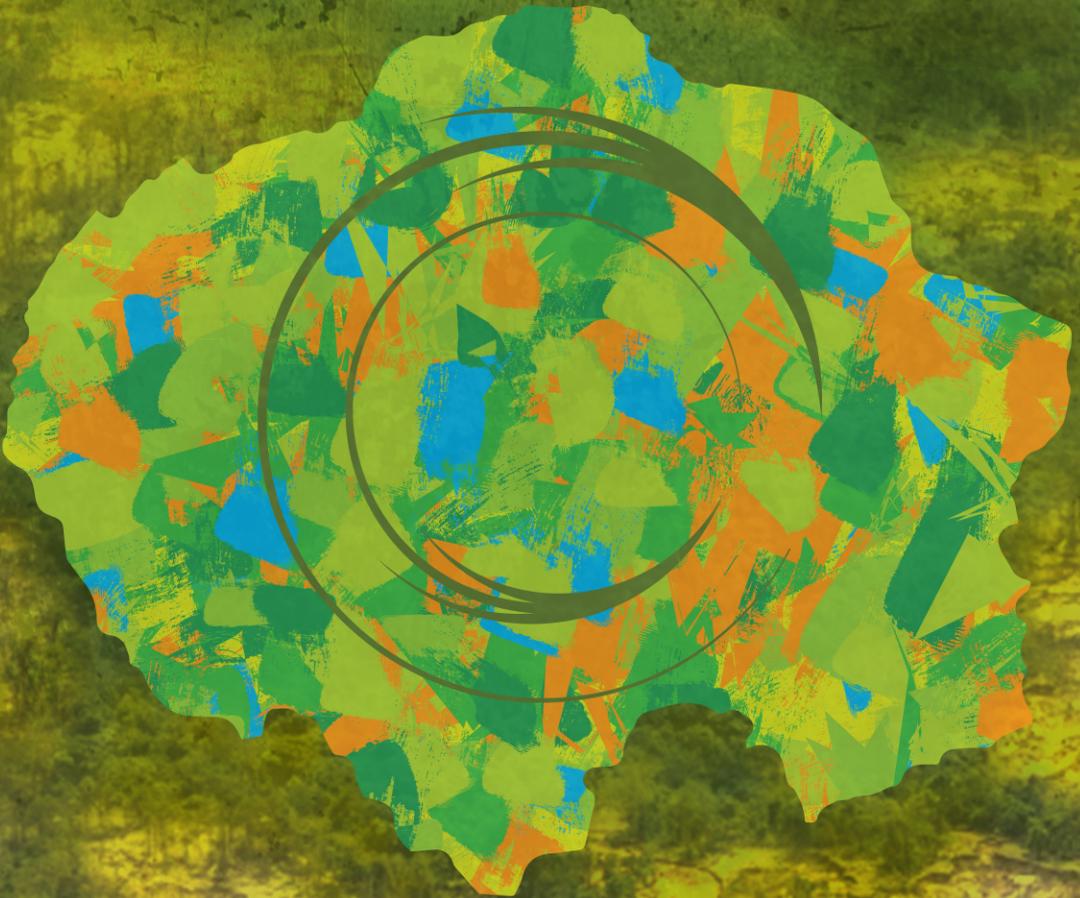


# Indigenous and Tribal Peoples of the Pan-Amazon Region



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. The Pan-Amazon region is one of the most biodiverse territories on earth, with vast cultural and biological wealth. From ancestral times this region has been occupied by indigenous and tribal peoples who continue to pursue their traditional way of life. In addition, this geographic space represents a source of subsistence for the whole planet because it is a biome that operates as a global climatic stabilizer. The Pan-Amazon region covers some 7 million km<sup>2</sup>, spread across nine countries, and is home to 34 million persons, a considerable part of whom belong to some 350 indigenous peoples, including those in voluntary isolation and initial contact.
2. In recent years this territory has experienced complex changes. In furtherance of its mandate, the Inter-American Commission on Human Rights (hereinafter the “IACHR,” the “Commission,” or the “Inter-American Commission”) has received worrisome information about serious problems that affect the Amazonian indigenous and tribal peoples. Serious impacts have been observed that result from several factors: the impact produced by legal provisions, public policies, and practices geared to the extraction and exploitation of natural resources, as well as the development infrastructure megaprojects or investments without consultation and without free, prior, and informed consent. These impacts endanger these peoples’ physical and cultural survival, as well as the environment. In this regard, it is important to note that the challenges highlighted by the IACHR through its various mechanisms for the protection and promotion of human rights have become further aggravated. These observations have been set forth in its prior publications, including the reports [\*Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities\*](#) (2016) and [\*Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights\*](#) (2013).
3. In response to this situation, the IACHR decided to prepare this thematic report on the “*Situation of Human Rights of the Indigenous and Tribal Peoples in the Pan-Amazon region*,” for the purpose of addressing the issue of the peoples who live in this territory in light of the standards of the inter-American human rights system. The preparation of this document constitutes the first joint initiative with the Pan-Amazonian Ecclesial Network (REPAM: Red Eclesial Pan-Amazónica) in the context of carrying out Program 12 of Objective 3 of the IACHR’s 2017-2021 Strategic Plan, which seeks to strengthen agreements with academic research centers and give impetus to the formation of an Academic Network Specialized in the Inter-American Human Rights System.
4. In the process of preparing this report information has been collected on the legal frameworks and public policies in force in each country through the information provided by the states involved and various civil society organizations by answering

the questionnaires prepared for this purpose. In addition, the voices of indigenous leaders were drawn on for a sociocultural representation of these peoples. In this context, cases and testimonies will be set forth that illustrate the principal situations that have drawn the attention of the Commission, albeit noting that there are hundreds of other peoples who are also impacted by the above-mentioned processes.

5. This Report includes an introduction, five chapters, and two annexes. The introduction makes reference to the general characteristics of the Pan-Amazon region and to the history of the indigenous and tribal peoples who have lived there from time immemorial. Moreover, information is provided on the complex processes of interethnic relations that those communities experienced and continue to experience. It includes reference to the Afrodescendent communities living in Pan-Amazon region and who persist as ethnically and culturally differentiated communities. Similarly, explicit mention is made of the increase in economic activities that generate enormous pressure on the territories of the indigenous and tribal peoples, rendering them more vulnerable. Finally, the introduction describes the interinstitutional collaboration that was put in place to write the report, as well as the methodology used.
6. In the first chapter the Commission presented the international standards, approaches, and principles applicable to the indigenous and tribal peoples of the Pan-Amazon region. It is emphasized that the territorial rights of the indigenous and tribal peoples are based on the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Accordingly, the Commission notes that while neither of these instruments makes express reference to the rights of indigenous or tribal peoples, both the IACHR and the Inter-American Court of Human Rights (I/A Court HR) have interpreted these documents so as to include them under their protection scope. In addition, special mention is made of the American Declaration on the Rights of Indigenous Peoples as the most specific instrument in the region on this matter. In this chapter the Commission also makes mention of the international human rights instruments that have emanated from the United Nations, which further reinforce the recognition of the relevant standards.
7. The Report presents and develops six standards that are fundamental for ensuring the full exercise of the rights of these communities: (1) the right to self-identification and recognition, which is the main criterion for recognition of a human group as an indigenous people; (2) the right to self-determination, which includes the capacity to freely define their economic, social, and cultural development in light of their existence and wellbeing as differentiated groups; (3) the right to collective property, understanding territory in its various dimensions, particularly economic, cultural, and spiritual; (4) state obligations of protection vis-à-vis extraction, exploitation, and development activities through laws, policies for prevention and mitigation, oversight mechanisms, participation of the communities, and access to justice when violations occur; (5) special protection from ethnic-cultural discrimination; and (6) the right to a dignified life as understood in the indigenous cosmovisions. To these standards the Commission adds the explicit reference to three approaches: (i) interculturality, i.e. recognition of the coexistence of diverse cultures who should live together and engage in dialogue based on respect for their different

cosmovisions, human rights, and rights as peoples; (ii) gender, recognizing the special position of indigenous women and adopting culturally appropriate measures that ensure the enjoyment of their rights and fundamental freedoms, and a life free from discrimination and violence; (iii) intergenerational solidarity, which should find expression in a strong commitment to the values and experiences transmitted through oral memory and traditions from one generation to the next.

8. The second chapter presents information on the processes that have a direct impact on indigenous peoples, whether longstanding processes, such as being dispossessed of their lands by colonization, or the more recent development projects in the Pan-Amazon region. The IACHR seeks to present the statistical information gathered through quantitative information. The qualitative information, by way of contrast, allows one to account for regional trends in terms of the issues faced by the indigenous peoples in this territory based on the situation in each country. The IACHR has verified the continuation of processes whereby indigenous and tribal peoples in the Amazon have lost possession of their lands. While this problem has been shaped by historical processes particular to each country, the IACHR has identified some common patterns, such as: excessive delays or paralysis of processes for demarcating indigenous lands and territories; legal and regulatory measures that diminish guarantees previously recognized in relation to collective property rights; the unlawful appropriation of indigenous territories by the state and third persons; the adoption of agrarian regulations unfavorable to the Amazonian peoples; and the increase in export-oriented monoculture, with major environmental and social impacts, among others.
  
9. In addition to the processes already mentioned have been the impacts of extractive or development projects, which have been particularly intense in recent decades. These are, primarily: (1) mining, legal or illegal, that deforests, accumulates residues at the surface, consumes and contaminates river waters and groundwater, and changes the patterns of settlement; (2) infrastructure projects, in the form of waterway transport corridors or highways, presented as a mega program, the Initiative for the Integration of Regional Infrastructure in South America (IIRSA), with enormous impacts on Amazonian lands and waters; (3) hydroelectric plants, whose construction totally redefines the peoples' ancestral territories; and (4) energy and hydrocarbon projects, whose impacts are similar to those of mining projects. The IACHR has collected and systematized information concerning the principal impacts of the processes mentioned above, such as: contamination of rivers and water sources, restricted access to water and food; desertification and deforestation of forests; loss of biodiversity and protected natural areas; obstacles to the development of cultural and spiritual practices; negative health impacts; assassinations and attacks on members of indigenous and tribal peoples; division of communities and rending of the social fabric; forced displacement; difficulties accessing justice, which has to do not only with the absence of resources but above all with the absence of an intercultural approach in the national legal systems; and criminalization of leaders of those communities. The Report also addresses the increase in illegal activities; the growing presence of transnational organized crime; and the expansion of illicit crops, drug and arms trafficking, and human trafficking, among others. As regards each of the aspects mentioned, specific examples are cited with testimony from the populations directly impacted.

10. The third chapter analyzes the various impacts described in the previous chapter as violations of rights recognized as binding standards, which have been presented in the first chapter of the Report. In relation to the right to collective property and guarantees related to the land, territory, and natural resources, the IACHR finds not only the existence of legal obstacles but also the persistence of widespread practices of dispossession of lands and territories by the use of violence, threats, and other negative impacts on the life and integrity of the members of indigenous communities. In response, the Report presents in detail the obligations of the states in relation to this right. As regards the right to self-determination and the right to prior, free, and informed consultation, the IACHR notes that several extraction, exploitation, and development projects, varying in scale, and that have substantial repercussions in the territories of indigenous and tribal peoples, have not abided by prior consultation provisions, as called for by relevant international standards. To the contrary, one notes practices aimed at delaying such processes or carrying them out as a mere formality that does not satisfy the aim of reaching a mutual agreement or consent. After detailing the content of this right, based on standards in force and the case-law of the I/A Court HR, the Report presents and analyzes the most relevant cases of violations thereof by the states that share the Pan-Amazon region.
11. Similarly, this chapter includes an analysis of the main violations of other rights in respect of which the indigenous and tribal populations of the Pan-Amazon region are at serious risk of suffering: the right to water and food; the right to cultural and spiritual identity, and to indigenous cultural heritage; the right to health; and the right to life, physical integrity, and sexual integrity. For each of these rights the Report presents the most important types of violations and spells out the content of the right in question, appealing to the above-mentioned standards (first chapter) and to the case-law of the IACHR. It highlights the close link between violations of these rights and the violation of the right to collective property that results from strong pressures on the territories and the natural resources found in them.
12. The fourth chapter of the Report refers to indigenous peoples in voluntary isolation and initial contact in the Amazon. The indigenous peoples in isolation are those peoples or segments of peoples who do not maintain regular contact with what is called the “majority population” and who, in turn, shun any kind of contact with persons from outside their group. Indigenous peoples in initial contact are those who maintain recent contact or who, despite maintaining contact for some time, are not intimately familiar with the standards or codes that prevail in the relationships of the majority population. They are peoples or segments of indigenous peoples who maintain sporadic or intermittent contact with the non-indigenous population. For these communities, isolation is a survival strategy. From the 16<sup>th</sup> century on thousands of indigenous persons faced massacres, forced assimilation, or deadly epidemics as a result of contagion with diseases brought by the settlers. Those problems intensified during the rubber boom in the late 19<sup>th</sup> century and early 20<sup>th</sup> century, when many indigenous persons were enslaved to extract this resource. Due to these and other traumatic situations, a number of indigenous peoples decided to flee to remote forests, situated predominantly in the Amazon. As regards these groups, in 2013 the IACHR produced the report *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights*. This document, along with the *Guidelines for the Protection of*

*Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay*, adopted in 2012 by the United Nations High Commissioner for Human Rights (HCHR), set forth considerations regarding the standards of protection that the states where these communities live should follow.

13. Based on the standards developed in the 2013 Report, and taking into account updated information, the IACHR identifies and analyzes the most recent threats to the full enjoyment of these peoples' human rights. To this end it addresses, first, the information regarding the peoples in isolation and initial contact in the Amazonian countries. It is estimated that in the Americas there are approximately 200 communities which, in the exercise of their right to self-determination, maintain this way of life. Subsequently, the Commission refers to the legal gains and challenges and the measures that the states of the region have adopted in favor of these peoples. In recent years there has been legal progress in all countries of the region; nonetheless, those provisions are frequently plagued by shortcomings in their implementation. This leads to a situation of lack of effective judicial protection and impunity in relation to the population in isolation and initial contact. Violent contacts and deaths of members of peoples in isolation have been reported that have not been followed by investigations or judicial proceedings with respect to those acts.
14. The final section of this chapter identifies the main threats at this time, such as: direct contact by individuals or groups from outside the uncontacted communities; the expansion of activities for the extraction of natural resources; the spread of diseases; direct attacks, particularly by illegal groups who use their territories as corridors for drug trafficking or trafficking of other goods; and projects for the settlement of outsiders and for tourism, among others.
15. In the fifth and final chapter the Inter-American Commission makes recommendations to the states on the obligations and lines of action which, according to international human rights law, should be implemented to ensure the rights of the indigenous and tribal peoples of the Pan-Amazon region. In this regard, it highlights the appeal to the states to design, implement, and effectively enforce an adequate and integral legal framework for protecting their rights. At the same time, the states should adopt measures to prevent, mitigate, and suspend the negative impacts on the human rights of indigenous and tribal peoples that result from extraction, exploitation, and development activities in the Pan-Amazon region. To that end, the states should reinforce their own role supervising and overseeing those activities.
16. The IACHR calls in particular for the adoption of legislative, administrative, and other measures as necessary to fully implement and enforce, in a reasonable time, the right of indigenous and tribal peoples to prior, free, and informed consultation in keeping with international standards. At the same time, the states should refrain from committing attacks on and harassing leaders and other persons involved in the defense of the rights of indigenous and tribal communities and peoples in the Pan-Amazon region. When states learn of a real and immediate risk, they should adopt reasonable measures to keep it from materializing; seriously investigate the facts it

comes to learn of; and, as the case may be, sanction the persons responsible and offer the victims adequate reparation, independent of whether the acts are committed by state agents or private persons. They should also make a serious commitment to fight impunity.

17. The IACHR also recommends incorporating in all public policies an intercultural approach that guarantees the right to self-determination. In addition, the Commission reiterates the recommendations set forth in the report *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights* (2013).
18. Finally, the Report includes two annexes. The first is called *Amazonian countries and peoples*; it systematizes the responses to the questionnaire provided by the states of Bolivia, Ecuador, Colombia, and Peru. The second annex is titled *Pronouncements of the Inter-American Human Rights System regarding Amazonian peoples*; it presents a set of decisions through which the Commission and the Inter-American Court on Human Rights have approached the topic over the last years.

# INTRODUCTION



## INTRODUCTION

1. The Amazon basin—a region shared by Bolivia, Brazil, Colombia, Ecuador, French and British Guyana, Peru, Suriname, and Venezuela—is an area that stands out for its immense cultural and biological diversity. The region has been inhabited since ancient times by indigenous peoples and communities that have evolved knowledge and production practices linked to their natural environment as their means of subsistence. The pan-Amazon region is essential to life, not only for the peoples and communities that live there, but also for the planet as a whole, given its role as a biome that stabilizes the Earth's climate and a reserve of flora, fauna, and genetic diversity. Its protection, therefore, is of unparalleled importance and has major implications for the observance and assurance of a wide range of human rights.
2. Before the first Europeans reached the Americas, the history of the indigenous peoples of the Amazon encompassed centuries of physical and cultural adaptation to its unique environment. The Amazon region has played a primary role in shaping their cultures and ways of life in close harmony with nature. With the onset of European colonization of the region in the 15th century that panorama changed. Early contacts between native peoples and foreigners unleashed deadly epidemics that triggered what we now know to be one of the worst demographic collapses in history.<sup>1</sup> However, because of their exposure, the coastal communities bore the brunt in that period. Thanks to its remote, impenetrable forests and a climate to which the Europeans were unaccustomed, the Amazon region offered a shelter of protection.<sup>2</sup>
3. However, in the late 19th and early 20th centuries, with the breakneck expansion of the rubber industry in several Amazonian countries, fresh dangers arose for the region's indigenous peoples. Thousands of their members were enslaved and forced to work on rubber plantations, resulting in large numbers of deaths.<sup>3</sup> Added to that was an increase in evangelizing missions that aimed, through direct contact, to outlaw their traditional religious practices and replace them with ones considered acceptable to the Western mindset, riding roughshod over the indigenous

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<sup>1</sup> ECLAC and Patrimonio Natural, *Amazonia posible y sostenible*, Bogota, ECLAC and Patrimonio Natural, 2013, p. 92.

<sup>2</sup> Huertas Castillo, Beatriz, Despojo territorial, Conflicto Social y Exterminio. Pueblos Indígenas en Situación de Aislamiento, Contacto Esporádico y Contacto Inicial en la Amazonía Peruana, Pamplona and Copenhagen, Instituto de Promoción Estudios Sociales (IPES) and International Working Group for Indigenous Affairs, 2010, p. 28; Montenegro, Raúl and STEPHENS, Carolyn, Indigenous health in Latin America and the Caribbean, in *The Lancet*, Volume 367, 2006, p. 1860.

<sup>3</sup> Zarzar, Alonso, *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*, Lima, Office of the Ombudsperson, 2000, p. 14.

worldviews.<sup>4</sup> There were also serious social effects as a result of the forcible movement of indigenous populations for the purposes of their religious conversion.

4. Additional threats to the indigenous peoples of the Amazon emerged in the 20th century, largely because of the increase in extractive activities across the region. Symptoms of that included a rise in logging, which hastened the pace of deforestation and opened the way to threats connected with other land uses. Transnational oil and gas companies also began installing plants with the authorization of States. In addition, in certain countries, the presence increased of illegal armed groups in indigenous territories, as did the spread of unlawful activities, such as illegal mining and drug trafficking. As a result of the historical developments described, some indigenous peoples have been physically and culturally wiped out. Others, however, survived and defended their territories and cultural identity.<sup>5</sup>
5. In recent years the region has seen complex changes in which the human rights of communities have been impacted by laws, public policies, and practices mainly aimed at expanding the frontiers of land eligible for natural-resource extraction and infrastructure megaprojects, which put pressure on indigenous ancestral lands. As this report examines, the current panorama is one of oil and gas exploitation, mining, forest development, use of genetic resources, dam and oil/gas pipeline construction, industrial fisheries and agriculture, and tourism, as well as the establishment of protected areas and national parks. All of the above is done without prior consultation of the indigenous peoples and communities that inhabit the areas concerned. These projects have an irreversible impact on the livelihood systems and cultural identity of Amazonian indigenous communities and ecosystems.<sup>6</sup>
6. It was against this backdrop that the Inter-American Commission on Human Rights (IACHR) decided to prepare this thematic report on the *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region* in order to examine the problems faced by the peoples who inhabit that region in the light of the standards of the inter-American human rights system. The decision to do so stems from the strategic priority that the IACHR has accorded to the plight of indigenous peoples, as well as increasing information suggesting that Amazonian peoples have to contend with a unique set of difficulties in addition to the significant challenges that indigenous peoples face in the Hemisphere.<sup>7</sup> Furthermore, the adverse effects on

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<sup>4</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, par. 88.

<sup>5</sup> ECLAC and Patrimonio Natural, *Amazonia posible y sostenible*, Bogota, ECLAC and Patrimonio Natural, 2013, p. 92; WWF, *Living Amazon Report 2016*, A regional approach to conservation in the Amazon, 2016, p. 14. Pontificia Universidad Javeriana (PUJ), Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 6.

<sup>6</sup> Wayuu Taya Foundation, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 30, 2018, p. 22.

<sup>7</sup> See, inter alia, IACHR, Hearing on *Right to Territory of Amazonian Indigenous Peoples and Communities*, Latin American Episcopal Council (CELAM), Pan-Amazonian Ecclesial Network (REPAM), Caritas Latin America and the Caribbean, Confederation of Latin American and Caribbean Religious (CLAR), 161st session, March 2017.

their rights transcend the individual and collective spheres of those peoples and have repercussions on the protection of the pan-Amazon region itself.

7. The Amazon region is the world's biggest tropical rainforest and river system.<sup>8</sup> The region covers an area of nearly seven million km<sup>2</sup>, spanning nine countries, which the IACHR references in this report.<sup>9</sup> The Amazon area is home to 34 million people and around 350 indigenous peoples, including those who have opted to remain in isolation (Annex 1. Amazonian countries and peoples).<sup>10</sup> In the opinion of the IACHR, the vast cultural and ethnic diversity of our continent also includes ethnic groups made up of descendants of those who originated in Africa. In several countries of the Hemisphere, certain Afro-descendants choose to live in ethnically and culturally distinct collectives with a common identity, origin, history, and tradition. A case in point are the *quilombos* and traditional communities in Brazil, some of which live in the Amazon region. In keeping with a position it has previously taken, in this report the IACHR addresses the situation of those peoples, who also need special protection. Accordingly, the Commission relies on the concept of "tribal peoples" contained in Article 1(a) of ILO Convention No. 169, which regards them as peoples that are not indigenous or native to the region they inhabit but that like indigenous peoples share certain conditions that distinguish them from other sections of the national community. The Commission recalls that tribal peoples and their members have in this context the same rights as those held by indigenous peoples and their members.<sup>11</sup>
  
8. The IACHR is grateful for the assistance of the Pan-Amazonian Ecclesial Network (REPAM) in the preparation and publication of this report. In a collaborative initiative framed by a memorandum of understanding signed by REPAM and the IACHR in August 2016, the two entities established a number of interagency collaboration frameworks to respond to human rights violations against Amazonian populations, which included partnering on the production of documents. As has

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<sup>8</sup> WWF, *Living Amazon Report 2016*, A regional approach to conservation in the Amazon, 2016, pp. 10 and 14. See also ECLAC, *Amazonía posible y sostenible*, 2013, p.11

<sup>9</sup> WWF, *Living Amazon Report 2016*, A regional approach to conservation in the Amazon, 2016, p. 8.

<sup>10</sup> WWF, *Living Amazon Report 2016*, A regional approach to conservation in the Amazon, 2016, p. 10.

<sup>11</sup> As the IACHR has previously stated, there are two relevant criteria for identifying communities that could be regarded as tribal peoples. On one hand, there are objective criteria, which consist of them sharing "[...] social, cultural and economic conditions [that] distinguish them from other sections of the national community", as well as being "regulated wholly or partially by their own customs or traditions or by special laws or regulations." In addition, there is a subjective element related to the respective community's awareness of its distinct and group identity that makes its members assume themselves as members of a collectivity. If an ethnic group meets both criteria it can be considered a "tribal people" under the terms of Convention 169, for purposes of its protection under international law. IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, pars. 28-32. In a similar sense, see I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, par. 79; Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 15, 2005, pars. 132-133; and Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2013, Series C. No. 270, par. 346.

already been mentioned, this was the first initiative under Program 12 of Objective No. 3 of the IACHR Strategic Plan 2017-2021.

9. The Commission values the various meetings held with REPAM and underscores the contributions made by the following academic entities that it comprises: Association of Universities Entrusted to the Society of Jesus in Latin America (AUSJAL); Universidad Católica Andrés Bello (UCAB); Pontificia Universidad Javeriana Bogotá (PUJ-Bogotá); Pontificia Universidad Javeriana Cali (PUJ-Cali); Pontificia Universidad Católica del Ecuador (PUCE); Universidad Antonio Ruiz de Montoya (UARM); Pontificia Universidad Católica de Río de Janeiro (PUC-Río). The IACHR also wishes to acknowledge the contributions of the following entities that belong to the Network: Pontificia Universidad Católica de Perú (PUCP); Escola Superior Dom Helder Camara, Belo Horizonte; Indigenist Missionary Council (CIMI) of Brazil; Centro de Documentación e Información Bolivia (CEDIB); Centro Amazónico de Antropología y Aplicación Práctica (CAAAP), and Guyana Human Rights Association.
10. As part of the process of preparing this report, in September 2018 the IACHR distributed its Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, targeting indigenous peoples, civil society organizations, academic institutions, and any individual interested in submitting information. The IACHR wishes to express thanks for the 22 responses it received, which contained invaluable input for this report.
11. The Commission also sent the Questionnaire to all the Amazonian countries and received responses from the States of Bolivia, Peru, Colombia, and Ecuador. The IACHR thanks those four states for their responses, which enabled a more in-depth understanding of the situation of human rights of the pan-Amazonian indigenous and tribal peoples in those countries.
12. Finally, all the information received has been complemented with information that the IACHR gathered via its various mechanisms through December 2018. In spite of that, the Commission notes that in 2019 important changes or events apt to impact indigenous and tribal peoples occurred in a number of countries. A brief mention of the subject concerned will be made in those cases, in order to update the study. In the case of Brazil, for methodological reasons and bearing in mind that the Commission made an on-site visit to that country in November 2018, the events that occurred there in 2019 will be addressed in greater depth in the final report on that visit.
13. This report is divided into four chapters. Chapter 1 deals with international standards, approaches and principles to be considered by States in designing laws, programs, and policies to protect the human rights of the indigenous and tribal peoples of the pan-Amazon region. Chapter 2 provides situational information on the main impacts of development projects on pan-Amazonian indigenous and tribal peoples. Chapter 3 examines the principal human rights violations committed against the peoples of that region. Each section of this chapter includes a general assessment by the Commission of the overall panorama and, for illustrative purposes, examples of concrete situations that have come to the attention of the IACHR. While it is not possible to refer to every Amazonian country in each case,

broadly speaking the problems described are common to all. Chapter 4 looks specifically at the situation of indigenous peoples in voluntary isolation and initial contact, with a particular emphasis on information received in the wake of the report that the IACHR published on those peoples in 2014. The report concludes with recommendations for the States of the region.

14. The information provided in this report is complemented by two annexes. The first, titled “Amazonian Countries and Peoples,” systematizes the questionnaire responses submitted by the States of Bolivia, Peru, Colombia, and Ecuador. The second annex is titled “Pronouncements of the Inter-American Human Rights System on Amazonian Peoples” and illustrates the approach adopted by both the Inter-American Court and the Inter-American Commission through their various mechanisms.
15. Finally, in this report the Commission has sought to gain a closer understanding of the episteme of the pan-Amazon region’s indigenous and tribal peoples. Starting by recognizing the diversity that exists, it presents a series of terms, standards, and approaches that are novel in comparison to other IACHR documents, emphasizing, where possible, those communities’ own knowledge, concepts, and languages. It also seeks to highlight the main adverse impacts on the rights of those peoples through references to representative situations, reflecting the opinions of the men and women who lead them. The cases presented are intended to illustrate the principal situations that merit attention in the opinion of the Commission, while recognizing that there are hundreds of peoples and communities not mentioned in this report whose rights are infringed daily in contexts of the kinds described.



CHAPTER 1  
INTER-AMERICAN STANDARDS  
ON INDIGENOUS AND TRIBAL  
PEOPLES APPLICABLE TO THE  
PAN-AMAZON REGION



## INTER-AMERICAN STANDARDS ON INDIGENOUS AND TRIBAL PEOPLES APPLICABLE TO THE PAN-AMAZON REGION

16. Indigenous and tribal peoples are bearers of human rights, both individually and collectively, that enjoy broad recognition in international law. The organs of the inter-American system have given particular attention to those peoples' right of collective ownership over their lands and natural resources as an intrinsic right and as a guarantee of effective enjoyment of other basic rights.<sup>12</sup> Over the decades, both the Commission and the Inter-American Court of Human Rights (hereinafter I/A Court H.R.) have developed abundant case law on the content of the right to property of indigenous and tribal peoples in different spheres.<sup>13</sup>
17. The territorial rights of indigenous and tribal peoples are founded in the American Declaration of the Rights and Duties of Man (Article XXIII) and in the American Convention on Human Rights (Article 21). In spite of the fact that neither article expressly references the rights of indigenous or tribal peoples, the IACHR and the I/A Court H.R. have interpreted both provisions in the sense of protecting the rights of those peoples and their members over their lands and natural resources; that is, over their territories.<sup>14</sup> The Commission notes that on June 4, 2016, the OAS member states adopted the American Declaration on the Rights of Indigenous Peoples, the region's most specific instrument in relation to indigenous peoples.<sup>15</sup>
18. In carrying out their mandates, in recent decades the organs of the inter-American system have included recognition and protection of the rights of indigenous peoples in a large number of pronouncements on Amazonian peoples. In the case of the

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<sup>12</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 225.

<sup>13</sup> See, inter alia, IACHR, Report No. 75/02 (Merits), Case 11.140, Mary and Carrie Dann (United States), December 27, 2002; IACHR, Report No. 40/04 (Merits), Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Preliminary Objections, Judgment of February 1, 2001; Case of the Xucuru Indigenous People and its members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 5, 2018, Series C. No. 346.

<sup>14</sup> 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, par. 5; IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 225.

<sup>15</sup> OAS, *American Declaration on the Rights of Indigenous Peoples*, AG/RES. 2888 (XLVI-O/16), June 4, 2016.

IACHR, those pronouncements have come through its various mechanisms, such as the individual cases and petitions system, precautionary measures, thematic and country reports, press releases, and public hearings (Annex 2. Pronouncements of the IAHRs on Amazonian Peoples). Of particular significance is the report *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, given that the majority of indigenous peoples in voluntary isolation and initial contact in the Americas live in the Amazon region due to the fact that it is a hard-to-reach area that enables them to remain that way.<sup>16</sup>

19. As regards the United Nations, both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognize at Article 1 that all peoples have the right of self-determination. Also in place is the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. In the specific case of indigenous peoples, a fundamental instrument is Convention No. 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, currently the main treaty that expressly recognizes the rights of those communities.<sup>17</sup> In addition there is the United Nations Declaration on the Rights of Indigenous Peoples, which reflects a broad consensus on their rights in the international community and was adopted with the vote in favor of the Amazonian States.<sup>18</sup> Likewise of particular importance are the guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay, given that the bulk of the communities in isolation or initial contact inhabit the Amazon region.<sup>19</sup>
20. Bearing in mind the foregoing, the purpose of this chapter is to re-examine the most important standards developed by the IACHR and the I/A Court H.R. on the rights of indigenous and tribal peoples over their lands, territories, and natural resources.

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<sup>16</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, par. 63.

<sup>17</sup> The countries with Amazonian territory that have ratified this international treaty are Colombia (August 7, 1991), Bolivia (December 11, 1991), Peru (February 2, 1994), Ecuador (May 15, 1998), Venezuela (May 22, 2002), and Brazil (July 15, 2002). The only Amazonian countries not to have ratified the instrument are Guyana and Suriname. In the case of French Guiana, to date, the State of France has also refrained from ratifying the treaty.

<sup>18</sup> Bolivia, Brazil, Ecuador, Guyana, Peru, Suriname, and Venezuela voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples. In the case of French Guiana, France also voted in favor. In the case of Colombia, although it initially refused to do so, in 2014 the country's Constitutional Court held that while the Declaration lacked the normative force of a treaty, it should be applied directly and taken into account when determining the scope of indigenous peoples' rights. Constitutional Court, Judgment T-376 of 2012, Judgment T-704 of 2006, and Judgment T-514 of 2009. IACHR, Colombia, 2014, Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II. December 31, 2013, footnote 1293.

<sup>19</sup> The Guidelines were adopted in 2012 by the Office of the United Nations High Commissioner for Human Rights, as a result of consultations in the States of Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. United Nations, Office of the United Nations High Commissioner for Human Rights, *Guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela*. Geneva, Office of the United Nations High Commissioner for Human Rights, 2012.

The Commission refers, first, to the main inter-American standards relating to the exercise of Amazonian peoples' rights, and second to the principal approaches to be considered in the following parts of the report.

## **A. *Inter-American Standards Applicable to Indigenous and Tribal Peoples in the Pan-Amazon Region***

### **1. Self-Identification and Recognition of Indigenous and Tribal Peoples**

21. The criterion of self-identification, defined as a people's awareness of their indigenous or tribal identity, is established in Article 1.2 of ILO Convention No. 169. The IACHR regards the criterion of self-identification as the principal one for the recognition of a human group as an indigenous people in both an individual and a collective sense.<sup>20</sup> That position is also adopted by the I/A Court H.R. in its case-law, according to which, the collective identification of a people or community, from its name to its membership, is a social and historical fact that is part of its autonomy.<sup>21</sup> Therefore, "the Court and the State must restrict themselves to respecting the corresponding decision made by the Community; in other words, the way in which it identifies itself."<sup>22</sup>
22. That criterion is contained in the United Nations Declaration on the Rights of Indigenous Peoples, Article 33.1 of which provides: "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions."<sup>23</sup> It is also included in the American Declaration on the Rights of Indigenous Peoples, Article 1.2 of which says: "States shall respect the right to such self-identification as indigenous, whether individually or collectively, in keeping with the practices and institutions of each indigenous people."

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<sup>20</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 216.

<sup>21</sup> I/A Court H.R., Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of August 24, 2010. Series C No. 214, par. 37.

<sup>22</sup> I/A Court H.R., Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of August 24, 2010. Series C No. 214, par. 37; 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.Doc.56/09, December 30, 2009, par. 31.

<sup>23</sup> UN, United Nations Declaration on the Rights of Indigenous Peoples, 2007.

## 2. Right of Indigenous Peoples to Self-Determination and Their Own Models of Development

23. As societies whose existence predates the establishment of state borders, indigenous peoples have a collective right to self-determination, whose exercise means the freedom to determine their economic, social and cultural development in order to ensure their existence and well-being as distinct groups.<sup>24</sup> Thus, those communities can determine their own destiny on an equal footing with others and participate effectively in all decision-making processes that affect them.<sup>25</sup>
24. Recognition of that right is essential for the full exercise of the other fundamental human rights of indigenous peoples,<sup>26</sup> both individual and collective,<sup>27</sup> which, as the IACHR maintains, include rights over their ancestral territories and natural resources.<sup>28</sup> In that sense, the imposition of extractive activities and development megaprojects without free and informed prior consent may violate those rights.<sup>29</sup>
25. That right has also been considered by the I/A Court H.R. in various cases concerning indigenous and tribal peoples, such as the *Case of the Kichwa People of Sarayaku v. Ecuador*, an indigenous people situated in the Ecuadorian Amazon.<sup>30</sup> The right is also recognized expressly in international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (Article 3) and the American

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<sup>24</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc.47/15, 2016, par. 237; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, par. 70; IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 43.

<sup>25</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Doc. UN A/HRC/12/34, 15 July 2009, par. 41.

<sup>26</sup> United Nations, *Permanent Forum on Indigenous Issues, Consolidated report on extractive industries and their impact on indigenous peoples*, E/C.19/2013/16, 20 February 2013, par. 19.

<sup>27</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Doc. UN A/HRC/12/34, 15 July 2009, par. 41.

<sup>28</sup> 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.Doc.56/09, December 30, 2009, par. 165.

<sup>29</sup> IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 42.

<sup>30</sup> The I/A Court H.R., citing the Committee on Economic, Social and Cultural Rights, recognizes that common Article 1 of the covenants is applicable to indigenous peoples and, therefore, that those groups may “freely pursue their economic, social and cultural development” and “freely dispose of their natural wealth and resources” so as not to be “deprived of [their] own means of subsistence.” Likewise, the I/A Court H.R. held that the rules of interpretation set down in Article 29(b) of the American Convention precluded it from interpreting the provisions of Article 21 of the American Convention in a manner that might limit its enjoyment and exercise to any lesser degree than that recognized in the UN covenants. Consequently, Article 21 of the American Convention includes the right of members of indigenous and tribal communities freely to determine and enjoy their own social, cultural, and economic development. I/A Court H.R., *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C. No. 172, par. 93.

Declaration on the Rights of Indigenous Peoples (Article 3), and implicitly in ILO Convention No. 169 (*inter alia*, preamble, Article 1.3, and Article 7.1).<sup>31</sup>

26. It is also worth highlighting that a concrete manifestation of the right of self-determination is the right to development, recognized in Article 29 of the American Declaration on the Rights of Indigenous Peoples. That instrument recognizes that indigenous peoples “have the right to maintain and determine their own priorities with respect to their political, economic, social, and cultural development in conformity with their own cosmovision.” It also recognizes their right “to be guaranteed the enjoyment of their own means of subsistence and development, and to engage freely in all their economic activities.”<sup>32</sup>

### 3. Right to Collective Property

27. Territory is uniquely important for indigenous peoples, as it is a fundamental requirement for the development of their culture, spiritual life, integrity, and economic survival.<sup>33</sup> Those groups consider certain places, phenomena or natural resources to be sacred, in accordance with their cosmovision and traditions.<sup>34</sup> In the inter-American system, the IACHR and the I/A Court H.R. have held that that indigenous peoples’ spiritual relationship with the space that they occupy collectively speaking is protected by Article 21 of the American Convention and Article XXIII of the American Declaration.<sup>35</sup> They have also expressly recognized the right of indigenous and tribal peoples to the natural resources situated in the territories that they have “traditionally used and [that are] necessary for the very survival, development and continuation of such people’s way of life.”<sup>36</sup> In turn, that right entails the right of possession, use, occupation, and habitation of their

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<sup>31</sup> Recently the IACHR Rapporteur on the Rights of Indigenous Peoples said that “the IACHR has been working since the 1980s on the elements that make up indigenous peoples’ right to self-determination (such as non-discrimination, cultural integrity, territorial integrity and development), and key standards have been adopted at the Inter-American Human Rights System that must be taken into consideration for self-determination. I want to make the most of this opportunity to invite indigenous authorities to use the inter-American human rights system, through its various mechanisms.” IACHR, Press Release [68/19, International Seminar on Indigenous Peoples’ Rights to Autonomy and Self-Government Ends Successfully](#), Mexico City, March 15, 2019.

<sup>32</sup> OAS, General Assembly, [American Declaration on the Rights of Indigenous Peoples](#), AG/RES. 2888 (XLVI-O/16), June 4, 2016.

<sup>33</sup> IACHR, Submissions to the Inter-American Court of Human Rights in the Case of Sawhoyamaya v. Paraguay, referenced in I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of March 29, 2006, Series C. No. 146, par. 113(a).

<sup>34</sup> IACHR, [Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System](#), Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, par. 150.

<sup>35</sup> 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.Doc.56/09, December 30, 2009, par. 55. I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs, Judgment of August 31, 2001. Series C. No. 79, par. 148.

<sup>36</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C. No. 172, par. 122.

ancestral territories,<sup>37</sup> which they should be able to exercise without external interference.<sup>38</sup>

28. By virtue of the right to collective property, States have the duty to title, delimit, and demarcate ancestral territories. As the IACHR has stated, indigenous and tribal peoples have the right “to be recognized as the legal owners of their territories, to obtain a formal legal title [of ownership of] their lands, and to the due registration of said title.”<sup>39</sup> That titling should be collective, irrespective of the forms of internal organization of indigenous peoples with regard to land ownership.<sup>40</sup> In addition, the procedures for granting title over indigenous or tribal communal lands must be effective, taking into account the distinctive characteristics of the people concerned.<sup>41</sup> Until that occurs, provisional territorial protection should be ensured, which means, among other things, that the State should not grant concessions for exploration or development of natural resources located in territories that are undergoing titling, delimitation, and demarcation without consulting the people or community.<sup>42</sup>
29. Specifically, the I/A Court H.R. has argued that those communities have the right to recognition and protection of their “specific versions of use and enjoyment of property, springing from the culture, uses, customs, and beliefs of each people.”<sup>43</sup> Similarly, the IACHR has held that delimitation and demarcation are only adequate when indigenous and tribal peoples are granted suitable and culturally appropriate title, enabling “the respective indigenous peoples and their members to have access to food, water, and their traditional health and healing systems.”<sup>44</sup> Likewise, the I/A Court H.R. has indicated that States should materialize such territorial rights by

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<sup>37</sup> 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.Doc.56/09, December 30, 2009, par. 110.

<sup>38</sup> 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.Doc.56/09, December 30, 2009, par. 110.

<sup>39</sup> 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.Doc.56/09, December 30, 2009, par. 82. In a similar sense, see I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment of June 17, 2005, Series C. No. 125; Case of the Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 15, 2005, Series C. No. 124; Case of the Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of March 29, 2006, Series C. No. 146.

<sup>40</sup> 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.Doc.56/09, December 30, 2009, par. 82.

<sup>41</sup> 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.Doc.56/09, December 30, 2009, par. 85.

<sup>42</sup> 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.Doc.56/09, December 30, 2009, pars. 94-96.

<sup>43</sup> I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of March 29, 2006, Series C. No. 146, par. 120.

<sup>44</sup> IACHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Report No. 2/12 (Merits), Case 12.094, January 26, 2012, par. 169.

"granting a formal title of ownership or some other similar form of official recognition that bestows legal certainty on indigenous land ownership."<sup>45</sup> (unofficial translation) The territory allocated to indigenous peoples must be "of sufficient extension and materially continuous, that is, not fragmented, for purposes of allowing the full development of their ancestral ways of life."<sup>46</sup>

30. For historical reasons numerous indigenous peoples have been deprived of ownership of their ancestral territories. Accordingly, another core guarantee for the exercise of their right to collective property is restitution of ancestral territory. Restitution recognizes that peoples who have lost possession of all or part of their territories retain their property rights over those territories and have a preferential right to recover them, even though they may be in the hands of third parties.<sup>47</sup> However, such an approach presupposes that the third parties do not have a good faith property title, legitimate expectations, or bona fide property rights. In that context, the right of indigenous and tribal peoples to property and restitution persists and it is not acceptable for indigenous land claims to be denied automatically simply because the lands claimed are in the possession of third parties.<sup>48</sup>
31. States should ensure collective property rights against third parties, which means that, should conflicts arise, those communities have the right to obtain protection and redress through procedures that are adequate and effective; to have the effective enjoyment of their right to property secured; to an effective investigation and sanction of those responsible for the attacks; and to the establishment of special, prompt and effective mechanisms to settle legal disputes over ownership of their land.<sup>49</sup> By the same token, they have a right to have their territory reserved for them, free from the presence of outside parties or settlement by non indigenous colonists.<sup>50</sup> In keeping with the above, where legal disputes over land ownership arise with third parties, they must be resolved in accordance with the principles that govern limitations of human rights. According to the I/A Court H.R., to be admissible, restrictions on the enjoyment and exercise of such rights must be (i) established by

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<sup>45</sup> I/A Court H.R., Case of the Xucuru Indigenous People and its members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 5, 2018, Series C. No. 346, par. 119. I/A Court H.R., Case of the Xucuru Indigenous People and its members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 5, 2018, Series C. No. 346, par. 121.

<sup>46</sup> IACHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Report No. 2/12 (Merits), Case 12.094, January 26, 2012, par. 168.

<sup>47</sup> 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.Doc.56/09, December 30, 2009, par. 123.

<sup>48</sup> 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.Doc.56/09, December 30, 2009, pars. 118-119.

<sup>49</sup> 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.Doc.56/09, December 30, 2009, par. 113.

<sup>50</sup> 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.Doc.56/09, December 30, 2009, par. 114.

law; (ii) necessary; (iii) proportional, and (iv) their purpose must be to attain a legitimate goal in a democratic society.<sup>51</sup>

#### 4. State Obligations in Relation to Extraction, Exploitation, and Development Activities

32. The expansion in the Americas of an economic model based on natural resource extraction has brought with it the need for an urgent response by States to prevent irreparable harm to the rights of certain groups particularly vulnerable to environmental damage in their territories, as in the case of indigenous peoples.<sup>52</sup> Both the IACHR and the I/A Court H.R. have been called upon to determine the obligations of States in such contexts.
33. In its 2016 report *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, the IACHR considered that those obligations have six fundamental dimensions. Specifically, it found that the State has six duties in that regard: (i) to design, implement, and effectively enforce an adequate regulatory framework; (ii) to prevent, mitigate, and suspend adverse impacts on human rights; (iii) to have in place mechanisms for the supervision and oversight of such activities that offer an effective response and are culturally appropriate; (iv) to ensure effective participation mechanisms and access to information; (v) to prevent illegal activities (including unlawful extraction of natural resources) and violence; and (vi) to ensure access to justice through the investigation, punishment, and adequate reparation of human rights violations committed in such contexts.<sup>53</sup>
34. In the specific case of indigenous and tribal peoples, the IACHR has noted that there are certain obligations and guarantees that States must take into account, including the right to free, informed prior consultation and consent in good faith and in a culturally appropriate way. The guarantee of that right entails ensuring effective participation in the processes of design, execution, and evaluation of development

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<sup>51</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005. Series C. No. 125, par. 144; 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.Doc.56/09, December 30, 2009, par. 117.

<sup>52</sup> The IACHR defines "extraction or development plan or project" as "any activity that can affect the lands, territory, or natural resources of any indigenous peoples or Afro-descendent community, especially any proposal related to the exploration of natural resources."  
IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 12.

<sup>53</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016.

projects carried out on their ancestral lands and territories.<sup>54</sup> For the Court, effective participation means that indigenous and tribal peoples must be consulted in accordance with their customs and traditions, in relation to “[any] development, investment, exploration or extraction plan [...] that is carried out within the territory.”<sup>55</sup> As regards consent, the IACHR has held that purpose of all consultation processes is to reach an agreement or to obtain consent.<sup>56</sup> That means that indigenous and tribal peoples should be capable of having a significant influence on the process and on decisions adopted after its conclusion.<sup>57</sup> Where appropriate, that should be demonstrated by notable modifications to the project’s objectives or to its parameters and design.<sup>58</sup>

35. At the same time, there are concrete scenarios in which consent is mandatory. In the *Saramaka People v. Suriname* the Court considered that, “regarding large-scale development or investment projects that would have a major impact within [indigenous or tribal] territory, the State has a duty, not only to consult with the [people], but also to obtain their free, prior, and informed consent, according to their customs and traditions.”<sup>59</sup> In that regard, the IACHR has indicated that it is neither feasible nor advisable to opt for a narrow definition of “large-scale development or investment plans” but that at least two criteria should be taken into account: (i) the characteristics of the project, such as its magnitude or scale; and (ii) the human and social impact of the activity, bearing in mind the particular circumstances of the indigenous or tribal people concerned.<sup>60</sup>
36. At the same time, States have a duty to carry out environmental impact assessments (EIAs) in advance that consider the human rights perspective and should be performed by “independent and technically capable entities,

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<sup>54</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016.

<sup>55</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 28, 2007, Series C. No. 172, pars. 127 and 128. I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and reparations, Judgment of June 27, 2012, Series C. No. 245, pars. 159-167.

<sup>56</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 179; I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, par. 134.

<sup>57</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 179.

<sup>58</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 179.

<sup>59</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 28, 2007, Series C. No. 172, par. 134.

<sup>60</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 40/15, 2015, pars. 186-188.

with the State's supervision."<sup>61</sup> Their main purpose is to preserve, protect and guarantee the special relationship that indigenous peoples have with their territories and ensure their survival as peoples.<sup>62</sup> In its Advisory Opinion OC-23/17, the I/A Court H.R. wrote that the obligations of the State with regard to environmental protection encompass the duty to observe the precautionary principle, which includes the "measures that must be taken in cases where there is no scientific certainty about the impact that an activity could have on the environment."<sup>63</sup> (see *infra*, Chapter IV.C)

37. Thus, the I/A Court H.R. has concluded that a State's failure to carry out or supervise an EIA before granting a concession constitutes a violation of Article 21 of the American Convention on Human Rights.<sup>64</sup> As the IACHR has emphasized, such studies must take into account not only environmental, but also social, impacts. This is particularly important for indigenous peoples, given that it is necessary to identify "the direct or indirect impact upon the ways of life of the indigenous peoples who depend on those territories and the resources present therein for their subsistence."<sup>65</sup> In turn, EIAs should be carried out with the participation of the indigenous peoples and, in particular, in a way that respects their traditions and cultures.<sup>66</sup> The reason for that is to ensure that the peoples "are aware of possible risks, including environmental and health risks, in order that the proposed development or extraction plan is accepted knowingly and voluntarily."<sup>67</sup>

## 5. Ethnic and Cultural Discrimination

38. In several of the region's countries the legacy of the colonial era for indigenous peoples, as communities that predate the colonization, is often one of different forms of discrimination and social segregation on racial, ethnic, and/or cultural

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<sup>61</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C. No. 172, par. 129. I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and reparations, Judgment of June 27, 2012, Series C. No. 245, par. 205.

<sup>62</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 213.

<sup>63</sup> I/A Court H.R., *The Environment and Human Rights* (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17 of November 15, 2017, Series A No. 23, par. 175-180.

<sup>64</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C. No. 172, par. 154.

<sup>65</sup> 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, par. 254.

<sup>66</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 215.

<sup>67</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C No. 172, par. 133.

grounds.<sup>68</sup> Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” In complementary fashion, the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance (2013) contains definitions for the concepts of indirect discrimination,<sup>69</sup> multiple discrimination,<sup>70</sup> and racism.<sup>71</sup>

39. The foregoing gives rise to a need for special protection of the right to nondiscrimination of those communities.<sup>72</sup> As Article 2 of the United Nations Declaration on the Rights of Indigenous Peoples provides, “[i]ndigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”<sup>73</sup> Thus, international standards on the rights of indigenous peoples have a dual objective. On the one hand, they strive to effectively address discrimination against such communities so they can fully benefit from development efforts and achieve an adequate standard of living. On the other hand, the standards aim to ensure respect for their right to define and

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<sup>68</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc.47/15, 2016, par. 26.

<sup>69</sup> Indirect racial discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group based on the reasons set forth in Article 1.1, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law. OAS, *Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance*, 2013, Article 1.2.

<sup>70</sup> Racism consists of any theory, doctrine, ideology, or sets of ideas that assert a causal link between the phenotypic or genotypic characteristics of individuals or groups and their intellectual, cultural, and personality traits, including the false concept of racial superiority. OAS, *Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance*, 2013, Article 1.4.

<sup>71</sup> Multiple or aggravated discrimination is any preference, distinction, exclusion, or restriction based simultaneously on two or more of the criteria set forth in Article 1.1, or others recognized in international instruments, the objective or result of which is to nullify or curtail, the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties, in any area of public or private life. OAS, *Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance*, 2013, Article 1.3.

<sup>72</sup> 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.Doc.56/09, December 30, 2009, par. 49.

<sup>73</sup> In addition, the I/A Court H.R. has determined that the principle of equality before the law, equal protection of the law and non-discrimination is jus cogens “because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.” I/A Court H.R., *Advisory Opinion OC-18/03*, September 17, 2003, par. 101.

pursue their self-determined development paths in order to safeguard their cultural integrity and strengthen their potential for sustainable development.<sup>74</sup>

## 6. Right to a Life of Dignity from an Indigenous World View

40. Indigenous peoples have unique ways of life that are sustained by subsistence practices intimately associated with the natural resources found on the territories they occupy. Common activities of theirs may include farming, hunting, fishing, and gathering,<sup>75</sup> as well as the use of traditional communal systems on which their individual and collective well-being depends.<sup>76</sup> In the specific case of Amazonian peoples, given that the forest's resources are often distributed across large expanses of territory, their subsistence practices may involve seasonal movement patterns. Such ways of life are part of their identity.<sup>77</sup>
41. The I/A Court H.R. has determined that the right to life should be considered, not only “the right of every human being not to be arbitrarily deprived of his or her life, but also the right not to be denied the conditions required to ensure a decent existence.”<sup>78</sup> To fulfill its duty to ensure the right to life, the State must also generate basic conditions compatible with the dignity of the human person and refrain from creating conditions that obstruct or impede them. Thus, forced displacement from their territories,<sup>79</sup> deprivation of access to their natural resources,<sup>80</sup> projects that cause environmental harm,<sup>81</sup> and other practices that hinder the exercise of their right of collective property may significantly compromise the basic conditions for their subsistence, development, and continuity of their lifestyle, as well as constituting violations of human rights protected in international instruments.<sup>82</sup>

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<sup>74</sup> United Nations, General Assembly, Rights of indigenous peoples, including their economic, social and cultural rights in the post-2015 development framework, Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, A/69/267, 6 August, 2014, par. 16.

<sup>75</sup> IACHR, *Submissions to the Inter-American Court of Human Rights in the Case of Awas Tingni v. Nicaragua*, referenced in I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment of August 31, 2001. Series C. No. 79, par. 140(f).

<sup>76</sup> IACHR, *Report No. 75/02*, Case 11,140, Mary and Carrie Dann (United States), December 27, 2002, para. 128.

<sup>77</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, par. 95.

<sup>78</sup> I/A Court H.R., *Case of the Yakve Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005, Series C. No. 125, par. 157(a).

<sup>79</sup> I/A Court H.R., *Case of the Yakve Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of June 17, 2005, Series C. No. 125, par. 137.

<sup>80</sup> I/A Court H.R., *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-23/17 of November 15, 2017, Series A No. 23, par. 114.

<sup>81</sup> I/A Court H.R., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and reparations, Judgment of June 27, 2012, Series C. No. 245, par. 249.

<sup>82</sup> I/A Court H.R., *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation*

42. That obligation also requires the adoption of positive measures that take into account the special vulnerability of the members of the people or community. That entails taking into consideration “their different [way] of life (different worldview systems than those of Western culture, including their close relationship with the land) and their life aspirations, both individual and collective.”<sup>83</sup>

## **B. Approaches**

### **1. Intercultural Approach**

43. The intercultural approach aims to recognize the coexistence of a diversity of cultures in society that “must live together based on respect for their different worldviews, human rights, and rights as peoples.”<sup>84</sup> This approach is regarded as an instrument by which to study “relations between cultural groups that live together in the same space.” It may include at least two dimensions: (i) “distribution of power over decision-making on their specific development priorities and control of their lives,” and (ii) “the level of recognition of their cultural differences, without that being grounds for exclusion or discrimination.”<sup>85</sup>
44. In that regard, the I/A Court H.R. has determined that in adopting measures that involve indigenous peoples, the State should take into account that they have a cultural identity that distinguishes them from majority groups or communities and, therefore, it will be necessary to accord “effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs.”<sup>86</sup> In that sense, the recognition and protection of indigenous peoples as culturally different peoples requires wide political and institutional structures that allow them to participate in public life and protect their cultural, social, economic and political institutions in the decision-making process.<sup>87</sup>

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*and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights*], Advisory Opinion OC-23/17 of November 15, 2017, Series A No. 23, par. 48 and 114.

<sup>83</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of June 17, 2005, Series C No. 125, par. 163.

<sup>84</sup> UNFPA, UNDP, UNICEF and UN Women, *Ampliando la mirada: La integración de los enfoques de género, interculturalidad y derechos humanos*, Santiago, Chile, 2012, p. 24.

<sup>85</sup> German Cooperation Agency, Programa Buen Gobierno y Reforma del Estado, *“Guía metodológica de “Transversalización del enfoque de interculturalidad en programas y proyectos del sector gobernabilidad” a partir de la experiencia del Programa “Buen Gobierno y Reforma del Estado” del Perú,* Lima, 2015, p. 17.

<sup>86</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005, Series C No. 125, pars. 51 and 63.

<sup>87</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 150.

45. In the opinion of the IACHR, the foregoing calls for an intercultural dialogue to be advanced on human rights, the creation of culturally adequate services, and differentiated care for indigenous and tribal peoples. It also entails ensuring effective participation through the right to consultation and, as appropriate, free and informed prior consent. The consultation should be culturally adequate; that is, it should take into account each people's traditional methods of decision-making as well as their own forms of representation.<sup>88-89</sup> Mainstreaming an intercultural approach requires adapting the entire institutional framework of the State, including the areas of education, justice, and health care, among others. It also entails, for instance, promoting indigenous medicine systems and care based on traditional knowledge.<sup>90</sup>

## 2. Gender Perspective

46. Although the majority of indigenous peoples in the Americas are in a state of vulnerability and have historically suffered discrimination, within those communities women often face more serious discrimination, violence, and social exclusion for reasons of gender, ethnicity, and poverty.<sup>91</sup> That occurs both within and outside their communities.<sup>92</sup> Faced with that reality, the gender perspective “reveals the presence of an asymmetrical power structure that assigns differentiated values, positions, and habits to either sex, thus organizing a system of power relations on that basis, which has taken shape as a cultural, social, economic, and political mindset that is omnipresent in all spheres of social relations.”<sup>93</sup>
47. In the context of extractive activities, the IACHR observes differentiated impacts on women, whose lives are altered in different spheres. Generally speaking, extractive activities offer work opportunities for men, leaving the women to shoulder the burden of almost all community activities. Although this has led to the empowerment of some women who have assumed a leadership role in their communities as a result, it has also entailed an excessive workload. That imbalance

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<sup>88</sup> I/A Court H.R., Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C. No. 172, pars. 27, 131, 133, and 154. I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and reparations, Judgment of June 27, 2012, Series C. No. 245. pars. 201-202.

<sup>89</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc.47/15, 2016, par. 237.

<sup>90</sup> IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 201.

<sup>91</sup> IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 228.

<sup>92</sup> IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 230.

<sup>93</sup> The gender perspective “reveals the presence of an asymmetrical power structure that assigns differentiated values, positions, and habits to either sex, thus organizing a system of power relations on that basis, which has taken shape as a cultural, social, economic, and political mindset that is omnipresent in all spheres of social relations.” Laura Pautassi, *La igualdad en espera: el enfoque de género*. Revista Lecciones y ensayos No. 89, 2011, p. 281 (free translation).

in roles is augmented by such factors as the disappearance of land under cultivation and the attendant loss of food and medicinal plants that they grow for their families.<sup>94</sup> It can also lead to an increased risk of rape and sexual exploitation in the surrounding area, which can even affect young and adolescent girls. In turn, specific forms of property-related violence can arise as a result of restrictions on their access to their own resources. Other forms of violence manifest themselves in contexts of armed conflict, militarization of indigenous lands, in the home, in the exercise of economic, social, and cultural rights, in the urban environment (in migration and displacement processes), and in the exercise of leadership and defense of rights.<sup>95</sup>

48. The gender perspective combined with an intercultural approach helps to recognize the particular position of indigenous women and adopt culturally appropriate measures to ensure their enjoyment of their fundamental rights and freedoms, as well as enabling them to have a life free from discrimination and violence. In the opinion of the IACHR, such approaches need to be considered when investigating, prosecuting, and punishing all forms of violence against indigenous women, as well as for determining appropriate reparations. They should also be applied to consultation processes, in which States should see to it that women's participation in internal decision-making processes is guaranteed, using measures that respect their customary law.<sup>96</sup>

### 3. Intergenerational Solidarity Approach

49. Most indigenous peoples attribute special importance to their ancestors and to their future descendants. From that perspective, intergenerational solidarity is widely understood as social cohesion between generations,<sup>97</sup> which manifests itself in a strong commitment to the values and experiences passed on via the oral tradition, as well as in the need to reproduce that knowledge. Thus, part of the cultural heritage of indigenous peoples has to do with the community's return to the past in order to

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<sup>94</sup> Grupo de Trabajo sobre Pueblos Indígenas de la Coordinadora Nacional de Derechos Humanos del Perú, Informe sobre vulneraciones diferenciadas a los Derechos Humanos de las mujeres indígenas en contextos de actividades extractivas en el Perú presentado ante la comisión interamericana de derechos humanos en el marco del 159° Periodo de Sesiones, 2016.

<sup>95</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc.40/15, 2015, pars. 319-321. IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, pars. 87-130.

<sup>96</sup> IACHR, *Indigenous women and their human rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, 2017, par. 231; IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc.47/15, 2016, par. 211; OAS, *American Declaration on the Rights of Indigenous Peoples*, 2016.

<sup>97</sup> Chapela, Luz María, *Ventana a mi comunidad*, Cuadernillo cultural: El pueblo hñähñu, CGEIB-SEP, 206, pp. 33-35.

project its future. In sum, the aim is to look after the land and nature, their values, property, and knowledge for the current and future generations.<sup>98</sup>

50. This concept has also been developed in the framework of the United Nations and refers to relations between young and older generations, including child-parent relationships, affordability of pensions, and care of the elderly.<sup>99</sup> In the context of sustainable development, intergenerational solidarity goes beyond relations among the currently living representatives of different generations to embrace the future generations who do not yet exist. At the World Summit for Social Development, held in 1995, countries committed themselves to creating a framework of action to, among other things, fulfil their responsibility for present and future generations by ensuring equity among generations and protecting the integrity and sustainable use of the environment. In this view, humanity as a whole forms an intergenerational community in which all members respect and care for one another, achieving the common goal of survival of humankind.<sup>100</sup>
51. In light of the foregoing, the Commission takes as its starting point the general obligations of the States that make up the inter-American system to respect and ensure the human rights of all persons subject to their jurisdictions without discrimination of any kind; and their duty to adapt their domestic legal framework to the provisions of the inter-American human rights instruments.<sup>101</sup> Accordingly, the IACHR urges States to value and incorporate the standards and approaches addressed in this chapter in relation to the rights of the indigenous and tribal peoples of the pan-Amazon region, which are underpinned mainly by the need to respect, ensure, and protect their ethnic diversity, as well as their physical and cultural survival.

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<sup>98</sup> UN, General Assembly, *Intergenerational solidarity and the needs of future generations, Report of the Secretary-General*, A/68/322, 15 August 2013, par. 6.

<sup>99</sup> Chapela, Luz María, *Ventana a mi comunidad*, Cuadernillo cultural: El pueblo hñähñu, CGEIB-SEP, 206, pp. 33-35.

<sup>100</sup> UN General Assembly, *Intergenerational solidarity and the needs of future generations, Report of the Secretary-General*, A/68/322, 15 August 2013, par. 8.

<sup>101</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 25.

CHAPTER 2  
SITUATION OF INDIGENOUS AND  
TRIBAL PEOPLES IN THE  
PAN-AMAZON REGION



## SITUATION OF INDIGENOUS AND TRIBAL PEOPLES IN THE PAN-AMAZON REGION

52. This chapter contains information about the development pressures on indigenous and tribal peoples in the pan-Amazon region. It includes both quantitative and qualitative information available to the IACHR. The former includes statistics available from a variety of sources about the situation in the pan-Amazon region. The qualitative information, for its part, allows the Commission to discern regional trends in relation to the issues facing the pan-Amazon region based on the reality that currently exists in each country, including pressures exerted by extractive activities; infrastructure projects, including roads, waterways, and hydroelectric plants; and monoculture, among other factors, which often encroach on Amazonian indigenous territories and are carried out without free and informed prior consultation or consent, which, in turn, leads to social protest and the ensuing criminalization of their leaders. This chapter also shows that transnational criminal organizations are closely associated with the cultivation illicit crops; drug, firearms and people trafficking; and other activities. Lastly, where possible, emblematic cases and testimonies are cited to illustrate the panorama described.

### ***A. Dispossession of Lands and Territories and Barriers to Recognition of Ownership***

53. The IACHR observes an ongoing process that continues to this day, in which indigenous and tribal peoples in the Amazon region are being dispossessed of their lands and blocked from recognition of their ownership. Although each country's problems in this regard have their own history, the IACHR has identified a number of obstacles in common. In the main, they include excessive delays or stoppages in demarcation processes involving indigenous lands and territories, adoption of regulations curtailing previously recognized guarantees on communal property, partial recognition of territory or imposition of conditions on ownership requirements, unlawful appropriation of indigenous territories by the State and third parties, powerful pressures from economic sectors linked to extractive industries, and introduction of farming regulations unfavorable to Amazonian peoples. The following examples illustrate the above.
54. In the case of Bolivia, according to information from the State, as of January 2019 it had titled a total of 85,901,515 hectares, of which 23,989,678 hectares (28 percent of the country's territory) have been titled as indigenous territories (currently termed "original indigenous smallholder territory" – *territorio indígena originario*

*campesino*), benefiting 483,673 families.<sup>102</sup> According to information received by the IACHR, in spite of the fact that the Constitution contains articles concerning the right to property of indigenous peoples,<sup>103</sup> those provisions are in line with Law 1715 of 1996 (National Agrarian Reform Service Law, or INRA, Law), which laid the foundations for addressing core problems affecting farming in Bolivia in the wake of the 1952 Agrarian Revolution. Although one of the achievements of that law's implementation is the titling of more than 22 million hectares as "original communal land" (*tierra comunitaria de origen* – TCO) to the benefit of indigenous peoples, the IACHR has been informed about obstacles in relation to indigenous territories. Specifically, it was reported that large and medium-sized landholders have managed to corner the majority of productive farmland, the main agri-industry firms have relied on land leases to deforest the land for intensive farming with highly adverse effects, and so-called intercultural and Mennonite communities also exert great pressure on their territories.<sup>104</sup> Likewise, 28 indigenous peoples in the Amazon region are reportedly pursuing applications and/or lawsuits over territories and that they have to contend with difficulties such as lack of access to public information, situations in which third parties are granted lands claimed by indigenous peoples, alleged imposition of conditions relating to political party affiliation and other issues.<sup>105</sup>

55. In spite of the State's efforts, a significant number of communities are still prevented from obtaining title to their territories. For example, in 1990, Executive Decree 22611 recognized the territory of the Chimán people. The companies that were operating in the zone prior to the decree were granted an area of approximately 420,000 hectares outside the protected zones and indigenous territories. The arrangement was that when their contracts expired those areas would become part of the indigenous territories. However, in 2010 the State declared those areas to be government property instead of complying with Decree. The Chimán people have been claiming their right to property ever since. There are reports of plans to grant those areas to colonists and loggers through the National Agrarian Reform Institute (INRA). The president of the Chimán Great Council, Edgar Note, has accused INRA of issuing a settlement order for intercultural communities on Chimán ancestral territory.
56. The IACHR was informed of the application by Brazilian courts of the time requirement principle with regard to land occupation in that country, whereby recognition of collective ownership by indigenous peoples of their territories depends on whether or not those communities were in possession of them upon the

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<sup>102</sup> State of Bolivia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region.

<sup>103</sup> Inter alia, Article 393, 394, 395, 403 and 401.

<sup>104</sup> The Mennonites are a Protestant religious community traditionally "closed off from the outside world." They settled in Bolivia in 1954 in an area where the export-oriented agri-industrial production model predominates. KOPP, Adalberto, *Las colonias menonitas en Bolivia*, La Paz, Fundación TIERRA, 2015, p. 11. CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, pp. 8, 37.

<sup>105</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 36.

enactment of the 1988 Federal Constitution. The IACHR finds that argument disturbing as it ignores the countless forcible evictions and internal displacements that prevented indigenous communities from effectively holding large portions of their land in 1988 and runs counter to international and inter-American human rights rules and standards. That criterion contradicts the pre-existing nature of the rights to collective property, which Article 231 of the Constitution itself recognizes as inalienable.<sup>106</sup>

57. According to the National Indigenous Foundation (FUNAI), in Brazil there are around 685 outstanding applications for recognition of indigenous lands. It was reported, however, that FUNAI omitted territories whose population had filed an application but whose administrative processing had not yet started, a status that applies to 415 cases in the Amazon region alone. In recent years the federal government has reportedly stalled demarcation processes, either as a result of administrative decisions, or because of FUNAI budget cuts. The effects of that are to prolong the time taken to initiate, carry out, and finalize demarcation processes (which can last between 10 and 19 years), and, in turn, increased conflicts. Added to that is the widespread practice of squatting (*grilagem*) in the Brazilian Amazon (understood as private appropriation of public lands by such methods as falsified property documents, for example), which reportedly affects around 100 million hectares (approximately 12 percent of Brazil).<sup>107</sup>
58. According to information received by the IACHR, the situation recently worsened after the Brazilian Government adopted measures curbing guarantees for the collective property rights of indigenous and tribal peoples. Although the worst threats to those communities envisaged in the administrative reform process have not yet materialized, insofar as quilombola peoples are concerned, Provisional Measure 870/2019, which went into force as Law 13.844 in 2019, transferred authority over identification, recognition, delimitation, demarcation, and titling of lands occupied by quilombola communities to the Ministry of Agriculture. Those responsibilities previously belonged to the National Institute for Agrarian Reform and Colonization (INCRA) which relied on technical staff and specific tools for carrying them out. The IACHR notes that the Ministry of Agriculture has traditionally maintained a position in favor of natural resource exploitation activities.
59. According to information received by the IACHR, various non demarcated lands in the Brazilian state of Amazonas are affected by unauthorized incursions for the extraction of natural resources and the presence is very common of nonindigenous persons claiming ownership of the land who often act in a violent and intimidating way. The Commission witnessed as much when it visited the village of Açaizal in the Munduruku Territory of Planalto during its on-site visit in 2018. On that occasion,

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<sup>106</sup> IACHR, Press release [238/18, IACHR Concludes Visit to Brazil](#), Washington, D.C., November 12, 2018, [Preliminary Observations on the IACHR Visit to Brazil](#), p.12.

<sup>107</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, 2018, p. 5. IACHR, Press release [238/18, IACHR Concludes Visit to Brazil](#), Washington, D.C., November 12, 2018, [Preliminary Observations on the IACHR Visit to Brazil](#), p. 9. CIMI, Response to the Questionnaire PUC-Rio, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, par. 62.

the delegation was accosted in an intimidating and threatening way by representatives of soybean farmers in Planalto Santareno, who sought to stop the meeting from taking place. It was thus able to see for itself the conflict and violence promoted by sectors linked to agri-business interests, who have historically appropriated and plundered the lands and territories of traditional and native peoples and of rural communities in Western Pará state in general.<sup>108</sup>

60. A signature case is that of the Sawre Muybu Indigenous Land of the Munduruku people. In 2014, their demarcation plan was halted. The IACHR was informed that, as a result, in 2016 the people decided to do their own demarcation of the Sawre Muybu Indigenous Land, by putting up signs along the territory's borders. As a resistance tactic, the Munduruku people drew up a "life map" affirming their traditional relationship with the land and calling for the demarcation process to resume. As part of the preparations for this report, the Commission interviewed Juarez Saw, a chief of the Munduruku people, who said: "We are under threat from loggers, prospectors, palm oil producers, and the dam that is coming. We know about the government's failure, the violation of laws. Therefore, we decided to do the demarcation ourselves. We know that this also gives us security and that if the government agrees with this demarcation it would be a very good thing for us. This land is our heritage, our means of subsistence. We get fish from the water and the forest is our market. It is our means of survival."<sup>109</sup> For his part, Bruno Kaba, chief of the warriors of the Munduruku people, said: "The map is for our defense, for defending everything, so that the river can stay as it is: alive; so that the esperidip (forest) can stay alive; so that those who live in the forest can continue to do so. ... We cannot stop with the demarcation. That is why we have to defend ourselves. Are we going to stand idly by and wait until our land is underwater? No. We have to fight. And not just in the Sawre Muybu Land, but in the whole Munduruku territory."<sup>110</sup>
61. The IACHR received information that, although Colombia has formally recognized indigenous reserves, several communities have not yet been granted collective title.<sup>111</sup> There were also reports of overlaps in relation to ethnic communities, specifically indigenous lands and territories with areas licensed for oil and gas development (70,632.33 hectares), mining concessions (82,974.80 hectares), and

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<sup>108</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, 2018, p. 8. Comissão Pastoral da Terra, *Produtores de soja agem com truculência e tentam impedir comissariado de realizar reunião com comunidade indígena durante visita da CIDH a Santarém (PA)*, November 8, 2018, Consulta, January 11, 2019.

<sup>109</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, 2018, p. 8. Comissão Pastoral da Terra, *Produtores de soja agem com truculência e tentam impedir comissariado de realizar reunião com comunidade indígena durante visita da CIDH a Santarém (PA)*, November 8, 2018, Consulta, January 11, 2019.

<sup>110</sup> Interview by CIMI, enclosed for the Commission with the response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, 2018, p. 8. Comissão Pastoral da Terra, *Produtores de soja agem com truculência e tentam impedir comissariado de realizar reunião com comunidade indígena durante visita da CIDH a Santarém (PA)*, November 8, 2018, Consulta, January 11, 2019.

<sup>111</sup> Specifically, it was reported that there are 227 indigenous reserves (51 percent of the total area in the region); three collective titles (less than 1 percent of the region), and 28 community councils without collective title. IEI, Pontificia Universidad Javeriana de Cali, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 15, 2018, p. 9.

mining claims (445,105.18 hectares).<sup>112</sup>In addition, indigenous peoples in the Amazon region reportedly faced obstacles to access to traditional sites owing to the expansion of land under cultivation. That has apparently given rise to tensions between colonists and members of indigenous communities who dispute access to fisheries, such as the Caquetá River and its forests, where the Uitoto and Coreguaje communities usually get their meat. Some indigenous leaders in that region have said that the companies and colonists “are closing the indigenous larder” by hindering their access to raw materials and sacred sites.<sup>113</sup>

62. With respect to Afro-descendent communities, Law 70 of 1993 accorded legal recognition to their community councils and introduced rules governing the collective titling of their territories. However, the different impacts of the armed conflict have caused widespread displacement, as well as abandonment and forcible dispossession of lands. In that regard, Decree 4635 of 2011 made provision for individual and collective comprehensive reparation measures for black, Afro-Colombian, Raizal and Palenquera communities, which include restitution of lands on ethnic and territorial grounds.
63. In the case of Ecuador, according to information provided to the Commission, the State has encouraged a colonization process on Shuar territory through the Ecuadorian Institute for Agrarian Reform and Colonization (IERAC), particularly since the 1970s. Paving the way, the governing military junta issued the Agrarian Reform and Colonization Law and the Unused Land and Colonization Law in July and September 1964, respectively.<sup>114</sup> Those laws and the creation of the Institute legalized the State's ownership of the land, including undeveloped areas. In that way smallholders were encouraged to exercise the right to obtain property title over land they were working, leading to the colonization of lands deemed “uninhabited.” As a result, the Shuar were forced to adopt the colonists' production and land-use models or risk losing their land to smallholders.<sup>115</sup>
64. In the case of Guyana, the IACHR is concerned by the fact that communal property titles are considered a State grant and not a recognition of indigenous traditional property.<sup>116</sup> Thus, although the Constitution of Guyana protects the territories of

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<sup>112</sup> IEI, Pontificia Universidad Javeriana de Cali, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 15, 2018, p. 13.

<sup>113</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 40.

<sup>114</sup> Gondard, Pierre and Hubert Mazurek, 30 años de reforma agraria y colonización en el Ecuador (1964-1994), in *Dinámicas territoriales: Ecuador, Bolivia, Perú, Venezuela*, Estudios de Geografía, volumen 10, Quito, Colegio de Geógrafos del Ecuador (CGE), Corporación Editora Nacional (CEN), Institut de Recherche pour Le Développement (IRD), Pontificia Universidad Católica del Ecuador (PUCE), 2001, p. 16.

<sup>115</sup> HENDRICKS, Janet W, *Poder y conocimiento: Discurso y transformación ideológica entre los Shuar*, SANTOS GRANERO, Fernando (Compiler), Globalización y Cambio en la Amazonía Indígena, Quito, FLACSO, 1996, 135.

<sup>116</sup> That has to do with the fact that the British Government's Guyana Independence Act of 1963 provides: “Amerindians should be granted legal ownership or rights of occupancy over areas and reservations or parts thereof where any tribe or community is now ordinarily resident or settled and other legal rights, such as rights of passage, in respect of any other lands where they now by tradition or custom de facto

indigenous peoples, referred to as Amerindians, Article 142(2)(b)(i) provides that in exceptional circumstances the forcible expropriation of their property without compensation may be authorized, for the supposed purpose of “its care, protection and management or any right, title or interest held by any person in or over any lands situate in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community.”<sup>117</sup> The Commission also notes the existence of the Amerindian Act (2006), which provides that indigenous communities without any land title are not entitled to a Village Council. (Art. 5 (c)).<sup>118</sup>

65. In Peru, the Commission observes serious difficulties in relation to access to the right to property for indigenous peoples of the Amazon that have to do with the notion of property in the Amazonian context. The Agrarian Reform played a critical role in determining what constituted the communities' territory inasmuch as it was guided by the premise that land had to be worked in order to be granted. The State's policy was based on its concept of a smallholder community and assimilated the notion of an Amazonian community with that of an Andean community without taking into account the differences in terms of identities and concept of space. The scant knowledge of land use in the jungle meant that large tracts were not granted, with the result that the territory of communities was reduced and recognition granted only to land that was worked.<sup>119</sup>
66. Another obstacle to ownership of territory in Peru has to do with soil classification, which was introduced as a requirement for determining the property of indigenous peoples and involves the collection of samples and tests that can only be performed by qualified laboratories. In addition, in the case of the Amazon region, indigenous peoples' property is made up of lands turned over to farming that is also forest land and which can be used for a variety of purposes. However, forest land can only be assigned, according to Article 11 of the Native Communities and Agrarian Development in the Jungle and High Jungle Regions Law; as well as the erstwhile Flora and Fauna Law of 1975 (Decree Law 21147). Accordingly, there are a series of regulatory and bureaucratic barriers that complexify recognition of territory that historically belongs to indigenous peoples.<sup>120</sup>
67. In that regard, it is worth noting the situation of the Native Community of Santa Clara de Uchunya, which belongs to the Shipibo-Conibo people. According to information provided to the IACHR, the State granted more than 200 certificates of possession to non indigenous smallholders in the community's territory, despite being aware

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enjoy freedoms or permissions...legal ownership that comprise all rights normally attaching to such ownership”.

<sup>117</sup> Constitution of the Co-operative Republic of Guyana, 1980, Article 142(2)(b)(i).

<sup>118</sup> United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Guyana, CERD/C/GUY/CO/14, 4 April 2006, par. 15.

<sup>119</sup> CAAAP-UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 9.

<sup>120</sup> CAAAP-UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 17.

of its ancestral occupation and an application for recognition of their right to property. The colonists evidently succeeded in registering property titles with the National Superintendency of Public Records (SUNARP), formally making them owners of those lands, which they then sold to a company. That company initiated its activities on the estate today known as Fundo Tibecocha and proceeded to clearcut 6,845 hectares of old-growth forest in order to establish an oil palm plantation. In 2015 the Ministry of Agriculture and Irrigation (MINAGRI) founds that the company did not have an approved environmental management instrument and that it had deforested 99.69 percent of the property. Despite that, it has not halted its activities. Fresh areas of the community's territory have been invaded by new smallholders, who continue to deforest land for oil palm cultivation in the face of inaction on the part of the authorities.

68. With regard to Suriname, the IACHR recalls two judgments by the I/A Court H.R. ruling on the State's violation of Article 21 of the American Convention in relation to the right to property of indigenous and tribal peoples over their territory, specifically concerning the Saramaka people<sup>121</sup>, and the Kaliña and Lokono peoples.<sup>122</sup> In spite of the foregoing, the I/A Court H.R. recently found that the State has failed to adopt the reparation measures that it ordered regarding, inter alia, the delimitation, demarcation, and granting of collective title for the territory of the members of the Saramaka people. On the contrary, according to the information received, a new concession has been granted to the company IAMGOLD by means of an amendment to the Rosebel Mineral Agreement, which affects 33 Saramaka communities and fails to comply with the standards on prior consultation, environmental and social impact assessments, and shared benefits for the people.<sup>123</sup>
69. With regard to Venezuela, the information available indicates that, according to Transitory Provision XII of the Constitution, the process of demarcation of indigenous lands and habitats should have been completed within two years following the entry into force of the basic law. However according to what the IACHR was told, the regional demarcation commissions were not set up until 2003 and 2004, and the first demarcation processes were not carried out until 2005 and 2009. In spite of that, the IACHR was informed that as of 2016, 87 percent of the total had yet to be granted, and in some states, such as Bolívar and Amazonas, the titling process had been exceedingly slow.<sup>124</sup>The Commission also learned that in

<sup>121</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C No. 172.

<sup>122</sup> I/A Court H.R., *Case of the Kaliña and Lokono Peoples v. Suriname*, Merits, Reparations and Costs, Judgment of November 25, 2015, Series C No. 309.

<sup>123</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 26, 2018, par. 28.

<sup>124</sup> Stanford Zent, Egleé L. Zent, Lucas Juae Mólö and Pablo Chonokó, Reflexiones sobre el proyecto Auto-Demarcación y Etno Cartografía de las Tierras y Hábitats, Jodí y Eñepa, *Revue d'ethnoécologie*, 2016; Caballero A., H. La Demarcación de Tierras Indígenas en Venezuela, *Revista Venezolana de Economía y Ciencias Sociales*, vol. 13, No. 3, septiembre-diciembre, 2007, pp. 189-208; Universidad Central de Venezuela Caracas, Venezuela, UCAB, Informe sobre los Derechos de los Pueblos Indígenas Cuestionario sobre Panamazonía Venezuela, December 10, 2018, p. 64; Bello, J. El Estado ante la Sociedad Multiétnica y Pluricultural: Políticas Públicas y Derechos de los Pueblos Indígenas en Venezuela (1999-2010). 2011; IWGIA, Vitti, M. La demarcación de territorios indígenas, una deuda vigente, 2016, Revista SIC.

November 2010 Presidential Decree No. 7855 was issued, restructuring and reorganizing the National Commission on Demarcation of Indigenous Lands and Habitats. As a result, the national process of indigenous land demarcation is at a standstill and the Commission has been transferred from the Ministry of the Environment to the Ministry of Indigenous Peoples. Indigenous organizations expressed concern at the transfer as it contravenes the Indigenous Lands and Habitat Demarcation and Guarantee Law.<sup>125</sup>

70. In addition there are several other obstacles that adversely affect Venezuela indigenous peoples' recognition of their right to property. They include alleged inefficiency, slowness, and absence of political will on the part of the entities in charge of resolving land disputes; vulnerability of state bodies to pressure from powerful sectors (large landholders, ranchers, the military, mining companies) interested in the land; economic, staffing, and budget constraints; lack of information in the bodies responsible; irresponsibility and disorganization in granting titles, resulting in dual titling of the same land, for example; slowness and complexity of established procedures; and lack of understanding of indigenous peoples' culture and concept of land ownership.<sup>126</sup>

## ***B. Obstacles to the Use of Traditional Territory Associated with Extractive or Development Projects***

71. The IACHR has observed how indigenous peoples and communities are faced with numerous problems that often arise in their territories—often in combination with each other—associated with extractive activities or development projects. The 20th century, in particular, saw a surge in extractive activities, especially in Latin America and the Caribbean. There has also been a major increase in activities export-oriented single-crops plantations that cover large expanses of land, have a high environmental impact, and generate enormous production volumes. In that context, the IACHR notes that such projects have a particular impact on indigenous peoples and that this situation has not only continued over time, but in some cases actually grown worse.<sup>127</sup> In the following sections, the IACHR looks at the most troubling extractive and development activities and projects in the Amazon, according to information provided to it. In particular, such projects involve (i) mining, (ii) infrastructure (waterways and roads), (iii) hydroelectric plants, and (iv) energy and oil and gas projects.

<sup>125</sup> Articles 3 and 5 provide that the demarcation process should be carried out by the Ministry of the Environment, an organ of the national executive branch in charge of the national demarcation process, with the full participation of the indigenous peoples, communities, and organizations .

<sup>126</sup> Wayuu Taya Foundation, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 30, 2018, p. 34.

<sup>127</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016.

## 1. Mining

72. The information received by the Commission indicates that mining is one of the main threats to the integrity of forests and the cultural survival of their inhabitants. The threat is one of deforestation caused by the elimination of the surface vegetation to get at the mineral resources, waste buildup on the surface; consumption and contamination of river and ground water; road building and installation of industrial facilities; expansion of the agricultural frontier due to the depletion of productive lands and the failure to demarcate indigenous territories; population growth and sedentarization (because the groups concerned settle permanently in a particular area, going against the nomadic practices of a number of Amazonian peoples), overburdening the productive capacity of rainforest soils; changes in values and beliefs as a result of contact with the market economy, which they generally join in subordinate social and economic positions; among other serious adverse impacts.<sup>128</sup>
73. For example, in Colombia, indigenous peoples in the Amazonian region are constantly challenging different land-use regulations as a result of increasing interest in the extraction of natural resources, especially from the mining sector.<sup>129</sup> The Commission also took note of large mining projects underway in the Ecuadorian Amazon region, including the Mirador and Fruta del Norte projects.<sup>130</sup>
74. Another country on which the IACHR recently received information is Brazil. According to available information, of a total of 44,911 mining projects in the Amazon region as of 2016, 17,509 affected, either in their entirety or partially, indigenous lands or conservation areas. The IACHR received troubling information about the irreversible effects that such projects are reportedly having, including the deforestation of an area of around 11,670 km<sup>2</sup> between 2005 and 2015.<sup>131</sup> During its last on-site visit, the IACHR was told that such activities are incompatible with the permanent residence of the indigenous, quilombola, and traditional communities that inhabit the areas concerned.<sup>132</sup> In the case of Oriximina, for instance, the information provided mentioned potential harmful effects to quilombola communities, as documented by Comissão Pro Índio. For that reason, the

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<sup>128</sup> Wayuu Taya Foundation, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 30, 2018, p. 18.

<sup>129</sup> According to information received by the IACHR in relation to large-scale mining, a total of 259 applications (715,207.51 hectares) have been submitted, and 263 titles (131,726.69 hectares) granted. IEL, Pontificia Universidad Javeriana de Cali, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 15, 2018, p. 11.

<sup>130</sup> The Mirador project reportedly affects the territory of the Amazonian Community of Acción Social "Cordillera del Cóndor Mirador" (Cascomi), in Pangui Canton, Zamora Chinchipe Province, Tundayme Parish. The Fruta del Norte project is apparently situated in the territory of the Shuar indigenous community, in Los Encuentros Parish, Yanzantza Canton, Zamora Chinchipe Province, where it is said to have reached the negotiation stage. PUCE, Facultad de Jurisprudencia, Centro de DDHH, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 18.

<sup>131</sup> PUC-Río. Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018.

<sup>132</sup> IACHR, Press release [238/18, IACHR Concludes Visit to Brazil](#), Washington, D.C., November 12, 2018, [Preliminary Observations on the IACHR Visit to Brazil](#), p. 7.

communities concerned have demanded that approval not be given for the construction of any new dams without an assessment of the environmental and social risks, as well as of the risks to the safety of communities that live downstream from already built dams.<sup>133</sup>

75. With regard to Peru, the IACHR was given information about the activity of the mining company Afrodita which has facilities set up on the property known as El Tambo, overlapping the territories of the Awajun and Wampis peoples, in the zone of El Cenepa, Condorcanqui Province. According to the information available, the company has installed platforms and dug tunnels based on permits issued by the Amazonas Regional Government, without having conducted an EIA or a prior consultation. The situation worsened when in December 2016 the regional government reportedly abrogated the resolutions that registered the territories of the indigenous peoples concerned and that declared the Amazon forest fallow land. However, in February 2018, it reportedly denied the mining company's application to establish a usufruct on the same land. In spite of that, the mining camp is still in the indigenous territory.<sup>134</sup>
76. In Venezuela, Amazonian indigenous peoples are reportedly prevented from going about their traditional activities as a result of social and environmental conflicts that have been reported and documented by civil society organizations.<sup>135</sup> Such cases are mainly connected with illegal mining, which is said to be on the rise at present as an alternative source of income in the midst of the country's economic crisis. In some states, such as Bolívar, obstacles aside from illegal mining include pollution by State-owned enterprises and environmental conservation regulations. State-owned enterprises are also said to have adversely affected indigenous peoples by impacting their hunting/gathering areas as a result of deforestation. According to information received by the IACHR, a case in point is the State-owned enterprise CVG Bauxilum in Bolívar state, which has been an operating open-pit bauxite mine in the area of Los Pijiguaos since 2006, adversely affecting the Eñepa (or Panare) communities.<sup>136</sup>

## 2. Infrastructure

77. In relation to infrastructure, the IACHR received information about the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA), a regional mega program comprising 10 integration hubs encompassing more than 500 priority projects across South America. Insofar as the Bolivian Amazon is concerned, the Peru-Brazil-Bolivia Hub would have a particular impact, especially as a result of highways would run through it from south to north (La Paz–Guayaramerín and La Paz–Cobija). In relation to that hub, the Bolivian State has reportedly planned,

<sup>133</sup> Comissão Pro Índio, Sao Paulo, *Em visita da Comissão de Brumadinho à Oriximiná, ribeirinhos e quilombolas reivindicam moratória de novas barragens*, March 30, 2019.

<sup>134</sup> REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 26.

<sup>135</sup> Webpage of Observatorio de Ecología Política (OEP) de Venezuela,

<sup>136</sup> OEP de Venezuela, *Ficha sobre Impactos socio ambientales de la mina de bauxita a cielo abierto Los Pijiguaos*, pp. 7 and 8.

without prior consultation, the construction of the Villa Tunari–San Ignacio de Moxos Road, all three sections of which would cut through the Isiboro Sécuré Indigenous Territory and National Park (TIPNIS).<sup>137</sup>

78. Part of the IIRSA Program in Bolivia is known as the “Energy Heart of South America” and would consist of mega hydroelectric, nuclear, and thermal power plants that would have an enormous impact on territories of indigenous peoples, including peoples in isolation and initial contact. For example, it was reported that the construction of the Chepite and Bala dams would adversely affect at least six indigenous peoples and their territories, as well as one of the world's most biodiverse parks.<sup>138</sup> The Energy Heart plan is said to have originated from the Brazilian Río Madera Complex project, most of whose area of influence is in Bolivia. According to available information, two of the four planned dams in Brazil have been built, with the other two pending (one in binational waters and the other in Bolivia).<sup>139</sup>
79. In relation to Brazil, the IACHR has been informed about various road-building and paving projects that would cut through the Amazon region and affect numerous indigenous peoples. Of particular note are the paving projects for highway BR-319, which joins Manaus and Porto Velho, and Route BR-163, which links Cuiabá and Santarém.<sup>140</sup>
80. As regards Peru, the Commission obtained information about the Amazon Waterway Project, which aims to improve navigability on the Rivers Huallaga, Marañón, Ucayali, and Amazon, as well as to encourage large-scale trade. However, to do so will require dredging to deepen and widen the rivers’ channels, among other measures. According to the information provided, the dredging would be harmful because it would stir up silt contaminated with heavy metals left by oil and gas operations carried out years earlier. Following the project’s announcement, Asociación Cocama de Desarrollo y Conservación San Pablo de Tipishca (Acodecospat), a Kukama organization representing 63 native communities, filed an application for constitutional relief, asking the courts to order the Peruvian State to cancel the call for bids and to conduct a prior consultation process with the Kukama people and any other parties that might be affected. Following that action, a consultation process was launched in 2014 that culminated in 2017 with 70 agreements with 14 indigenous peoples.<sup>141</sup> However, the IACHR was informed that

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<sup>137</sup> REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 87.

<sup>138</sup> CEDIB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, November 29, 2018, pp. 29-33; REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 86.

<sup>139</sup> CEDIB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, November 29, 2018, pp. 29-33; REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 86.

<sup>140</sup> PUC-Río. *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, received by the IACHR on November 16, 2018.

<sup>141</sup> Ministry of Culture of Peru, *Se lograron 70 acuerdos con 14 pueblos indígenas en marco del primer proyecto de hidrovías de la Amazonía*, July 7, 2017; SERVINDI, *Hidrovía Amazónica: continúa evaluación del avance de acuerdos*, July 19, 2017.

dissociative mechanisms were allegedly used in order to get indigenous organizations to support the project.<sup>142</sup> In 2019, civil society organizations claimed that the Amazon Waterway Project violated the precautionary principle contained in the Constitution, a flaw that warranted that it be voided. That principle is applied in cases where there is uncertainty or a lack of scientific certainty as to the causes and hazards that certain economic activities could generate.<sup>143</sup>

### 3. Hydroelectric Projects

81. The Commission has received disturbing information about the impacts of hydroelectric projects in the region. The IACHR has found that hydroelectric dams are a type of infrastructure project that make it impossible for the peoples affected to return to their ancestral territories.<sup>144</sup>
82. With regard to investment projects, there are reportedly plans to implement the Bala-Chepete Project in the Madidi Park, Bolivia, the identification study for which was said to have been initiated by Empresa Nacional de Electricidad (ENDE), the State-owned electric utility, at some time between 2015 and 2016. The project has evidently prompted opposition from organizations presenting the territories potentially affected, of which there are said to be at least four: Mosestén, Tsimane, Leco and Takana. The IACHR is especially troubled by information that in those territories it is estimated that at least 49 communities would be flooded. There are reports that the project is being “shared” with the communities; however, without meeting the requisite standards of the obligation to conduct free and informed prior consultation.<sup>145</sup>
83. With respect to Brazil, in recent years the IACHR has received information about violations of indigenous territorial rights resulting from the construction of the Belo Monte hydroelectric project. According to the information received, the State failed to complete the demarcation processes or to protect demarcated indigenous territories and restricted-use areas occupied by indigenous groups in isolation.<sup>146</sup> The IACHR recently received information about the adverse environmental impacts of the “consensus hydrograph,” a system of dams to feed the plant's turbines. According to information supplied to the IACHR, the system was allegedly approved by the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) and Brazil’s National Water Agency (ANA) without prior consultation. It is

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<sup>142</sup> REPAM, Informe Regional, Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia, 2018. p. 227. See also Asociación Civil Derecho, Ambiente y Recursos Naturales (DAR), *Hidroviya Amazónica avanza sin normas de protección ambiental*, p. 21.

<sup>143</sup> SERVINDI, *Hidroviya Amazónica vulnera principio constitucional precautorio*, June 11, 2019.

<sup>144</sup> IACHR, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, 2016, par. 309.

<sup>145</sup> REPAM, Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia, 2018, pp. 175-177.

<sup>146</sup> AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 1, 2018, pp. 13-14.

claimed that the water level on the Xingu River has allegedly fallen as a result of the project, which has in turn impacted the region's ecosystems and the survival of local communities.<sup>147</sup>

84. The construction of two plants in the context of the Belo Monte hydroelectric project is said to have caused substantial harm to sacred sites of the Munduruku people. Work on the Teles Pires dam evidently included blasting that destroyed the Karobixexe Waterfall, which was considered sacred, as well as the removal of 12 funerary urns; the construction of the San Manoel dam is said to have destroyed the Morro dos Macacos, also known as Dekoka's. According to reports, the lack of prior consultation prompted the almost 12,000-strong Munduruku indigenous people to bring lawsuits claiming their rights over their flooded lands. The Munduruku, distributed in 130 villages in Amazonas state, regarded the space they inhabit as the sacred land of their ancestors. For the Munduruku, the destruction of those sacred places harms not only their cultural and spiritual survival, but also the survival of all forms of life in the forest, including the animals, rivers, and plants.<sup>148</sup>
85. The IACHR also has information that the Tapajós plants in Brazil, planned for construction in the Jacareacanga region of the Amazon, would flood approximately 1 million hectares of land. 22 of the 43 plants proposed would impact indigenous territories. In April 2018, IBAMA allegedly suspended permission to build the São Luiz de Tapajós plant after FUNAI warned of irreversible environmental harm. Those lands contain one of the most complex ecosystems in the Amazon in terms of biodiversity.<sup>149</sup> The indigenous peoples affected include the Apiaká and Munduruku, as well as the communities of Pimental, Montanha and Mangabal; indirectly affected would be the Sateré-Mawe ethnic group of the Andirá-Marau Indigenous Land and the communities of São Luiz de Tapajós and Vila Rayol, among others. Although the project's license has been withdrawn, it could be resumed.<sup>150</sup> Information received by the Commission indicates that under the 2023 10-year Energy Plan, 20 new hydroelectric plants were scheduled to go into operation in the Brazilian Amazon between 2011 and 2023.<sup>151</sup>
86. In relation to Venezuela, the IACHR also received information about energy projects and the prevalence of water use to that end in the state of Amazonas. At present, there are an estimated 162 projects in operation, generating 2,279,976 KW of

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<sup>147</sup> IACHR, Press release [238/18, IACHR Concludes Visit to Brazil](#), Washington, D.C., November 12, 2018, [Preliminary Observations on the IACHR Visit to Brazil](#), p. 7.

<sup>148</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de la Escuela Superior DomHelderCámara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 53.

<sup>149</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de la Escuela Superior DomHelderCámara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 53.

<sup>150</sup> The foregoing is based on statements from the chairman of Eletrobrás and the managing director of the National Electricity System (ONS). REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 94.

<sup>151</sup> PUC-Río, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018.

power, with plans to boost the State's generation capacity by an additional 28,957 KW from projects already under construction and a further 11 proposed.<sup>152</sup>

#### 4. Energy and Oil and Gas Projects

87. The oil and gas sector is also involved in the exploitation of natural resources in the Amazon. According to statistics for the region, for every hectare allocated for conservation, there are around 2.5 hectares on which the petroleum industry has designs of some sort.<sup>153</sup> In Colombia, for instance, a total of 1,068,540.5 hectares have been licensed to the sector.<sup>154</sup> The IACHR has also received reports that following the creation of the National Hydrocarbons Agency in that country, oil and gas concessions in the Amazon have risen considerably. In many cases they are situated near natural parks, forest reserves, and indigenous reserves.<sup>155</sup>
88. As regards Ecuador, the IACHR received information that in November 2011 the Ministry of Non Renewable Natural Resources (MRNNR) presented a new oil and gas cadastre for the country that created 21 blocks in the Provinces of Pastaza, Morona Santiago, Napo, and Orellana, which make up the XI Oil and Gas Round or Southeast Round, covering an area of 3.6 million hectares. That tripled the area announced in 2010. Those oil and gas blocks overlap 76 percent of the total surface area of the following indigenous territories: Achuar, Andoa, Kichwa, Sapara, Shiwiar, Shuar, and Waorani. They also affect the mobility area of the Tagaeri, Taromenane and Sapara, who are peoples in voluntary isolation. In addition, the IACHR learned that in October 2013, the National Assembly declared oil and gas exploitation in Blocks 31 and 43, which are situated in Yasuní National Park, to be in the national interest.<sup>156</sup> Subsequently, following a popular consultation held in February 2018, it was decided to expand the “off-limits zone” (zona intangible) in Yasuní National Park by at least 50,000 hectares and to reduce the area authorized by the National Assembly for oil and gas development from 1,030 hectares to 300 hectares. As a

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<sup>152</sup> Wayuu Taya Foundation, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 30, 2018, p. 19.

<sup>153</sup> Trujillo Quintero, Hernán, Losada Cubillos, John Jairo, and Rodríguez Zambrano, Hernando, *Amazonia colombiana. petróleo y conflictos socio-ambientales*, Revista Científica General José María Córdova, Vol. 15, No. 20, July-December 2017, 209-223.

<sup>154</sup> Pontificia Universidad Javeriana de Cali, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 15, 2018, p. 11.

<sup>155</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, pp. 33-34.

<sup>156</sup> Castillo, M., Félix, J., Mazabanda, C., Melo, M., Moreno de los Ríos, M., Narváez, R., Páez, B. and Ushigua, M., (2016), *La Cultura Sapara en Peligro ¿El Sueño es Posible? La lucha de un pueblo por su supervivencia frente a la explotación petrolera*, Quito, Terra Mater, la Nación Sapara del Ecuador and NAKU, p. 60; OILWATCH LATINOAMÉRICA, *Resolución de las Nacionalidades y Pueblos Indígenas de Orellana, Pastaza y Morona Santiago frente a la política estatal petrolera y la pretensión del Gobierno Nacional de implementar la Décima Primera Ronda Petrolera en nuestros territorios ancestrales*, February 7, 2012; PUCE, Facultad de Jurisprudencia, Centro de Derechos Humanos, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 46.

result, in May 2019, Decree 751 was issued, increasing the Yasuní off-limits zone from 758,051 hectares to 818,502 hectares.<sup>157</sup>

89. In that regard, a particularly notable case is that of the Kichwa Sarayaku people, who obtained a judgment in their favor from the Inter-American Court in 2012. The events in the case occurred during the 1990s in the Province of Pastaza, in Ecuador's Amazon region. The dispute arose after the State awarded a concession to a private petroleum company to operate in an indigenous territory without consultation and without respecting their due process guarantees and right to judicial protection. Following proceedings before the IACHR, the case was referred in April 2010 to the I/A Court H.R., which passed judgment in June 2012. The Court found that the State bore international responsibility for violation of the rights recognized in Articles 4(1), 5(1), 8(1), 21, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. An examination of compliance with the judgment revealed that the State failed to implement all the reparation measures ordered by the Court. Specifically, according to information provided to the IACHR, in the context of the XI Oil and Gas Round a new concession was awarded for 16 blocks in the province of Pastaza, affecting 91 percent of the Sarayaku territory. Added to that was the failure to remove, deactivate, and neutralize all the pentolite (an explosive) buried in the people's territory; only 14 kg of a total of 1433 kg has been removed. The State has also reportedly failed to adopt legislative, administrative, or other measures to ensure full enjoyment of the right to prior consultation (*infra* IV.B)<sup>158</sup>.
90. With respect to Peru, the IACHR received information about the Tigre, Corrientes, Pastaza and Marañón basins. According to available information, there is a long-running situation that arose as a result of the overlap of oil and gas blocks (Blocks 192 and 8) on the territory of indigenous communities. The contamination with which around 100 indigenous communities live impacts the ecosystem from the forest to the rivers and fisheries. According to reports, in 2011 the indigenous communities began engaging in dialogue with the State in order to address the environmental impacts of the oil and gas activities.<sup>159</sup> As a result of that participation, in 2015 the State and the indigenous communities in the above basins signed an agreement containing 19 commitments, including the installation of water treatment plants, the creation of an environmental remediation contingency fund for the oil block, the transfer of funds from the executive branch to the Loreto Regional Government for the awarding of property titles to the native communities located in the four basins, and other measures.<sup>160</sup>

<sup>157</sup> MONGABAY, *Ecuador: crece polémica por actividad petrolera en zona intangible del Parque Nacional Yasuní*, May 30, 2019.

<sup>158</sup> I/A Court H.R., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of November 22, 2016; Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 22, 40.

<sup>159</sup> CAAAP-UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 6.

<sup>160</sup> Official Gazette El Peruano, *Avances en Pastaza, Tigre, Corrientes y Marañón*, 15 de noviembre de 2015.

91. In that context, according to information received by the IACHR, concessions were awarded without consultation. One example is the case of communities belonging to the KukamaKukamiria people, who apparently were not consulted about the start of oil extraction operations on Block 8x – Battery 3 Yanayacu, part of the North Peruvian Oil Pipeline. From the 1970s to the present, extraction activities have been carried out with insufficient State oversight, resulting in spills of crude and other waste in the headwaters of the Pacaya, Samiria, and Marañón Rivers. In turn, according to reports, Oil Blocks 193, 173, and 194 were identified in territory of the Kukama people, for which an exploration is reportedly planned, the consultation process for which has been halted numerous times.<sup>161</sup>
92. As regards Bolivia, the IACHR received information that the State has expanded the area susceptible to oil and gas activity from just under 3 million hectares in 2007 to more than 30 million hectares in 2015 (almost 30 percent of the country's territory). That has affected 11 of the country's 22 protected areas and encroached on 37 of 49 indigenous territories in Chaco, the Amazon region, and the east of the country. In October 2015, Executive Decree No. 2549 further expanded the oil and gas area to 31,695,190 hectares, mainly affecting Bolivia's Amazon region. According to information available to the IACHR, of the 16 new blocks, 7 (with an overall area of 5,876,569 hectares) are located in the Departments of Beni and Pando and represent 72 percent of the new area earmarked by Executive Decree No. 2549. That area further increases the pressure that already existed on Amazonian indigenous territories and peoples as well as the Madidi, Pilón Lajas and TIPNIS Parks. The measure also coincided with the start of seismic exploration activities in the River Beni and Nueva Esperanza Blocks (in Beni and La Paz Departments), which included the opening up of 1,958.4 kilometers of trails (1.5 meters wide), 43,920 detonations using approximately 373 tons of pentolite, as well as a second exploration phase in the River Beni zone, adding another 717 kilometers of trails and 17,915 detonations.<sup>162</sup> The information received indicates that eight indigenous territories in the northern Amazon zone are affected.<sup>163</sup>

### ***C. Contamination of Rivers and Water Sources, and Obstacles to Water and Food Access***

93. The contamination problems faced by Amazonian indigenous peoples are widely documented. The impacts on water quality in the region's main rivers prevent

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<sup>161</sup> REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, pp. 225-229.

<sup>162</sup> CEDIB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, November 29, 2018, p. 24.

<sup>163</sup> Specifically, the IACHR was informed that the previously unaffected Tacana Cavineño and Chácobo Pacuahara territories were included in the oil and gas area in 2015. As regards the impact on Multiethnic Territory II, it was partially affected in 2012; however, that impact has now increased to the point where the TCO of the Esse Eija people is now entirely inside the oil and gas zone, having previously been outside it. In the case of the previously unaffected Itenez Mamoré region, the 2015 measure encompassed the indigenous territory of the Cayubaba people and the Moxeño Ignaciano Indigenous Territory (TIMI). CEDIB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, received by the IACHR on November 29, 2018, p. 26.

fishing and recreation activities, and even cause diseases in humans. Also, contamination not only affects rivers, but also has a direct impact on wildlife and indigenous communities, who depend on hunting and fishing as their source of animal protein. Based on the information provided to it, below the IACHR addresses the main adverse impacts for indigenous peoples as a result of the effects of (i) mining, (ii) use of toxic substances in agri-industry, (iii) infrastructure projects, and (iv) oil and gas projects on (v) water and sewerage services and (vi) food.

## 1. Mining (Legal and Illegal)

94. Mercury (Hg) is one of the most widely used substances in mineral processing and has particularly frequent and devastating effects on water sources in the Amazon. Mercury usually transforms into methylmercury (CH<sub>3</sub>Hg), the sixth most toxic compound in the world. The substance bioaccumulates in a variety of living organisms and gets into the food chain of different animal species. Exposure in humans to such substances usually occurs as a result of eating contaminated fish or game. The IACHR received disturbing information about levels of mercury in fish—a key food staple for riverine communities and indigenous peoples—that were higher than the levels considered safe by the World Health Organization (WHO). It can significantly harm the immune, enzyme, genetic, and nervous systems, and can even impair coordination and the senses of touch, taste, and vision. The IACHR emphasizes that the aim of preserving the environment is to ensure quality of life not only for today's generations, but also for future generations. Mercury contamination can have particularly serious effects, given that it can penetrate the placental barrier and poison the fetus. It can also be transmitted to infants via lactation and accumulates mainly in the brain, lungs, and muscles of the child, causing serious and irreparable damage.<sup>164</sup>
95. In Bolivia, information about mercury contamination mainly appears to be connected with gold mining, as the IACHR reported in its 2009 report.<sup>165</sup> More recently, the Ministry of Water and Environment prepared a situation report in which it noted areas with high levels of mercury contamination in the Amazon (especially in areas adjacent to the River Madre de Dios, River Beni, Chapare, River Itenez, and Mamoré)<sup>166</sup>. One datum that illustrates the lack of control over mercury

<sup>164</sup> United Nations Environment Programme (UNEP), *Global Mercury Assessment*, Geneva, UNEP, 2002, p. 81. Edna M Yokoo, Joaquim G Valente, Lynn Grattan, Sérgio Luís Schmidt, Illeanne Platt and Ellen K Silbergeld, Low level methylmercury exposure affects neuropsychological function in adults, in *Environmental Health: A Global Access Science Source*, vol. 2, 1, 2003, p. 8. Clínica de Derechos Humanos y Derecho Ambiental de la Universidad del Estado de Amazonas, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 28, 2018, pp. 55-62.

<sup>165</sup> IACHR, Bolivia, 2009, *Follow-up Report - Access To Justice And Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, August 7, 2009, par. 63.

<sup>166</sup> It was prepared as part of the commitments under the Minamata Convention on Mercury. The Bolivian State ratified the Minamata Convention on Mercury in Law No. 759 of November 17, 2015. CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, pp. 8-9. Pouilly, M., & Molina, C., Niveles de Mercurio en Medio Ambiente y Biota de Bolivia, in

use is that in the past 5 years mercury imports have grown twenty-fold in Bolivia, with 50 percent of those imports reportedly used for gold extraction. The country also appears to lack a national action plan that would enable it to adopt control measures.<sup>167</sup>

96. The Brazilian Amazon is also an area rich in mineral resources that are extracted. Much of the extraction is done by illegal miners, significantly impacting water quality. Miners dump mercury into the environment, polluting the water and contaminating the fish that communities eat.
97. The Yanomami people suffer the effects of environmental pollution caused by mercury, and high levels of the substance have been found in its members. The level of contamination in rivers caused by mining often prevents any consumption of water or fish. That is the situation faced by Yanomami who live on the banks of the River Tropas, Pará; they have been unable to find any fish to catch for years. In that connection, one Yanomami leader in the Upper Catrimani River region said: “The *garimpos* [gold diggers] and their machines destroy the river bank and foul the waters. The water is very polluted. Although the gold diggers say that they do not dump mercury in the river when they extract gold, our children get sick. Women also contract diseases from the gold diggers. The Yanomami get sick from drinking contaminated water [because of the gold mining]. One man (F. Yanomami) became ill from water contaminated with mercury and his belly swelled up. He is still at the CASAI (indigenous health center) in Boa Vista. The doctors removed the water from inside him but he swelled up again.”<sup>168</sup>
98. Colombia, for its part, has among the highest levels of mercury pollution in the world.<sup>169</sup> In that regard, the IACHR notes that the State has taken significant steps to address the problem, such as enacting Law 1658 of 2013, regulating the use, sale, handling, storage, transportation, and disposal of mercury in industrial activities. In

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Ministry of Foreign Affairs of Bolivia and Ministry of Environment and Water, *Mercurio en Bolivia: Línea base de usos, emisiones y contaminación*, La Paz, MRE-MMAyA, 2015, pp. 35-42.

<sup>167</sup> It was prepared as part of the commitments under the Minamata Convention on Mercury. The Bolivian State ratified the Minamata Convention on Mercury in Law No. 759 of November 17, 2015. CEDIB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, November 29, 2018, pp. 8-9. Pouilly, M., & Molina, C., *Niveles de Mercurio en Medio Ambiente y Biota de Bolivia*, in Ministry of Foreign Affairs of Bolivia and Ministry of Environment and Water, *Mercurio en Bolivia: Línea base de usos, emisiones y contaminación*, La Paz, MRE-MMAyA, 2015, pp. 35-42.

<sup>168</sup> Interview by the Pan-Amazon Region Strategic Research Group, Escuela Superior DomHelderCâmara, enclosed with the response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 10.

<sup>169</sup> Clínica de Derechos Humanos y Derecho Ambiental de la Universidad del Estado de Amazonas, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, October 28, 2018, p. 10. See also Ministry of the Environment and Sustainable Development, Ministry of Foreign Affairs, GEF, UNDP, *Foro Nacional por Colombia*, WWF-Colombia, *El Convenio de Minamata. Así actúa Colombia frente al mercurio*, Santiago de Cali, 2017, p. 38; Instituto Amazónico de Investigaciones Científicas (SINCHI), Ministry of the Environment and Sustainable Development, *Minería: Impactos sociales en la Amazonia*, Bogotá, 2019, p. 81; GOSSAÍN, Juan. *Colombia: subcampeón mundial en el mercurio de la minería ilegal*, *El Tiempo*, May 9, 2017; Mancera, Nestor, Álvarez, León. *Estado del conocimiento de las concentraciones de mercurio y otros metales pesados en peces dulceacuáticos de Colombia*, *Acta biológica colombiana*. June 2006, pp. 6-19.

July 2018 a ban on all mercury use in mining went into effect. The country has also committed to eliminate all mercury use in industry and production processes by 2023. Despite the regulations, their enforcement and effectiveness remain weak since peoples and communities living in the Amazon region continue to suffer major social and environmental effects.<sup>170</sup>

99. The IACHR also has information about the serious effects caused by illegal mining in Colombia. A 2015 study by the Ministry of Health of hair and blood samples from 202 people in 15 communities in the Department of Guainía examined the health effects on the communities that live by the Rivers Inírida, Atabapoe, and Guanía. The findings of the study showed that the people examined had between 60 and 109 times the WHO-recommended safe levels of mercury in their bodies. The improvised dredges used to dig up the riverbeds in illegal mining have seriously contaminated the rivers as a result of the enormous amounts of industrial chlorine, detergent, and mercury that the miners use to wash the mud and extract the gold. In the Uitoto community of Los Monos on the River Caquetá, children are born with deformities and illnesses that have been linked to the consumption of contaminated fish. The community has allegedly presented a formal complaint to the prosecutor's office and Ministry of Health in Caquetá but has reportedly yet to receive an official response.<sup>171</sup>
100. According to information received by the IACHR, the greatest impacts to rivers and water sources in Ecuador are being caused by the biggest mining projects underway in the Amazon region, such as those of Mirador and Fruta del Norte. Based on available information, those projects use millions of liters of water a day to process ore, which means that the majority of concessions use very large quantities of water. The communities of Chicaña, Panguintza, and Pachicutza, in the Cantons of Yantzaza, Centinela del Cóndor and El Panguí, respectively, have expressed concern about the construction of such large-scale mines, which they consider a threat to water sources that have historically provided them with quality water. It was claimed that the projects use mercury to recover the metals, raising fears about pollution in the communities. Another concern is that the mineral deposits generate acid runoff from the mine, badly acidifying the water and causing very long-term heavy metal contamination.<sup>172</sup>

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<sup>170</sup> Clínica de Derechos Humanos y Derecho Ambiental de la Universidad del Estado de Amazonas, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, p. 10. See also GOSSAÍN, Juan, *Colombia: subcampeón mundial en el mercurio de la minería ilegal*, El Tiempo, May 9, 2017.

<sup>171</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, pp. 34-35. Clínica de Derechos Humanos y Derecho Ambiental de la Universidad del Estado de Amazonas. See also El Tiempo, *En Guainía, la gente tiene 60 veces más mercurio que el permitido*, September 11, 2017; Ministry of Health and Social Protection of Colombia, *Programa territorial de reorganización, diseño y modernización de las redes de prestación de servicios de salud de acuerdo al nuevo modelo intercultural del departamento de Guainía*, Inírida, November 2015, p. 14; Ministry of Health, *Modelo Integral de Atención de salud – MIAS Piloto de implementación de los departamentos con poblaciones dispersas, Departamento de Guanía*, November 2015, pp. 11 and 23.

<sup>172</sup> Pastoral Social Cáritas, (2018) Línea Base de los Territorios Correspondientes a la Fase 1 de la Escuela de Identidad Territorial e Incidencia Socio-Política del Vicariato de Zamora, pp. 24-28. PUCE, Facultad

101. By way of an example, the IACHR notes the activities of the Mirador copper mine in Ecuador, which has apparently polluted the Rivers Wawayme, Tundayme and Quimi with suspended particles. The contamination reportedly affects the Amazonian community in Cordillera del Cóndor Mirador (Cascomi), Pangui Canton, Zamora Chinchipe Province. According to available information, the water turbidity in those rivers and its tributaries has altered the environmental quality of the area's watersheds, both physically and biologically speaking. In addition, the company Ecuacorriente (a subsidiary of the Chinese consortium CRCC-Tongguan) has reportedly made changes to the rivers to allow the passage of large heavy goods vehicles. The mass transportation of particles in suspension in the local rivers has apparently significantly disrupted their physical, chemical, and biological equilibrium. As a result, people are reportedly unable to fish in the River Quimi, which has impacted their food supply.<sup>173</sup>
102. With regard to Peru, according to available information, the Madre de Dios region is the worst affected by informal and illegal gold mining in the Amazon region. Evidence of the impact is found not only in the mercury contamination in the rivers, but also in the destruction of forests and soils, and adverse health effects to populations living in the region. It has been determined that approximately 65 indigenous territories are exposed to mining activities in their environments associated with the illicit extraction of gold and other minerals. The IACHR received information that more than 180 tons of mercury a year end up in the soil, air, and water of Madre de Dios, seriously impacting the health of indigenous peoples. Specifically, mercury levels as high as 27 ppm (parts per million) were found in the Machiguenga community of Maizal, which was considered an unprecedented degree of contamination.<sup>174</sup>
103. In relation to Venezuela, mining is reportedly the primary threat to the integrity of forests and the cultural survival of their inhabitants. The threat comes in the shape of deforestation and pollution of rivers and groundwater.<sup>175</sup> According to available information, the traditional fish-based diet of many communities has been restricted due to the fact that mercury used in mining has contaminated the rivers.<sup>176</sup> According to reports, mercury use has been recognized as a public health

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de Jurisprudencia, Centro de Derechos Humanos, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 19; Zorrilla, Carlos, *El ABC de la Problemática Minera en el Ecuador*, La línea de fuego, 2018.

<sup>173</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 19-20.

<sup>174</sup> Osoro Plenge, Fernando; Rojas Jaimes, Jesús Eduardo; Manrique Lara Estrada, Carlos Hermógenes, *Minería informal e ilegal y contaminación con mercurio en Madre de Dios: Un problema de salud pública*. Acta Med Per 29(1) 2012, p. 41; El Comercio, *Madre de Dios, la región más degradada en la Amazonía*, February 19, 2019; El Comercio, *Informe arroja alarmantes niveles de mercurio en Madre de Dios*, August 29, 2018.

<sup>175</sup> Fundación Wayuu Taya, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 30, 2018, p. 18.

<sup>176</sup> OEP, Venezuela, Ficha sobre Afectación de los pueblos Yek'wana y Sanemá por minería ilegal en el río Caura, pp. 5 and 6; UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 37.

problem for more than 25 years in Venezuela<sup>177</sup> where it has had an environmental impact, especially in the Caura river basin,<sup>178</sup> the location of the greatest concentration of illegal mining camps. The main mining hubs are situated on the Yuduwani River, which supplies the indigenous communities of Surapire, Tadakwaña, Ayawaña, El Palmar, and Juwutunña or Santa María de Erebató. Studies conducted in the Caura basin in 2011 and 2012 are said to have found that 92 percent of 152 Ye'kwana and Sanema women examined were contaminated with mercury levels far higher than those recommended by the WHO, while the analysis of the women's hair samples found an average mercury level of 9.38 mg.<sup>179</sup> In addition, the fish that form the basis of the diet of those indigenous communities contained mercury levels as high as 1.80 micrograms per gram of tissue, when the maximum level considered safe by the WHO is 0.5 mg/kg. Those data suggest that indigenous populations as far away as 200 kilometers from the discharge point of the contamination caused by the mines to the main channel of the River Caura are contaminated with mercury.<sup>180</sup>

104. Of special concern is the situation of indigenous peoples affected by contamination from mining (both legal and illegal) in Venezuela. The Warao people in Delta Amacuro State have reportedly suffered as a result of mining activities by State-owned companies and illegal operators. Communities in the lower Orinoco Delta in the municipality of Antonio Díaz had their river water polluted with waste from Corporación Venezolana de Guayana (a conglomerate of state-owned enterprises) and illegal mining activities conducted on the river, making them dependent on deliveries of potable water. There were also reports of fish contamination in the municipality of Manapiare affecting the Yabarana, Hoti, Eñepa (or Panare), and Piaroa indigenous peoples. Fish contamination as a result of mining activity also harms the Pemón, Yek'wana, Kurripako, Arawaco, and Chiriana peoples along the upper reaches of the Paragua River in Angostura Municipality in Bolívar State. Residents of the municipality of San Fernando de Atabapo in Amazonas and indigenous organizations have also denounced that mercury used in mining contaminates the fish that are a source of food for indigenous communities living on the banks of the River Atabapo, which belong to the Kurripaco, Baniva, and Puanibe peoples.<sup>181</sup>

<sup>177</sup> Centro de Investigaciones Ecológicas de Venezuela, *La contaminación mercurial: Un problema de Estado*, 2016, Venezuela.

<sup>178</sup> Located in Sucre Municipality, Bolívar State, and considered the most pristine area of forest.

<sup>179</sup> Red ARA, *Contaminación mercurial en los Ye'kwana y Sanema de la cuenca del Caura*, 2013.

<sup>180</sup> Fundación La Salle, UDO, Sociedad Conservacionista Vida Silvestre (no source), *Evaluación del riesgo de exposición al metil-mercurio en poblaciones ribereñas del río Caura* (not published). Cited by Red ARA; *La contaminación por mercurio en la Guayana venezolana: Una propuesta de diálogo para la acción*, 2013, Caracas.

<sup>181</sup> OEP, Venezuela, *Ficha sobre Indígenas warao en el bajo Delta del Orinoco contaminados por desechos de la Corporación Venezolana de Guayana y de la minería ilegal*, p. 7; *Ficha sobre Indígenas afectados por minería en municipio Manapiare*, pp. 6-7; *Ficha sobre disputas de indígenas del Alto Paragua en torno a la minería ilegal en sus territorios*, p. 8; *Ficha sobre arawaks del sur afectados por minería ilegal en cuenca del río Atabapo*, pp. 7-8. UCAB, *Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region*, December 10, 2018, p. 40.

## 2. Use of Toxic Substances in Agri-Industry

105. The IACHR has received information that farmland expansion into the Amazon region has brought a significant increase in the use of pesticides and herbicides. With regard to Brazil, the Açaizal indigenous people of Santarém, Pará State, are reportedly being harmed by the pollution of rivers and groundwater from the indiscriminate use of pesticides, herbicides, and other chemicals. Large ranching projects have also been set up in the Brazilian Amazon over the past number of decades. Particularly in relation to agri-industry, the widespread use of herbicides, pesticides, and chemical fertilizers is a major cause of water pollution. The consumption of contaminated water by indigenous communities downstream from plantations has led to problems of poisoning.<sup>182</sup>
106. For example, the IACHR took note of the situation of the people of the Xavante village of Madzabdzé, in the Marãiwatsédé indigenous territory, who are reportedly suffering from diseases associated with environmental contamination from pesticides and herbicides. The Mortes, a tributary of the River Araguaia, is the waterway at the heart of four Xavante indigenous lands. The river is the basis of the area's biodiversity, on which the indigenous peoples depend directly for their food and cultural expressions. The quality of the water in the Mortes is constantly under threat from the effects of large-scale soy cultivation. According to information received, the big soy plantations on the land adjoining the Xavante lands, use aircraft to spray large quantities of pesticides and herbicides, which are then carried into the human food chain by various water courses, causing harm to people's health.<sup>183</sup>
107. The Commission also learned that on the Paraná indigenous land of the Arauató people the pollution of the River Iriri with pesticides and herbicides has allegedly affected the water, on which approximately 1,740 members of the Kayapó and Paraná groups depend. According to the information received, the damage is visible from the large quantities of fish that have died. The water is also said not to be fit for drinking or bathing. The allegedly constant use of pesticides and herbicides by the region's farmers would appear to be the most likely cause of the pollution of the River Iriri in the state of de Mato Grosso. FUNAI technicians have expressed fears that the pollution could spread to the Xingú Indigenous Park, which is home to nearly 4,000 indigenous people.<sup>184</sup>

## 3. Infrastructure Projects

108. With regard to infrastructure projects in the Amazon that have reportedly harmed indigenous peoples, the IACHR received information about the Amazon Waterway

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<sup>182</sup> IACHR, Press release 238/18, *IACHR Concludes Visit to Brazil*, Washington, D.C., November 12, 2018, *Preliminary Observations on the IACHR Visit to Brazil*, p. 7.

<sup>183</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de la Escuela Superior DomHelderCámara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 9.

<sup>184</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 4.

infrastructure megaproject being implemented in the Peruvian Amazon region as part of the IIRSA initiative IIR (*supra* III.B.ii). According to the information provided, the project's rationale and economic study were developed in 2012 based on obsolete data. Accordingly, the project could have a greater impact on rivers, not only as transportation routes, but as ecosystems, sources of livelihoods, and a key element in the culture of large numbers of indigenous peoples and the Amazon basin as a whole. Specifically, according to the information provided to the IACHR, dredging could impact the behavior of rivers and alter their courses, potentially leading to droughts and flooding. There are also great risks to food security, given that the silt that the dredging would remove is the food of many different species, while the works could disrupt fish transit and spawning. In spite of that, the project offers little clarity regarding the potential impact on indigenous peoples and riverine communities who rely on the rivers for fishing and growing crops, and whose culture and view of the world are intrinsically linked to the rivers.<sup>185</sup>

109. As regards Brazil, infrastructure projects are another ongoing threat to water sources, not only because they significantly reduce the amount of available water, but also because of the pollution they cause. Quantitative and qualitative effects on water are reportedly observed, for example, in the areas flooded by hydroelectric projects, where mercury levels usually rise, harming not only the quality of water, but also aquatic life, including fish. Indigenous peoples are exposed to high levels of mercury that contaminate the water and local biodiversity, which are the basis of their food. The ingestion of mercury-contaminated food can cause serious health problems.<sup>186</sup>

#### 4. Oil and Gas Projects

110. In relation to oil and gas activities, the IACHR received information on Ecuador, suggesting that petroleum operations in the Amazonian province of Sucumbíos have affected the headwaters of the River Aguarico, which is used for human consumption. The above would mean that the local population, animals, and crops are exposed to a series of risks owing to a lack of access to sufficient quantities of quality water.<sup>187</sup> As for Peru, according to information provided to the IACHR, there are a number of sources of pollution associated with oil and gas activities, including the discharge (both authorized and unauthorized) of wastewater into water sources, dumping of toxic waste from oil refineries and installations on indigenous and surrounding lands; and ruptures in the North Peruvian Oil Pipeline. According to the information received, which cites a series of reports issued over the years by

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<sup>185</sup> DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 28, 2018, pp. 2-6.

<sup>186</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de la Escuela Superior DomHelderCámara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 7.

<sup>187</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 54.

public and private entities, since the 1970s, when oil and gas operations began on Block 1AB (Block 192), the communities in the watersheds of the Corrientes, Pastaza, Tigre, Chambira and Marañón Rivers have been affected by soil and water pollution.<sup>188</sup>

111. The Commission received particularly striking information about oil spills in the Peruvian Amazon. According to the information received, there were more than 40 oil spills from the North Peruvian Oil Pipeline in the regions of Loreto and Amazonas between 2014 and 2018. In one incident in January 2016, approximately 3,000 barrels of crude oil spilled from section II of the Pipeline, affecting the district of Imaza. According to reports there was no immediate cleanup of the area, with the result that the situation grew worse when heavy rains caused the spilled oil to spread to the Rivers Chiriaco and Marañón. According to the information reported, Petroperú hired children and young people without cleanup experience, who reportedly collected the oil without receiving any warnings as to risks or safety measures. As a result, the Bagua area health system identified 243 people (of 1,395) who were exposed to the oil without protection (16 percent), 67 of which (27.5 percent) were under 14 years old. In addition, the environmental oversight agency (Organismo de Evaluación y Fiscalización Ambiental – OEFA) said that the spills contaminated soil and water sources and that people's "health was adversely affected."<sup>189</sup>
112. The IACHR notes that such spills have a profound impact on indigenous peoples that live in the contaminated watersheds, given that, having no mains water supply or sewerage system, they depend on water from rivers and streams for their basic needs and daily activities. It is disturbing that they sometimes have no option but to drink polluted water or eat contaminated fish, which makes them sick (nausea, headaches, or skin complaints). The spills also impact the everyday practices associated with their relationship to the river, where they go to wash, bathe and, in the case of children, play.<sup>190</sup> The IACHR corroborated the seriousness of the situation during its visit to the Peruvian Amazon in July 2017. As a result, it granted precautionary measures to preserve the lives and well-being of the residents of the

<sup>188</sup> Urteaga Crovetto, Patricia; SEGURA, Frida and SÁNCHEZ, Mayra (2018), *Derecho Humano al Agua, Pueblos Indígenas y Petróleo*, Lima, CICAJ, Departamento Académico de Derecho, Cited by CICAJ – PUCP. Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 3-4.

<sup>189</sup> CAAAP – UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 6. Instituto Chaikuni and OPIO, *La serpiente negra de la Amazonía peruana: El Oleoducto Nor peruano*, Lima, 2018, p. 7. A similar situation is said to have occurred during a spill that affected the communities of Cuninico and Vista Alegre, in which a PetroPerú contractor encouraged the hiring of minors to find where the pipeline had ruptured. That action was reportedly punished by the Piura Administrative Labor Authority, which adopted resolution No. 095-2014-DRTPE-PIURA-SDNCIHSO, imposing a fine of 760,000 nuevos soles on Petroperú S.A. for committing a very serious violation of labor relations: hiring minor workers. Urteaga Crovetto, Patricia; SEGURA, Frida, and SÁNCHEZ, Mayra (2018), *Derecho Humano al Agua, Pueblos Indígenas y Petróleo*, Lima, CICAJ, Departamento Académico de Derecho.

<sup>190</sup> Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible, *El impacto socio cultural de los derrames de petróleo en los pueblos indígenas en el Perú* [interview with Wrays Pérez Ramírez, President of the Autonomous Territorial Government of the Wampis and YanuaAtamain Nation, spokesperson for the Awajun Shuar people], January 9, 2019.

communities of Cuninico and San Pedro. The Commission has monitored the measure's implementation through various mechanisms, including a public hearing in May 2018.<sup>191</sup>

113. One case in the Peruvian context is that of the Cuninico community of the Kukama Kukamiria people, situated in the lower watershed of the River Marañon, Peru. The community was impacted by an oil spill that occurred in June 2014 as a result of a crack that developed in the North Peruvian Oil Pipeline which affected the waters of the Cuninico stream. As a result, the issue of water supply reportedly became critical. Upon seeing their main source of water compromised, the community members are said to have demanded that the company supply them with water. Initially, the company allegedly only provided half a liter of water per person, far less than the standard amount established by the WHO of 50 to 100 liters per person for household and personal use; only after repeated demands did they persuade the company to provide 40 liters of water per family per week. As regards food, fishing evidently declined not only owing to the lack of fish, which swam to other, cleaner streams, but also because the catch became contaminated and, therefore, not fit for human consumption. The same was true of game (the villagers' main source of animal protein) that drank the contaminated water. Overall, the situation had a resounding impact on the food chain, with even humans affected.<sup>192</sup>

## 5. Access to Water and Sanitation Services

114. The IACHR notes that in the Amazonian regions of various countries there are significant barriers to access to quality water in sufficient quantities, which usually has to do with pollution of water sources. A major aspect of water pollution, which impedes access for Amazonian indigenous peoples, has to do with the precarious sanitation conditions to which those communities are exposed. Drinking untreated water causes illnesses. The situation is aggravated by the failure of States to take steps to improve communities' access to clean water, as well as by the absence of sewerage and sanitation services.
115. For example, at several villages of the Xavante indigenous people in Brazil, the dumping of untreated industrial waste and sewage into watercourses is reportedly commonplace. In the River Xingú, water quality is a cause of environmental concern whose management is the responsibility of the basic sanitation system. Until a solution is found, sewage will continue to flow directly into the river. Even villages with wells, such as the Munduruku indigenous communities of Mayrowi and Apiaká

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<sup>191</sup> IACHR, [Press release 105/17](#), IACHR Carries Out Visit to Peruvian Amazon Region, Washington, D.C., July 25, 2017. IACHR, Resolution 52/17, MC 120/16, Residents of the Community of Cuninico et al., regarding Peru, December 2, 2017; IACHR, Hearing on Impacts on Human Rights of Oil Spills in Peru, 158th Session, May 7, 2018.

<sup>192</sup> Urteaga Crovetto, Patricia; SEGURA, Frida and SÁNCHEZ, Mayra (2018), Derecho Humano al Agua, Pueblos Indígenas y Petróleo, Lima, CICAJ, Departamento Académico de Derecho, CICAJ - PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 6-7.

in Teles Pires, do not always have access to clean water. As a result many indigenous communities have to look for alternative water sources and travel long distances to collect it.<sup>193</sup>

116. In Peru it was found that communities living in the Amazon also lack access to safe drinking water. According to information received by the IACHR, water and sanitation service coverage did not expand very much between 2005 and 2014. If that is combined with the pollution of natural water sources, the outcome is catastrophic for indigenous communities and peoples, even in cases where the State has expressly promised to implement such services. Such is the case of the Tigre, Corrientes, Pastaza, and Marañón watersheds, where indigenous organizations signed an agreement with the authorities represented by the Ministry of Housing, Construction and Sanitation, which undertook to install mains water and sanitation systems for each home. In spite of the fact that a budget of 25 million nuevos soles was reportedly allocated for those systems, according to information from the Office of the Ombudsperson, two years after the agreement was signed construction had yet to begin.<sup>194</sup>
117. In addition, by way of illustration, in Venezuela it was found that several indigenous communities in the states of Amazonas and Bolívar lack access to treated water. That is troubling, bearing in mind the reported level of mercury contamination of natural water sources, which are also exposed to pollution from garbage dumps and sewage.<sup>195</sup>

## 6. Impact on Food

118. The IACHR notes that the survival of certain indigenous peoples is heavily dependent on the natural resources found in their territories. Different peoples may depend on hunting, fishing, and gathering to meet their alimentary needs. When their territories suffer adverse environmental impacts that alter the ecosystem, resources tend to grow scarce, potentially triggering a food crisis. Their eating habits are closely interlinked with their world view and cultural identity.
119. With respect to Colombia, for example, in 2015, the United Nations Food and Agriculture Organization (FAO) published a report on the food situation of indigenous peoples. The report found that in Amazonas and other departments there were food intake shortfalls of more than 85 percent in the population aged 2

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<sup>193</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de la Escuela Superior DomHelderCámara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 11.

<sup>194</sup> CICAJ – PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 3.

<sup>195</sup> Asociación Civil KapéKapé, Observatorio de los Derechos Indígenas, Condiciones de salud integral infantil en pueblos indígenas en los Estados: Amazonas, Bolívar y Delta Amacuro. Summary, 2018, p. 4.

to 64 years old. That indicator reveals the complex situations faced by that population in terms of food and nutrition security.<sup>196</sup>

120. As regards the relationship between land, food, and cultural identity, according to the Jiw leaders in the reserve of La María, the land enables them to engage in specific practices to obtain food. According to them, those practices are transmitted to the young as part of their education. In their own words: “They say, for our part and our culture's part, that when you eat chicken you can't stand any pain, you tire quickly or get sick easily ... When you eat capuchin (a monkey), it's different; it is natural, has more fiber because it isn't, let's say, vaccinated; it's from the bush and that's natural. Their blood is warm, like that of an indigenous person; they have hot blood, pure blood. If you eat you don't get sick easily, or the illness doesn't strike you hard. You can play, run, jog, or fall out of a tree but not break anything; you don't feel it so much, you tolerate the pain.” “Let's say, milk—what they call liquid milk, the stuff Bienestar (welfare) gives out. ... Then the child can get sick. Then the child is not like an indigenous person; half of them is like a western person and the indigenous part can be less than half. Natural indigenous people, on the other hand, have only indigenous blood.”<sup>197</sup>

#### **D. Desertification and Deforestation**

121. The countries of the pan-Amazon region have a serious problem of desertification that stems from multiple causes. High rates of deforestation lead to the degradation of natural heritage and the loss of biodiversity wealth. The main driver is the change of soil use that converts forestland into farmland.<sup>198</sup> Once the trees have been cut down and the bush has been cleared, the eliminated forest cannot recover. On the contrary, deforestation causes irremediable environmental harm. The reported causes of deforestation include mining (legal and illegal), logging, cattle ranching, large-scale farming, hydroelectric and infrastructure projects, and tourism. Based on information available to the IACHR, the main driver of deforestation is to turn forestland over to large-scale commercial farming and cattle ranching, soybean cultivation, and oil-palm plantations.<sup>199</sup>
122. The IACHR observes that aside from the loss of native forest, deforestation causes a slew of problems such as modification of nutrient cycles, disruptions to the hydrological regime, reduction in the soil's infiltration and water retention capacity,

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<sup>196</sup> United Nations Food and Agriculture Organization (FAO), (2015) *Comida, territorio y memoria. Situación alimentaria de los pueblos indígenas colombianos*; Grupo de Acciones Públicas de la Facultad de Jurisprudencia de la Universidad del Rosario, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 13.

<sup>197</sup> Interview by PUJ, enclosed with the response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 74, p. 74.

<sup>198</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 20.

<sup>199</sup> FAO, *The State of the World's Forests, Forest Pathways to Sustainable Development*. Rome, 2018, p. 105. FAO, *State of the World's Forests, In Brief, Forests and Agriculture: Land-Use Challenges and Opportunities*, 2016, p. 13.

increased soil erosion and silting, and drought, among others. Forests and jungles play a critical role in regulating weather, soil conservation, and maintaining water sources. Deforestation has also been identified as one of the main drivers of climate change, given that the fewer the trees, the lower the carbon retention capacity.<sup>200</sup> Accordingly, does desertification could have dire environmental, social, political, and economic consequences, not just for the Amazon region, but for the world as a whole.

123. The IACHR is disturbed by the deforestation statistics for the Amazon rainforest. For example, according to the information received, between 2004 and 2012 Brazil topped the deforestation rate and lost some 11.1 million hectares of forest.<sup>201</sup> It is alarming to consider that the other eight Amazonian countries lost 2.3 million hectares of forest between them. Also worrying are the forest loss statistics for the world as a whole. In 2016 alone the loss was reported of 29.7 million hectares of forest; in 2017 the reported loss was 15.8 million hectares. The front runners in terms of Amazonian forest loss are Brazil, in first place (4,519,833 hectares), followed by Bolivia (463,194 hectares) and Colombia (424,870 hectares).<sup>202</sup>
124. According to information received by the IACHR, in Bolivia, vast tracts of lowland tropical forest are being cleared to make way for soy plantations, cocoa production, and the expansion of intercultural communities. The data indicate that the per capita deforestation rate is 320m<sup>2</sup>/person/year, 20 times the international average per capita rate and one of the world's highest. According to the country's Forest and Land Oversight and Control Authority (ABT), most of the deforestation (80 percent) is illegal. Law 337 was enacted in January 2013 to contain the problem; however, the law's time frame was increased by Law 952 of May 2017. The available information suggests that legal deforestation has increased even as there has been no slowdown in the pace of illegal deforestation, nor any deviation from the upward trend in deforestation overall. The IACHR notes that, according to reports, in 2015 the vice president publicly announced the goal of expanding the agricultural frontier by 1 million hectares per year. That year, the country passed Law No. 741 authorizing small farmers to clear up to 20 hectares, thereby encouraging the expansion of the agricultural frontier.<sup>203</sup>

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<sup>200</sup> Egaña, C. *El Arco Minero del Orinoco: ambiente, rentismo y violencia al sur de Venezuela*, 2016, Prodavinci, Venezuela; Salusso, M. *Regulación Ambiental: Los Bosques Nativos*, 2008, Universidad de Belgrano, Buenos Aires, Argentina; FAO, *The State of the World's Forests, Forest Pathways to Sustainable Development*, Rome, 2018, p. 58.

<sup>201</sup> As regards the other countries, it was found that in 2012 Peru lost 162,000 hectares, Venezuela 12,600 hectares, Suriname 8,506 hectares, and Guyana 6,981 hectares. BUTLER, Rhett. "[Deforestation rates for Amazonian countries outside Brazil](#)", MongabayLatam, October 9, 2013.

<sup>202</sup> Weisse, Mikaela, Goldman, Liz, [2017 Was the Second-Worst Year on Record for Tropical Tree Cover Loss](#), Global Forest Watch, June 27, 2018.

<sup>203</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, pp. 20-22; Jimenez, G., 2018, *Pueblos indígenas en condición de aislamiento en la Amazonía boliviana y la amenaza del extractivismo*, Cochabamba, CEDIB-LaLibre.

125. As regards Brazil, the IACHR has information that deforestation of the Amazon region is close to becoming irreversible and permanent.<sup>204</sup> According to information received by the IACHR, by 2018 the Brazilian jungle had been reduced to 82.7% of its size by 1970. In almost five decades, 709,165 km<sup>2</sup> of its territory was lost.<sup>205</sup> Information received also indicates that deforestation is one of the main effects of the Belo Monte project, significantly impacting the area's peoples and communities.<sup>206</sup> One example worth highlighting is the situation of the Arara people who live on the Arara indigenous land of Igarapé Humaitá, Brasil. According to available information, they have been impacted by the construction and paving of roads in their territory. That has considerably assisted illegal logging on indigenous land. The opening up of several roads for transporting wood evidently made it easier to establish parcels along a 30 km stretch of the TransAmazon highway between kilometer markers 120 and 150. According to reports, trucks constantly leave the area loaded with timber. Another major problem is that the forward surveillance post built around four years ago at kilometer marker 130 is inoperative, apparently because of FUNAI personnel shortages. The post was provided by Norte Energía as part of the conditions for building the Belo Monte Hydroelectric Project. The purpose of the post is to prevent illegal logging.<sup>207</sup>
126. The IACHR also highlights that, together with the Office of its Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (SRESCER), and expressed grave concern about deforestation and fires in the Amazon in 2019. Specifically, they noted that in Brazil, according to the National Institute for Space Research (DETER/INPE), an agency of the Ministry of Science, Technology, Innovation, and Communications, deforestation in June and July increased considerably in comparison with the same months of 2018. Likewise, according to an expert from the United States National Aeronautics and Space Administration (NASA), there was an increase in the number and intensity of fires in the Brazilian Amazon in 2019. According to information, although the dry season plays an important role in exacerbating fires, the fires detected were more consistent with land clearing. The IACHR and its SRESCER noted that various civil society organizations mainly attributed the increase in fires to forest burning by private actors with the aim of expanding economic activities, such as mining and agriculture, in combination with public policies intended to weaken protection of the Amazon and the environment. In that context, the IACHR warned that indigenous peoples who live in the Amazon are the most affected, as the fires cause forced displacements of several communities, loss of land used for subsistence agriculture, and a serious risk that

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<sup>204</sup> Past models indicated that the tipping point would come when deforestation reached 40 percent; however, with climate change and indiscriminate burning in the region, the critical percentage for the changes to become irreversible is between 20 percent and 25 percent. AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 1, 2018, p. 2.

<sup>205</sup> BUTLER, Rhett. "[Calculating deforestation figures for the Amazon](#)", September 14, 2019.

<sup>206</sup> PUC-Río, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, par. 94; AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 1, 2018, p. 19.

<sup>207</sup> AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 1, 2018, p. 19.

indigenous peoples in isolation, such as the Awa in the Arariboia indigenous territory, in the Amazonian area of Maranhão, could disappear.<sup>208</sup>

127. Similarly, the IACHR and its SRESCER received information that there were also widespread, serious forest fires in Bolivia. In that connection, the College of Biologists of La Paz reported that one of the greatest losses was more than 40,000 timber trees and of an area of forest in Chiquitanía with a monetary value estimated at US\$1.1 billion. In terms of major areas of concern, civil society organizations point to Law 751 and Executive Decree 3973 that encourage forest-clearing practice (known as *chaqueo*) to make way for other economic and commercial activities, such as farming or cattle ranching. According to public information, fires in the country have destroyed around 1.7 million hectares of forest and wilderness areas.<sup>209</sup>
128. In relation to Colombia, the IACHR notes that the western part of the country's Amazon region is the main watershed for downstream water sources thanks to the moors and forests that cover the eastern mountain range. If those systems fail as a result of deforestation or the breaking up of forest areas, the water cycle that encourages cloud formation and maintains the moisture in the soil would be disrupted. As a result of solar radiation, excessive energy would fall directly on the soil, which would accelerate moisture loss in the land and lead to the desertification of the exposed areas. Thus, the forests need it to grow and its absence would give rise to excessive energy, driving up local temperatures.<sup>210</sup>
129. In the Colombian Amazon, and the primary drivers of deforestation are cattle ranching, drug trafficking, and extractive activities. In the specific case of drug trafficking, thousands of hectares of forest are cleared with fire to cultivate coca. For example, in March 2018, there were large numbers of complaints about the deforestation of 20,000 hectares in the Department of Guaviare, as a result of 29 fires, most of them started by human action.<sup>211</sup> According to expert research, cattle ranching has destroyed more than 12 percent of the Amazon jungle in the last 20 years. At present, 3.8 percent of the Colombian Amazon (around 1.7 million hectares) is given over to cattle ranching, especially in the Departments of Caquetá, Putumayo, Guaviare, and Meta.<sup>212</sup>

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<sup>208</sup> IACHR, *IACHR and its SRESCER express serious concerned about deforestation and fires in the Amazon*, September 3, 2019.

<sup>209</sup> Página Siete, *Incendios se extienden a cerca de 800 mil hectáreas en la Chiquitanía*, August 23, 2019; El Deber, *Biólogos estiman afectación de 40.000 árboles por incendios en la Chiquitanía*, August 26, 2019; CNN, *Incendios en Bolivia han quemado más de 700.000 hectáreas*, August 26, 2019; CBC, *While all eyes are on Brazil, Bolivia battles its own vast Amazon fires*, August 27, 2019.

<sup>210</sup> Wayuu Taya Foundation, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 30, 2018, pp. 18-19.

<sup>211</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 36.

<sup>212</sup> UNIANDES, *La Ganadería nos va a dejar sin Amazonas, Agronegocios e Industria de Alimentos*. Bogota, Universidad de los Andes, 2017; PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 36; IGAC, *No hay una sola hectárea apta para la ganadería en la Amazonia colombiana: Director del IGAC*, Noticias IGAC, 2017.

130. In Guyana, according to available operation, medium-scale gold extraction has been the leading cause of deforestation and forest degradation over the last decade.<sup>213</sup> According to the Guyana Forestry Commission (GFC), in 2017 the deforestation rate was 0.048 percent, below the 0.050 percent rate recorded in 2015 and 2016.<sup>214</sup>
131. In relation to Peru despite current efforts to reduce the alarming rates of deforestation, the IACHR was informed that the extensive harm caused to large areas affected by illegal mining and mercury use, especially in Madre de Dios, is irreversible, with 12,000 hectares of forest damaged beyond repair.<sup>215</sup> Furthermore, according to the *Amazon Conservation Association*, deforestation in the Peruvian Amazon in 2017 led to the loss of 143,425 hectares.<sup>216</sup>
132. In relation to Venezuela, the Commission has information that between 2000 and 2010 the deforestation rate was 0.6 percent, which at the time meant that Venezuela was the country with the 10th highest rate of forest loss.<sup>217</sup> It is also reportedly the only country in the Amazonian region where deforestation is on the rise. Where countries such as Brazil and Peru have slowed or reduced their forest loss, Venezuela has evidently seen a sustained rise in recent years.<sup>218</sup> Of particular concern was the creation of the Orinoco Mining Arc (AMO) by Decree 2248, given that the area it covers is one of the worst affected by deforestation (from 8,900 km<sup>2</sup> deforested in the period from 1960 to 2000 to 18,331 km<sup>2</sup> deforested between 2001 and 2017).<sup>219</sup>

## ***E. Loss of Biodiversity and Protected Natural Areas***

133. The deterioration in Amazonian plant and animal life and the attendant loss of the biocultural heritage of Amazonian peoples is a matter of grave concern for the IACHR. The Commission has received information mainly associated with oil and gas exploration and operations, the progressive loss of primary forest to commercial logging, illicit crop cultivation, and farmland and urban expansion. Various extraction and development projects are also generating biodiversity loss which has multiple knock-on effects on indigenous peoples and communities in the Amazon.

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<sup>213</sup> Guyana Human Rights Association (GHRA), Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 19.

<sup>214</sup> Sharples, Carinya, *Guyana deforestation rate hits 7-year low, officials say*, Mongabay, October 19, 2018.

<sup>215</sup> WWF Peru, *Reducción de la deforestación en los bosques peruanos*. August 26, 2017.

<sup>216</sup> CAAAP - UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 3.

<sup>217</sup> FAO, Global Forest Resources Assessment, Main Report, 2010. Other sources indicate that a total of 5,266 km<sup>2</sup> of vegetation were cleared between 2000 and 2015. RAISG, *Deforestación en la Amazonía 1970-2013 (Atlas)*, 2015, São Paulo, Red Amazónica de Información Socioambiental Georreferenciada,

<sup>218</sup> Data from Global Forest Watch, a collaborative online monitoring platform established by the University of Maryland, Google, USGS and NASA that uses Landsat satellite imagery to map annual forest loss.

<sup>219</sup> Data from Global Forest Watch, a collaborative online monitoring platform established by the University of Maryland, Google, USGS and NASA that uses Landsat satellite imagery to map annual forest loss.

134. In relation to Brazil, for instance, the IACHR received information about changes brought about by the hydroelectric project on the River Xingu that have had major impacts on the environmental practices of indigenous peoples that inhabit that region. Specifically, they have been forced to eat industrially processed food daily; their fishing has become more predatory owing to the greater difficulty of finding fish; the limited navigability of the river and the restrictions on the freedom of indigenous and riverine communities force them to use a mandatory passage through the system of locks, with the risk of sinking in the holding area (greater exposure to unexpected disturbances in the river current) among other things.<sup>220</sup>
135. The IACHR also received information about biodiversity loss in Colombia that reportedly has a direct impact on indigenous peoples' traditional practices. Peoples who engage in hunting, fishing, and gathering have seen a decline in the availability of natural resources, such as certain palm fruits, fish, and species of land and tree animals, which are disappearing or migrate elsewhere. The disappearance of forests and species of flora create difficulties when it comes to practicing their traditional medicine, affecting the social structure. Such plant species include yagé, yopo and ayahuasca, which they traditionally use for medical treatments, as well as for planning when and where to grow crops, hunt, and fish, and in general adopt important decisions for the community's future.<sup>221</sup>
136. The Commission also received information about Ecuador, where one of the biggest concerns is the impact on biodiversity of the Mirador mining project in the Condor mountain range. The project is situated in an area of high biodiversity and a wet climate, two characteristics that make the region vulnerable in the event of strong environmental impacts. According to available information, the area is home to the greatest biodiversity on earth in terms of flora, contains various threatened animal species (especially amphibia in danger of extinction)<sup>222</sup>, and is critical to the Amazon's hydrological regimes. The Commission notes with concern that all of that natural wealth is seriously threatened by large-scale mining.<sup>223</sup>
137. With respect to Venezuela, the IACHR also received information about Amazonian biodiversity diversity loss with a social and cultural impact. For instance, the Commission received information about fauna migrating away from their natural habitats and the spread of pollution in the River Ocamo (Alto Orinoco municipality, Amazonas state), as growing threats to the survival of the way of life of the Yanomami people.<sup>224</sup> The disappearance has also been documented of aquatic fauna

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<sup>220</sup> AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 1, 2018, p. 8.

<sup>221</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 41.

<sup>222</sup> REPAM, (2016), Case Tundayme, p. 3; Chicaiza, G. (2014), *Mineras chinas en Ecuador: nuevas dependencias*, p. 77.

<sup>223</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 24.

<sup>224</sup> OEP, Venezuela, Ficha sobre Afectación de comunidades indígenas yanomami de la cuenca del río Ocamo por minería ilegal, pp. 5-6. UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 42.

and flora along the Los Pijiguaos-Puerto Ayacucho, axis between Amazonas and Bolívar states owing to pollution from by silt and sludge produced by washing illegally extracted tantalite.<sup>225</sup>

## 1. Protected Natural Areas (PNA)

138. The Commission notes that a number of states have established protected natural areas. At the same time, it observes an absence of effective protection measures to prevent various projects and illicit activities from adversely impacting those areas. With regard to Bolivia, the IACHR received information about the pressure on protected areas and indigenous territories from the construction of a road in the TIPNIS as part of the IIRSA megaproject. Of particularly grave concern is the acceleration in the deforestation of the forests that support various indigenous peoples there, as is the potential expansion of coca cultivation inside the Park. According to available information, there are a number of alternative routes available for the road that would be viable and financially sustainable.<sup>226</sup> With respect to Ecuador, the IACHR received information suggesting that the handful of zones declared protected areas are insufficient to ensure the protection of the biodiversity and that even those few areas are at risk. A case in point is El Zarza protective forest, which is threatened owing to its proximity to the Fruta del Norte project.<sup>227</sup>
139. Another aspect that hinders the use of land by indigenous peoples is the establishment of protected natural areas without prior consultation. In Peru, for instance, although the law requires that when establishing a PNA the peoples that live in it must be consulted, in practice that guarantee is not observed.<sup>228</sup> According to the information received, many indigenous territories are not titled and since they lack title the State evidently disregards the obligation to conduct a prior consultation. In addition, by not recognizing the right to property, the establishment of the PNA prevents the peoples from making use of the area's natural resources.<sup>229</sup> Indigenous peoples with property titles that overlap a PNA would encounter a number of legal restrictions when it comes to the full exercise of that territorial rights. This issue has to do with the language of Article 4 of Law No. 26834 concerning the use and enjoyment of the natural resources of indigenous peoples within lands established as a PNA, and is due to the fact that those resources cannot

<sup>225</sup> OEP de Venezuela, Ficha sobre Fiebre del coltán y minería ilegal amenazan a indígenas en los estados Bolívar y Amazonas, p. 4.

<sup>226</sup> REPAM, Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia, 2018, pp. 80-88. See also International Commission of Observers of the International Rights of Nature Tribunal, *Cartilla explicativa el caso Tipnis y los derechos de la Madre Tierra*, 2019, January 16, 2019, pp. 7-10.

<sup>227</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 24.

<sup>228</sup> Peru Law 29785, Right to Prior Consultation of Indigenous or Native Peoples Law, Article 9,

<sup>229</sup> CAAAP - UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 11.

be exploited within those territories if their use is not compatible with the type of area concerned.<sup>230</sup>

140. An example of the above is the situation of the Kichwa people and the creation of the Cordillera Escalera National Conservation Area in Peru. Indeed, Executive Decree No. 045-2005-AG created that Conservation Area in 2005. The area overlaps the ancestral territory of the Kichwa peoples, specifically the communities of Nuevo Lamas de Shapaja, Alto Pucalpilllo, and Mishki Yakillu, which lacked title to their lands when the conservation area was created. According to reports, in spite of the fact that information was obtained from the peoples of the area for the EIA, no consultation processes were carried out. In response, an application for constitutional relief was lodged which was decided in 2018 by the civil court of first instance of the Superior Court of San Martín, which ruled that it lacked merit, saying: “all natural resources, both renewable and nonrenewable, are the property of the Nation, and the State has sovereignty over their use.”<sup>231</sup> And other illustrative case involving the declaration of a PNA without prior consultation is that of the community of Nuevo Capanahua, in which an area set aside for the exploitation of forestry resources reportedly overlapped that community's property, which is situated on the River Blanco. The core issue would appear to be that their territory coincides with a “permanent production forest,” on which the community was not consulted because they did not have a publicly registered title. According to the information received, the position of the authorities was that since the concession was granted prior to its registration, a prior consultation process was unnecessary.<sup>232</sup>
141. Various indigenous peoples and communities in Venezuela also encounter obstacles associated with national parks officially decreed in their territories without their consultation. One example was the creation in March 2017 El Caura National Park in the municipality of Sucre de Bolívar by Decree 2767. It was reportedly rejected by indigenous organizations, which denounced a lack of prior consultation of the Ye'kwana and Sanemá peoples and the risk of the loss of indigenous rights over the territory.<sup>233</sup> The IACHR was also informed that in Venezuela, despite their protected

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<sup>230</sup> Article 4 of Law No. 26834 (Protected Natural Areas Law) provides: “Protected Natural Areas, with the exception of Private Conservation Areas, are publicly owned and may not be adjudicated in ownership to private parties. When an area that includes privately owned properties is declared a Protected Natural Area, restrictions may be imposed on the exercise of the properties' ownership and, as applicable, appropriate compensatory measures shall be established. The management of the Protected Natural Area shall encourage the conclusion of agreements with the rights holders in the areas, in order to ensure that the exercise of their rights is compatible with the purposes of the area.”

<sup>231</sup> San Martín Regional Government, *Poder Judicial declara infundada demanda de amparo contra creación del ACR Cordillera Escalera*, August 20, 2018; Wayka, *Los kichwas de San Martín: las comunidades indígenas que piden permiso para vivir*, September 7, 2018. Another instance in which the Peruvian State failed to carry out a prior consultation was the creation of the Pacaya Samiria National Reserve in the territory of the Kukama Kukamiria people by Executive Decree 06-72-PE. REPAM, *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*, 2018, p. 224.

<sup>232</sup> CAAAP - UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 13.

<sup>233</sup> Manifiesto de los Ye'kwana Y Sanemá, Cited by UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 39. OEP, Venezuela, Ficha sobre el uso del fuego en el Parque Nacional Canaima, estado Bolívar, p. 7.

status, mining and forestry activities are being carried out in those natural areas.<sup>234</sup> Worth highlighting in that regard is the Imataca Forest Reserve (RFI), located in the states of Bolívar and Delta Amacuro, comprising more than 3.5 million hectares of forest. Around 29,000 people live in the area, where five indigenous peoples are registered: Pemón, Akawaio, Arawako, Kariña, and Waraos. It was established in 1963 as the first protected area in the Venezuelan Amazon with the aim of preserving the tropical rainforest. 61.2% (approximately 2,436,496 hectares) of the Reserve is earmarked for forestry exploitation, with an annual extraction of 8000 m<sup>3</sup>. However, a small portion was granted in concession with specific rules governing its maintenance and renewal. According to available information, a legal framework was introduced (Decree No. 1850 of 1997 and Decree No. 3110 of 2004) legalizing and promoting the growth of mining concessions, which has led to gold and diamond extraction on approximately 40 percent of the RFI. On the basis of that framework, Decree 2248 (on the Orinoco Mining Arc) established four mineral exploitation areas, of which Area 4 (40,150 km<sup>2</sup>) encompasses the RFI. In consequence, the zone has suffered high rates of deforestation, desertification, pollution, silting of water bodies, and animal species loss to poaching and commercial hunting. According to information provided to the Commission, part of the Imataca Forest Reserve was included in the State's AMO mega-mining plan, whose implementation in the north of Bolívar state has been denounced by indigenous and human rights organizations as a threat to the area's ancestral peoples owing to the risk of displacement and deterioration of their means of subsistence.<sup>235</sup>

## ***F. Obstacles to Cultural and Spiritual Practices***

142. The identity and cultural integrity of Amazonian peoples is intimately bound up with the biodiversity in their environment. Most peoples have a spiritual connection with the natural elements in their territories, which they believe are inhabited by mythological beings or define their unique concept of life and death. The information received by the Commission describes multiple accounts of cultural transgressions committed against those peoples. The diverse violations of their rights have direct repercussions on the exercise of their cultural and spiritual practices, whose disappearance could jeopardize the very existence of the community as a distinct group.
143. In particular, with respect to Brazil, the IACHR is mindful that the indigenous communities affected by the Belo Monte plant have a cultural relationship with the elements in their natural surroundings that is not only their means of survival but also part of their legends and beliefs. One of the biggest impacts on the community was the radical disruption of the flow of the River Xingú, which is one of the

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<sup>234</sup> UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 13.

<sup>235</sup> Olivares, F. No todo es oro, 2016, Análisis Libre, Venezuela, Observatorio de Ecología Política de Venezuela, La Reserva Forestal Imataca, Región Guayana, Venezuela; UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 38.

cornerstones of their cultures, not only materially speaking, but also in a spiritual sense. The alteration of the river's flow compelled them to look for alternative routes, which took into consideration not only which channels were best, but also their belief that mythological and supernatural beings inhabit certain stretches. One example is the case of the Juruna (*Yudjá*) people, whose explanation of their origin under their worldview is inextricably linked to the origin of the River Xingú itself. For the Jurunu (*Yudjá*), there are "enchanted" beings that inhabit the river. Accordingly, as a result of the dam those divinities have abandoned the territory.<sup>236</sup>

144. According to available information, the Electronorte company and the federal government wanted to build an energy transmission line through the Waimiri Atroari territory which resulted in deforestation and invasions. Those attacks directly affected the beliefs and sacred sites of the Kinja people, whose world view is closely linked to nature. According to the Kinja, in ancient times there were two groups: the Iky and the Wehmiri. The Iky lived in the headwaters of the river and had sakra (lighter) skin; the Wehmiri lived near the estuary and had skin that was tapryrma (darker than the Iky's). The groups lived both on the riverbed and on land, since they were relatives of the Xiriminja, mythological beings that live in the water. The Waimiri believe that the Xiriminja still live in the riverbed and that the akta (spirit) of a person who dies departs the body and returns to the forest to live.<sup>237</sup>
145. The impacts on the identity and cultural integrity of indigenous peoples in Brazil have a variety of causes. In the case of the Munduruku people, for instance, they have to do with the constant trespassing on their territory of garimpeiros or gold diggers. A member of that people said: "The white people are destroying our nature, ... they do not respect the world of the ancestors and only because they want to harm the Munduruku. When the garimpeiros find an artifact belonging to our ancestors, they take it. We ask them to return it because the spirits would come against us, many accidents could occur in our villages and we could suffer greatly." The IACHR received information that pastors from evangelical churches have interfered significantly in villages of the Paiter-Suruís people situated on the border between Rondônia and Mato Grosso, resulting in forced religious conversions. For example, Perpera, an indigenous man who was once a pajé (sage) said that one of the evangelical pastors told him that pajés are from hell. As a result, Perpera said that he always sleeps with the lights on for fear that the forest spirits, angered at his change of belief, might come to strike him.<sup>238</sup>
146. The Commission also received information that for many indigenous peoples in Colombia, forest loss, contamination of water sources, and the pressures of the armed conflict have seriously impaired the transmission of traditional practices and

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<sup>236</sup> AIDA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 1, 2018, p. 18.

<sup>237</sup> Grupo de Investigación Estratégica de la Pan-Amazonía de school Superior Dom Helder Câmara, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 48.

<sup>238</sup> Interview by the Pan-Amazon Region Strategic Research Group, Escuela Superior Dom Helder Câmara, enclosed with the response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 52.

customs and, therefore, led those communities to join Western market-economy systems. In that context, the measures adopted to address the extinction risk to indigenous peoples are reportedly not culturally appropriate. Specifically, in response to alleged inefficiency in the enforcement of Constitutional Court Injunction 004, which sought to provide “protection for the fundamental rights of individuals and indigenous peoples displaced by the armed conflict or at risk of forced displacement,”<sup>239</sup> Injunction 173 of 2012 was issued as a follow-up measure for the Jiw and Nukak peoples in the Department of Guaviare. The reason for the above was their particular ways of life as displaced nomadic and seminomadic groups. The information supplied to the IACHR suggests that the measures adopted in that context were not culturally appropriate. For example, the measures included the provision of home construction materials (cement and corrugated iron sheets) not consistent with their cultural practices, as well as alien concepts in relation to education, which for them is based on experience and life in the forest.<sup>240</sup>

147. With regard to the Jiw people in La María Reserve, the Commission was informed about violations of their sacred sites associated with tourism in the area. Specifically, it received the following testimony: “We have moved away from that part of the sacred sites, as they call it, because a lot of plans for tourism sites have already emerged; they take tourists there, where they take photographs. Those sacred sites, as we call them, are only for the sages, because that is how to show respect, respect for site; only the sage and the payé, as he is known, go there. Because there is a spirit in that site; it could be an animal spirit, it could be a fish spirit, it could be some spirit sent to heal the sick; that is why they are sacred sites; if you mock, you get sick, the person gets sick. Why? For not showing respect. And right now no one goes to those sites. Little by little they are disappearing because of the photos after photos they take their. It is very noisy; many people who do not show respect. So the spirit leaves and goes somewhere further away because the spirit does not like being bothered by people.”<sup>241</sup>
148. In relation to Ecuador, it is worth highlighting the concept of *sumak kawsay* as an expression of the unique ways in which indigenous peoples view the world. The peoples who practice it believe that the most important thing in life is not material realization, but a relationship in harmony with the land in the form of “living well” or “living life fully.” It regards the land as the place where peoples can develop fully,

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<sup>239</sup> In 2004, Colombia's Constitutional Court issued Judgment T-025, finding that there was a “state of unconstitutionality” given the forced displacement manifested in the persistence and perpetuation of the violation of indigenous peoples' rights. In monitoring compliance with the judgment, the Constitutional Court issued Injunction 004 of 2009 in which it found there to be a close link between the forced displacement and extinction of at least 34 indigenous peoples, to which list it added the Hitnu or Macaguán people in 2010. Accordingly, it ordered the national government to design, adopt, and implement a Program to Guarantee the Rights of Indigenous Peoples Affected by Displacement and to formulate and implement Ethnic Protection Plans for each of the 35 peoples identified as being at risk of disappearance. IACHR, Colombia, 2014, Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II. December 31, 2013, par. 801.

<sup>240</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, pp. 68-69.

<sup>241</sup> Interview by PUJ, Bogota, enclosed with the response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 74.

where they get the resources they need for their survival and practise their world view and culture.<sup>242</sup> There are notions similar to the concept of *sumak kawsay* in other countries, such as Bolivia, where it is known as *suma qamaña*.<sup>243</sup>

149. The Commission values the fact that both Ecuador and Bolivia accord constitutional protection to that concept.<sup>244</sup> And especially important case is that of the Sarayaku Kichwa people who express their unique world view in the *kawsak sachá* or living forest. That implies that there is a relationship of co-dependence and mutual respect between the people and the forest, as well as a need to practice regeneration in order to be able to grow crops and maintain the forest's resources. In contrast to the extractivist vision that regards the land as a space for resources to be exploited, under *kawsak sachá* the jungle is a living entity with awareness that comprises all the beings that dwell there. The implications of that unique concept are illustrated in an event that violated their spirituality, concerning the felling of the "Lispungo" tree by Compañía General de Combustibles S. A. That tree belonged to one of the people's wise men, César Vargas. According to the testimony of Sabino Gualinga, one of the people's *yachak* (wise men), to the I/A Court H.R., Mr. Vargas had woven threads between himself and the "Lispungo" that gave him healing powers. Therefore, "when they cut down that tree ... he became extremely sad and his wife died, then he died; one of his sons also died, then another son, and now only two daughters are left." In the same statement Sabino Gualinga said that the forest is inhabited by beings, the lords of the jungle who own it; when they plant explosives and detonate them, those beings die, they flee.<sup>245</sup>
150. In Peru, for its part, the oil spills in the communities of Cuninico and Vista Alegre not only harmed material aspects of the indigenous world. Symbolic aspects of their culture were also affected as a result of suffering detrimental changes that harmed their world view in relation to the water. For instance, the complex world view of the Kukama Kukamiria attributes fundamental importance to water in the sense that it is the element that connects the magical and natural worlds. In that connection, the IACHR notes that such an outlook differs from the State's view of water; that is, the western urban vision of it that does not include an intercultural approach or the concept of integrated water management.<sup>246</sup> Indeed, for the

<sup>242</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 30.

<sup>243</sup> Houtart, François. *El concepto de sumak kawsai (buen vivir) y su correspondencia con el bien común de la humanidad*. América Latina en movimiento, 2011.

<sup>244</sup> Ecuador at Articles 14 and 71; Bolivia, at Article 8.

<sup>245</sup> I/A Court H.R., Testimony of Don Sabino Gualinga to the Inter-American Court of Human Rights at the public hearing on July 6, 2011; I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment of June 27, 2012, Series C. No. 245, par. 218, footnote 290. PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 28-29.

<sup>246</sup> According to the information received, since 2015, the solution reportedly proposed by the State for addressing the proven contamination of the waters in the Pastaza, Corrientes, Tigre, and Marañón basins is the construction of provisional water plants in several communities. Urteaga Crovetto, Patricia; SEGURA, Frida, and SÁNCHEZ, Mayra (2018), *Derecho Humano al Agua, Pueblos Indígenas y Petróleo*, Lima, CICAJ, Departamento Académico de Derecho, Cited by CICAJ – PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 10.

Kukama Kukamiria riverine indigenous people, water is not just another natural resource, but a source of life and a cornerstone of their culture. For them, the worlds that make up their mythical universe consist of water and their relationship with their ancestors occurs through water. Thus, water performs an interlinking social function within those communities as an element that brings together generations through such activities as bathing, play, and in general other recreational activities. That function was disrupted when the oil contaminated the water sources, given that the indigenous peoples living in those watersheds were aware that water can also be a vector of disease and, potentially, death.<sup>247</sup>

151. The Commission considers that forced displacement of indigenous peoples can seriously impair the exercise of their cultural and religious practices. There have also been reports that the right to cultural identity of the members of the Shuar Arutam people was violated as a result of the fact that in 2016 and 2017 they were forcibly displaced from their ancestral territory in order to make way for a mining project. That allegedly prevented the free exercise of their culture, which includes rituals and traditional feasts in which they transmit, practice, and reproduce their culture, thereby obstructing their spiritual connection.<sup>248</sup> In the case of the Zaparas, for their part, the suffering and threat that they perceive are symptomatic of a global sickness that could be termed “ecocide.” Thus, they say, “[W]hat we are seeing today is nothing less than the systematic destruction of the vast fabric of beings that sustain our living world. Ecocide is actually a kind of suicide: by destroying the sacred ecology, we are also destroying ourselves.”<sup>249</sup>

## **G. Impairments to Health**

152. The IACHR has received constant reports of grave harm done to the health of indigenous peoples as a result of the relentless pressure to which their territories are subjected, in many cases due to the contamination of their rivers and water sources. (supra III.C). The harm done impairs their life and personal integrity, as well their cultural identity via impacts on their practice of traditional medicine. The above is closely related to the consequences of the extraction projects referred to earlier in this report. (supra II.B).

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<sup>247</sup> Urteaga Crovetto, Patricia; SEGURA, Frida and SÁNCHEZ, Mayra (2018), *Derecho Humano al Agua, Pueblos Indígenas y Petróleo*, Lima, CICAJ, Departamento Académico de Derecho, Cited by CICAJ – PUCP. Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 7-8.

<sup>248</sup> Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 51.

<sup>249</sup> Erazo, M., *Territorio, cosmovisión y derechos de la nacionalidad Sapara, Reflexiones Jurídicas*, Vol. IV, Centro de Publicaciones de la Pontificia Universidad Católica del Ecuador, Facultad de Jurisprudencia, Quito, p. 492, cited by Centro de Derechos Humanos, Facultad de Jurisprudencia de la de la PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 51-52.

153. In its last on-site visit to Brazil, in particular, the IACHR received information regarding the health crisis affecting the Yanomami communities inhabiting areas in the southern part of Venezuela and northern Brazil, as a result of uncontrolled outbreaks of measles. The Yanomami are especially vulnerable to epidemics of that kind because most of them lack immunity to unfamiliar diseases and cannot access medical care because they live in remote areas. Under those circumstances, reportedly, the Moxateteus Yanomami [CHECK] could be completely wiped out. The disease is said to have continued to spread rapidly throughout 2018 in both Venezuela and Brazil, although the number of those affected is unknown. The likely source of this epidemic and other diseases, such as malaria, is thought to be the presence of thousands of illegal miners. The Commission has been told that, despite repeated warnings, the authorities in Brazil and Venezuela have allegedly failed to take the steps needed to expel them.<sup>250</sup> Here, the IACHR reiterates that failure to provide medical care in such cases poses a risk not just to the lives of individuals but also to the very survival of native peoples.<sup>251</sup> The health of whole communities is reportedly also threatened by the presence of the mercury used in mining activities in their territories. According to a study conducted in 2016 on hair samples provided by members of 19 indigenous communities, the health of over 90% of the native inhabitants of the regions is seriously impaired by mercury.<sup>252</sup>
154. The construction and operation of the Belo Monte hydroelectric plant in Brazil is also reportedly associated with violation of the right to health. The number of deaths from vector-borne diseases (such as malaria, sores [CHECK - measles?], and dengue) is said to have risen significantly since construction work began.<sup>253</sup> According to the information available, for indigenous communities the advent of the plant also brought drastic changes in health care, which even reduced the availability of traditional medicine and the option they had of resorting to it. For example, Leoncio Arara, a practitioner of traditional medicine in the Volta Grande Arara community, pointed out that it was impossible to access the plants needed for traditional medicine.<sup>254</sup> The indigenous diet originally based on food that the indigenous

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<sup>250</sup> Survival International. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p.2

<sup>251</sup> IACHR. Press release [238/18 -IACHR Concludes Visit to Brazil](#). Washington, D.C., November 12, 2018 [Preliminary Observations of IACHR's In Loco Visit to Brazil](#), p. 11.

<sup>252</sup> Survival International. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p.3.

<sup>253</sup> For instance, between 2006 and 2010, 13 deaths from vector-borne diseases were reportedly recorded, with that number increasing to 22 for the years 2011-2015: an increase of 75%. In 2016, more than 140 members of indigenous communities, most of them children, allegedly had to be moved out of their villages with flu and diarrhea symptoms. By April, according to the Indigenous Health District (DSEI), almost 20% of the indigenous population of the region had caught the flu. At least seven indigenous people, mostly children, reportedly died from it between January and May 2016. AIDA (Interamerican Association for Environmental Defense) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 1, 2018, pp.21-22.

<sup>254</sup> AIDA Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 1, 2018, p.23.

fished, hunted, or planted themselves now includes daily consumption of rice, sugar, and alcoholic beverages.<sup>255</sup>

155. Regarding health issues in Colombia, the IACHR received information concerning institutional inability to fund special care for indigenous peoples, leading inter alia to a lack of interpreters for indigenous patients who do not speak Spanish, a lack of logistical resources needed for health teams to reach remote areas, and a shortage of the medical equipment required for quality health care.<sup>256</sup> It was further reported that, as part of the measures to protect the Nukak and Jiw peoples required by Decree (*Auto*) 173 of 2012, no differential approach had been adopted with respect to health care and the provision of opportunities for traditional medicine.<sup>257</sup>
156. As regards Guyana, according to information received by the IACHR, average life expectancy is especially low for the indigenous peoples. In particular, numerous communities are reportedly disproportionately hard hit by malaria and environmental pollution, specifically in the form of rivers contaminated by mercury and bacteria from mining activities in the areas they inhabit.<sup>258</sup>
157. In the case of Peru, the main problems reported have to do with the alleged oil spills in the Amazon region already mentioned by the Commission (*supra* III.C.iv). According to the information available, the health impacts of the spills on the local population were compounded by other factors. For instance, in the case of the Cuninico and Vista Alegre communities, there were reports that, in addition to the impact of the oil spills, precarious health conditions had caused several epidemics of disease known locally as "black vomit," or hepatitis. Allegedly, that led to the deaths of a whole generation of (27) children and a decline in the rate of growth of the population in those communities.<sup>259</sup>
158. As noted by the IACHR in its 2017 Report on Venezuela, that country is undergoing a severe health crisis characterized by a shortage of medicines and medical inputs, materials, and treatment<sup>260</sup>. Reportedly, the situation is devastating in the Amazon region, particularly in indigenous peoples and communities, inasmuch as they tend to be at greater risk of contracting diseases and are more likely to die for lack of

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<sup>255</sup> AIDA Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 1, 2018, p.23.

<sup>256</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.76.

<sup>257</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.69.

<sup>258</sup> United Nations. Committee on the Elimination of Racial Discrimination. Consideration of reports submitted by States parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Guyana. CERD/C/GUY/CO/14, April 4, 2006, para. 19.

<sup>259</sup> Urteaga Crovetto, Patricia; SEGURA, Frida, and SÁNCHEZ, Mayra (2018). Derecho Humano al Agua, Pueblos Indígenas y Petróleo. Lima: CICAJ (Center for Research, Training, and Legal Advice), Academic Department of Law. Cited by CICAJ, part of the PUCP (Catholic University). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, pp. 7-8.

<sup>260</sup> IACHR. Report on the Situation of Human Rights in Venezuela: "Democratic institutions, the rule of law, and human rights in Venezuela." OEA/Ser.L/V/II. Doc. 209. December 31, 2017. Chapter 5. C. par. 434

timely medical case and owing to the prevalence of other negative factors, such as malnutrition, tuberculosis, anemia, intestinal parasitosis, and so on. Reportedly, one obstacle to access to health care had to do with the fact that health professionals are, generally speaking, not trained to understand and respect the cultural differences that affect the care provided in health centers.<sup>261</sup>

159. Particularly noteworthy in the case of the Venezuelan Amazon region are reports of recent measles and diphtheria epidemics, both of which can be prevented by vaccination, affecting entire indigenous communities. According to PAHO<sup>262</sup>, between just January and September 2018, some 516 members of indigenous communities in Amazonas, Delta Amacuro, and Monagas allegedly caught measles. The hardest-hit ethnic groups were reportedly the Warao (37 deaths), Sanema (27), and Yanomami (16)<sup>263</sup>. The latest (2016) Ministry of Health report is said to confirm the low vaccinates rates (less than 70%) in indigenous territories. The rates for 2017 and 2018 are unknown, however, because the authorities have not published reports for those years.<sup>264</sup> Malaria cases have also allegedly increased significantly, triggering a PAHO call for urgent measures.<sup>265</sup> For example, in first quarter 2018, just in the municipality of Manapiare (Amazonas), there were said to be 797 cases of malaria, and 4,562 cases in the municipality of Atures (Amazonas). According to the information available, the lack of medical care by the health authorities and the difficulties involved in reaching population centers resulted in deaths among the indigenous peoples and contributed to the spread of the disease. In most communities, deaths went unreported or were not included in the records.<sup>266</sup>
160. Another disease reportedly continuing to spread among indigenous peoples of the Amazon region is HIV (human immunodeficiency virus). A particularly worrisome case reported to the IACHR is that of the Warao people, in which 10% of its 25,000 people allegedly are HIV positive. According to the information available. In 2017

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<sup>261</sup> OEP [Observatory of Political Ecology] Communique on the grave health situation of indigenous peoples in Venezuela

<sup>262</sup> Epidemiological alert and update for measles. Pan American Health Organization - World Health Organization. October 2018, [https://www.paho.org/hq/index.php?option=com\\_docman&view=download&category\\_slug=measles-2204&alias=46783-24-october-2018-measles-epidemiological-update&Itemid=270&lang=en](https://www.paho.org/hq/index.php?option=com_docman&view=download&category_slug=measles-2204&alias=46783-24-october-2018-measles-epidemiological-update&Itemid=270&lang=en)

<sup>263</sup> These figures vary from one source to another in both Venezuela and abroad. According to the KAPÉ-KAPÉ Observatory of Human Rights, as many as 71 Yanomami died of measles. <https://dl.inwebxdesigns.com/storage/Kape-Kape/Informe-Situacion-Sociosanitaria-de-los-Pueblos-Indigenas.pdf>

<sup>264</sup> UCAB (Andrés Bello Catholic University) Informe sobre los Derechos de los Pueblos Indígenas Cuestionario sobre Panamazonía Venezuela (Report on the Rights of Indigenous Peoples, Questionnaire on the pan-Amazon region in Venezuela) received by the IACHR on December 10, 2018, p.70.

<sup>265</sup> "La OPS recomienda a Venezuela "acciones urgentes" ante el sarampión y la difteria." El Universal. Accessed at: <http://www.eluniversal.com/politica/13379/la-ops-recomienda-a-venezuela-acciones-urgentes-ante-sarampion-y-difteria>.

<sup>266</sup> This would appear to be the case in the Haximú community in Alto Orinoco, in which five Yanomami allegedly died from malaria and their deaths went unreported by official health bodies as they lived in a remote community. Kapé Kapé. Situación Sociosanitaria de los Pueblos Indígenas del estado Amazonas y los Subregistros de Información Epidemiológica. 2018 <https://dl.inwebxdesigns.com/storage/Kape-Kape/Informe-Situacion-Sociosanitaria-de-los-Pueblos-Indigenas.pdf>. WHO. World Malaria Report 2017. <http://www.who.int/malaria/publications/world-malaria-report-2017/report/en/>. Ruíz, H. (2016). Minería Ilegal incrementa enfermedades como la tuberculosis. Radio Fe y Alegría. Venezuela.

alone seven indigenous members of that ethnic group died in Delta Amacuro (no data are available for 2018). State initiatives to provide proper medical care and treatment for HIV and other health conditions were described as deficient. Those cases underscore the dearth of public policies to ensure vaccination against vaccine-preventable diseases and the timely provision of antiretroviral drugs.<sup>267</sup>

## **H. Murders and Attacks against Members of Indigenous and Tribal Peoples**

161. In recent years, the IACHR has observed with concern the alarming frequency of acts of aggression, harassment, and murders of members of indigenous peoples in connection with opposition to natural resource extraction projects by those peoples' leaders and authorities. Those attacks on life and personal integrity are intended to suppress activities seeking to defend and protect territories and natural resources, as well as the right to autonomy and cultural identity. In several cases, such acts are reportedly not investigated with due diligence and their perpetrators go unpunished.<sup>268</sup>
162. One example is the murder of José Tendetza, a leader of the Shuar de Yanúa community, and a vigorous defender of his people's rights vis-a-vis extractive activities.<sup>269</sup> One day in December 2014, a group of mining workers allegedly found his corpse. Reportedly, the circumstances surrounding his death had to do with his opposition to mining projects.<sup>270</sup> More recently, there have been numerous reports of death threats against indigenous peoples' leaders associated with protection of the environment. One such violent episode was experienced by Yaku Sacha Pérez Guartambel, an indigenous leader of the ancestral Kichwa Cañari people, who reported having been kidnapped for seven hours along with three companions, allegedly by company workers. He claimed that they were mistreated, spat upon,

<sup>267</sup> Pronouncement by civil society organizations on the HIV crisis in Venezuela. Provea 2017 <https://www.derechos.org/ve/actualidad/accsi-pronunciamiento-de-las-organizaciones-de-la-sociedad-civil-frente-a-la-crisis-del-vih-en-venezuela>. Asociación Civil Kapé Kapé. Observatory of Indigenous Rights. Informe Anual de los derechos de los pueblos indígenas en Venezuela. (Annual report on the rights of indigenous peoples in Venezuela) Resumen Ejecutivo. (Executive Summary). Ciudad Bolívar: 2019, p. 15. Wayuu Taya Foundation Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p.63.

<sup>268</sup> IACHR. *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15, 2016, paragraphs.268-327; IACHR. *IACHR condemns the murder of Lenca indigenous leader and injuries to a child in Honduras military operation*. Press release 52/13. Washington, D.C., July 19, 2013.

<sup>269</sup> IACHR. *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15, /2016), par. 268.

<sup>270</sup> IACHR. *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15, /2016), par. 268.

and threatened with being burned alive for "opposing mining and leaving them without work."<sup>271</sup>

163. At the same time, special heed needs to be paid to particularly worrying circumstances such as those associated with armed conflict, which have a tremendous impact on the daily lives of indigenous peoples, who are all too frequently victims of the violence. The physical and cultural survival of certain vulnerable indigenous communities is threatened, especially in the Amazon region.
164. The Commission has been informed, for instance, of a marked increase in recent years in the number of murders of human rights defenders in Colombia. Thus, civil society organizations have reported the murder of at least 366 human rights defenders, including social leaders, community action activists, and land restitution advocates, Afro-descendants, indigenous leaders, boatmen (barquero), displaced persons, trade unionists, and others, between January 1, 2016 and March 31, 2019.<sup>272</sup> The IACHR observes that, while there is no consolidated State database of the numbers of murdered human rights defenders, Colombia's Ombudsperson has in recent years reported numbers similar to those reported by civil society organizations. As one leader of the Putumayo District Indigenous Organization [Organización Zonal Indígena - OZIP] put it: "They told us the war was over, but in this territory we still see armed groups: there are more armed assaults, more violent deaths."<sup>273</sup>
165. In this regard, Brazil is one of the most worrisome Amazonian countries. According to the information provided to the IACHR, 110 members of indigenous communities/peoples were murdered in 2017, whereby the states with the highest indices were Roraima (33), Amazonas (28), and Mato Grosso do Sul (17).<sup>274</sup> Altogether, registered murders, attempted murders, and death threats against leaders and members of indigenous communities and peoples in the Brazilian Amazon totaled at least 235 cases between 2007 and 2018. Those cases were reportedly associated with territorial conflicts or the defense of land ownership.<sup>275</sup> The situation in Maranhão needs to be watched closely given the high percentage of cases reported in that state (34.5%, or 81 cases). The spread of illegal logging in the Amazonian indigenous territories of Maranhão (land in Arariboia, Alto Turiaçu, Caru, Krikati, Cana Brava, and elsewhere) has allegedly generated an atmosphere of

<sup>271</sup> Lozano, Génesis. "Ecuador: amenazan líderes indígenas por defender sus territorios y el medio ambiente". July 26, 2018.

<sup>272</sup> Programa Somos Defensores, 2016 Annual Report, *Contra las cuerdas*, 2017, p. 29; Programa Somos Defensores, 2017 Annual Report, *Piedra en el zapato*, 2018, p. 62; Programa Somos Defensores, *Informe Anual 2018*, 2019, p. 47; Programa Somos Defensores, *Informe Anual 2018*, 2019, p. 3.

<sup>273</sup> Interview conducted by the Pontificia Universidad Javeriana de Bogotá, provided to the Commission as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.79.

<sup>274</sup> Though the numbers remain alarmingly high, there were eight fewer murders in 2017 than the 118 reported for 2016. AIDA Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on Thursday, November 01, 2018, pp. 23-24.

<sup>275</sup> CIML [Indigenous Missionary Council] CHECK] Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on Tuesday, December 4, 2018, p.25.

permanent violence and threats to the lives of the Guajajara, Ka'apor, Krikati, or Krahô-Kanela peoples. The IACHR was told of the existence of clandestine groups of loggers, "out-laws from Justice," hidden within indigenous territories, who constantly threaten their inhabitants. In addition to the logging mafia, there are reportedly also farmers claiming that they own land within traditional territories.<sup>276</sup>

166. In addition to the above, there was an alleged massacre of a group of indigenous people living in voluntary isolation, known as the "archers" (flecheiros), who were reportedly attacked by gold-diggers (garimpeiros) in the River Jandiatuba region, in the TI Vale do Javari, in Brazil. According to unofficial accounts, up to 20 members of that group may have been killed in the attack. However, the number may have been much higher.<sup>277</sup> According to the information available, there is a steady presence of loggers, illegal fishermen, and garimpeiros all along the Jandiatuba river basin, posing a threat to the life and bodily integrity of the indigenous peoples inhabiting the region.<sup>278</sup>
167. The IACHR also received information about attacks and threats against human rights defenders in Peru. Other worrying scenarios are found in connection with clashes between State agents and members of indigenous peoples, in which there have been reports of alleged excessive use of force. According to the Office of the Ombudsperson, between 2006 and 2018, 279 people died in connection with social conflicts, namely 244 civilians and 35 police officers.<sup>279</sup> One of the most serious and best-documented of these social conflicts was the so-called "Baguazo," in Bagua and Utcubamba in the Peruvian Amazon, in which a large number of policemen and civilians died, including indigenous people, died.<sup>280</sup> The numbers available states that 33 people died (23 police officers, five members of local communities and five members of indigenous peoples).<sup>281</sup>
168. A matter of serious concern to the IACHR is the plight of the Native Community of Santa Clara de Uchunya, where members of the community were allegedly attacked and threatened by workers and land traffickers pertaining to a palm growing

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<sup>276</sup> CIML Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on Tuesday, December 4, 2018, pp.25-26.

<sup>277</sup> CIML Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 4, 2018, p.25.

<sup>278</sup> Amazonian Centre of Anthropology and Practical Application (CAAAP).. ["REPAM expresa su indignación ante posible masacre sufrida por indígenas en aislamiento voluntario en Brasil"](#), September 15, 2017.

<sup>279</sup> Office of the Ombudsperson. [Documento de análisis de la conflictividad social](#) (N° 1, July-September 2018), p. 2.

<sup>280</sup> Human Rights Council Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, James Anaya, [Observations on the situation of the indigenous peoples of the Amazon region and the events of 5 June and the following days in Bagua and Utcubamba provinces, Peru](#). A/HRC/12/34/Add.8. August 18, 2009, para. 42.

<sup>281</sup> Office of the Ombudsperson. [Informe de Adjuntía N° 006-2009-DP/ADHPD](#). Actuaciones humanitarias realizadas por la Defensoría del Pueblo con ocasión de los hechos ocurridos el 5 de junio del 2009, en las provincias de Utcubamba y Bagua, Región Amazonas, en el contexto del Paro Amazónico. (Humanitarian actions undertaken by the Ombudsperson's Office in connection with the events of June 5, 2009, in the Utcubamba and Begua provinces in the Amazon region, in the context of the Amazonian strike.) México, 2009, p. 3.

enterprise.<sup>282</sup> According to information received by the Commission, in September 2017, six farmers in the Bajo Royal hamlet were allegedly tortured and murdered by land traffickers. The alleged motive was their refusal to give up their territory. Likewise, in December 2017, a group of 11 members of the community were allegedly shot in one of the deforested areas in the community. Another case, in July 2018, was that of Carlos Hoyos Soria,, the head of the community, and his brother who were reportedly attacked by three hooded individuals, while they were demarcating the boundaries of their community. According to the information available, none of these cases is being investigated by police or judicial authorities.<sup>283</sup>

169. With respect to Venezuela, the IACHR was informed of the violent death of members of indigenous communities. Indeed, in 2018, at least the following persons were murdered in mining-related disputes:<sup>284</sup> (i) In March, Oscar Meya, brother of the leader of the San Luis de Morichal community, in the municipality of Sifontes, in the state of Bolívar<sup>285</sup>; in May, Freddy Menare, leader and founder of the Organization Indigenous Uwottuja del Sipapo People (Oipus)<sup>286</sup>; (iii) in June, five Pemon indigenous leaders in Alto Chicanan, in the community of San Luis de Morichal<sup>287</sup>; (iv) in August, the leader of the Jivi (Hibi) people Misael Ramírez, his son Milson Dorangel Rondón Reina and four more people in a dispute for control of the El Silencio mine, located at the opening of the Matu river delta, in the Municipality of Cedeño, in the state of Bolívar<sup>288</sup>; and (v) in September, José Vásquez, commander

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<sup>282</sup> FECONAU (Federation of Native Communities of the Ucayali River and its Tributaries), FPP (Peruvian Journalists Federation), and IDL (Legal Defense Institute) Written report for the thematic hearing on: Situation of indigenous peoples in the Peruvian Amazon region, land, and environment. Lima, November 26, 2018, p. 7.

<sup>283</sup> FECONAU, FPP, and IDL. Written report for the thematic hearing on: Situation of indigenous peoples in the Peruvian Amazon region, land, and environment. Lima, November 26, 2018, p. 7.

<sup>284</sup> Other violent events are known to have occurred in indigenous territory in 2018 in connection with disputes for the control of mining activities, but were not reported by chieftains because of the dangers involved.

<sup>285</sup> On March 13, 2018 witnesses reportedly saw Meya being intercepted, detained, beaten, and subsequently disappeared by individuals carrying rifles very close to the Bolivarian National Armed Forces (FANB) checkpoint in El Dorado. Interview conducted by UCAB, provided to the Commission as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 55.

<sup>286</sup> He was allegedly murdered on May 12, 2018 by hired assassins who shot him in the back when he was walking near Puerto Ayacucho, the capital of the state of Amazonas. For years, he had opposed large-scale mining projects and illegal mining mafias operating in the area. Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 72.

<sup>287</sup> There has been no way to independently verify the names of those who are alleged to have died. Deputy Américo de Grazia blamed the massacre on the Colombian ELN <https://twitter.com/AmericoDeGrazia/status/1004911187270754306>. UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.55.

<sup>288</sup> Ramírez was the leader of the Felicidad Community, allegedly murdered by armed groups attempting to take over the mine located on land pertaining to this indigenous group. The inhabitants of the community complained that the so-called "miners' trade unions" had formed a kind of partnership with a Sanema community in the vicinity of El Silencio with a view to taking over the mine. UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.55. Wayuu Taya Foundation. Reply to the Questionnaire regarding the

of the Pemon Territorial Guard in the Community of Turasen, in the municipality of Gran Sabana<sup>289</sup>. Allegedly, between 2016 and 2017, five more indigenous persons were murdered by criminal groups operating in the mining areas in the state of Bolívar, including the Pemon leader Domingo Cabrera<sup>290</sup>.

170. In addition, according to information passed on to the IACHR, there were cases of severe impairment of the physical and sexual integrity of women and girls due to the human trafficking or prostitution often associated with pressures exerted for the control of indigenous territory. Sexual violence was reportedly especially prevalent in a number of indigenous communities in Brazil. As regards the Belo Monte project, the information available points to a 66% increase in rapes between 2010 and 2014 in the service area of the hydroelectric plant. According to the information received by the IACHR, women and girls were subjected to forced labor and sexual exploitation within the area declared to be in the public interest for construction of the plant. There were also reportedly cases of project workers entering indigenous lands in search of indigenous women. In particular, there was a report of a Kayapó indigenous woman from the indigenous land of Trincadeira del Bacajá impregnated by one of the project workers, whom everyone in her village was shunning.<sup>291</sup>
171. According to information received about Guyana, mining has had a hefty impact on indigenous women's and girls' rights to bodily integrity and security. The absence of men in the community for prolonged periods of time reportedly means that women have to take on responsibility for households, farms, children and other community matters. That situation is exacerbated by the presence of strangers in connection with mining activities. One of the major concerns is said to be "adolescent pregnancies," harassment, and rape, accompanied by coercion, pressure from employers, inducements, the use of alcohol, and exploitation of girls. Under those circumstances, according to information passed on to the IACHR, sexual violence against young women and girls in indigenous communities, as a direct and indirect consequence of mining, has reached crisis levels.<sup>292</sup>
172. As regards Peru, according to information received by the IACHR, there are numerous cases of sexual violence in schools in the Amazon region.<sup>293</sup> Reportedly, there have

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Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 66.

<sup>289</sup> Consejo de caciques confirma homicidio de líder pemón en la Gran Sabana <http://talcualdigital.com/index.php/2018/10/02/consejo-de-caciques-confirma-homicidio-de-lider-pemon-en-la-gran-sabana/.W7PpDxL8wcE.twitter>.

<sup>290</sup> Cinco aborígenes asesinados en Bolívar motivaron a crear la "seguridad indígena". October 2, 2017 <http://efectococuyo.com/principales/cinco-aborigenes-asesinados-en-bolivar-motivaron-a-crear-la-seguridad-indigena/>

<sup>291</sup> AIDA. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 1, 2018, p.26

<sup>292</sup> Guyana Human Rights Association (GHRA). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 21.

<sup>293</sup> According to information provided by the Defenders' Office (Oficina Defensorial) in Amazonas, between 2012 and 2017, the administrative procedures commissions for decentralized educational management in Amazonas conducted 273 disciplinary proceedings related to cases of sexual violence. UGEL (Local

been several cases of harassment and sexual violence during the long walks or trips that girls take between their communities and the schools. Because the construction of schools is a function of a given number of students enrolled, it is difficult for indigenous communities (with low demographic density and dispersed populations) to meet those quotas. As a result, in the long distances that pupils have to cover to get to school, they run great risks of becoming victims of sexual aggression and other forms of violence. According to the Ombudsperson's Office, indigenous girls and adolescents are exposed to risk, not only because they are female, but also because they are indigenous, living in places in which the State is barely present, all of which poses an obstacle to the exercise of rights, exacerbates poverty, and heightens the risk of gender-based violence.<sup>294</sup> The IACHR was also told that there is only one Women's Emergency Center (CEM) per province, forcing women living in indigenous communities to travel long distances to get to one. In September 2017, Congress reportedly formed a Commission to Investigate Sexual Abuse of Minors in Organizations, including cases involving indigenous children in several regions, such as Amazonas and the Central Jungle in Junín. According to information received by the IACHR, although that Special Commission reportedly met with indigenous organizations and mothers in 2018, thus far it had not issued an official report.<sup>295</sup>

## ***I. Splitting of Communities and Fracturing of the Social Fabric***

173. The Commission cautions that outside impacts on territories are typically accompanied by community fragmentation processes. Indigenous culture is likely to be threatened in several ways, including the loss of local identity caused by the inevitable expulsion from the territory of origin as a result of its illicit occupation by private agents or the unsustainable uses to which it is subjected. Indigenous crops are also likely to be substituted by others and the State is likely to recognize non-traditional leaders. It needs to be stressed that violations of an indigenous person's rights have consequences that differ from those associated with the violation of non-indigenous people's rights, in that the disappearance of a member of an indigenous people in the Amazon region may entail the loss of a specific structural role that keeps the collective body (community) together. That effect is especially serious

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Educational Management Unit) Condorcanqui (216), UGEL Ibir Imaza (26), UGEL Utcubamba (18), UGEL Bagua (2) and the Office of the Regional Director for Education (11). The Catholic University's Institute of Democracy and Human Rights (IDEHPUCP). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 24.

<sup>294</sup> Office of the Ombudsperson. Condiciones para garantizar el derecho a la educación, la salud y una vida libre de violencia de las niñas y adolescentes indígenas. [Conditions needed to guarantee education, health, and a life free from violence for indigenous girls and adolescents] Adjunct Report Series (Serie Informes de Adjuntía) - Report N° 002-2017-DP/AMASPPI/PPI. Lima, Peru, 2017.

<sup>295</sup> This Commission is said to have focused on the Condorcanqui and Bagua provinces in Amazonas, in particular. IDEHPUCP. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, pp.24-25. CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on Monday, November 05, 2018, p. 14. The Catholic University's Center for Research, Training, and Legal Advice (CICAJ - PUCP) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p.15.

when the persons concerned were heads or chieftains (curacas), wise men, priests, or others who provided guidance for their people and reinforced the social fabric.

174. One of the threats pointed out to the IACHR in Brazil, for instance, is the commodification of land and the steps taken by enterprises -- with the consent or cooperation of the State -- to welcome extractive industries that reportedly have a profound impact on the community's social fabric. Particularly noteworthy is the plight of indigenous peoples and traditional communities in Bajo Tapajós, who constantly have to assert their ties to their territory and oppose a series of natural resource exploitation projects in the region. As a result of their struggle, the Tapajós-Arapiuns Extractive Reserve was established, encompassing some 70 communities living alongside the Tapajós and Arapiuns rivers. Since the 2000s, the indigenous peoples in that region have acted through the Tapajós-Arapiuns Indigenous Council (CITA) to withstand the pressures exerted by agroindustry and associated enterprises, such as the Port of Maicá and Ferrogão Railway construction project. The Commission has been advised of business strategies for operating in the Amazon region that would involve breaking up communities by co-opting leaders via financial inducements, using violence, or interfering in the election of representatives to the local inhabitants' association. In some cases, the State jointly and directly forms part of those strategies in order to make mega-projects feasible. At the same time, the IACHR points out that the lack of a State presence in the region is what allows such practices to achieve their goals.<sup>296</sup>
175. At the same time, several indigenous communities in the Colombian Amazon have suffered breakdowns in their organizational and social roles and structures. According to the information available, the reasons for this destruction of their social fabric include defamation, stigmatization, and racism, along with forced displacement and generalized violence, resulting in the splitting up of families and the disbandment of families, social groups, clans, or whole communities. These processes have meant that traditional authorities, knowledge, and practices are no longer recognized as structurally core features of their peoples.<sup>297</sup>
176. With regard to Ecuador, there have been reports of a number of community break-ups as a result of extractive industry projects. For instance, the Sapara is said to have been split, since 2012, between pro-oil and anti-oil factions, represented by leaders with opposite views of the impacts and benefits of oil extraction.<sup>298</sup> There have also been reports of cases in which companies offered financial rewards to certain members of a people in order to elicit consent to operations in their ancestral territories. The Sarayaku people is a case in point. Some of its members accepted

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<sup>296</sup> PUC-Río.. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, par. 19.

<sup>297</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 42.

<sup>298</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, pp.28-29. Erazo, M. Territorio, cosmovisión y derechos del pueblo Sapara, Reflexiones Jurídicas, Vol. IV, Cetrno de Publicacones of the Law Faculty of the Catholic University of Ecuador (PUCE), Quito, p. 485.

such rewards without following the community's decision-making procedures.<sup>299</sup> Difference of opinion have also emerged within the Shuar Indigenous Nation in connection with the agreement signed by leaders of the Federación Interprovincial de Centros Shuar (FISCH) and the Explorcobres S.A. (EXSA) company operating the San Carlos Panantza mining project. Several Shuar leaders reportedly do not go along with the agreement, which was allegedly signed without consultation in a community assembly.<sup>300</sup>

177. At the same time, the IACHR noted with grave concern that Venezuela is experiencing severe disruptions to social relations and coexistence, including high levels of crime, pillaging, lynching, and other day to day acts reflecting extreme levels of conflict and violence. As Venezuela' political, economic, and social crisis deepens, conflicts are increasingly being "settled" through violence, thereby destroying social ties forged over long periods of time<sup>301</sup>. Specifically, the IACHR has received information to the effect that the surge in illegal mining activities by armed groups, including foreign guerrillas, has allegedly led to the loss of organizational benchmarks and created new cultural patterns -- in mining, prostitution, alcoholism, and drug addiction -- in communities pertaining to the Guajibo (or Jivi), Piaroa, Eñepa (or Panare) peoples and the Arawaks del Sur (which includes the Baniva, Kurripaco, Piapoco, and Puanibe peoples), in the states of Amazonas and Bolívar.<sup>302</sup>

## **J. Forced Displacements**

178. Given the severity of the impact of forced displacement for an indigenous people or community, the Commission devotes this section to report s of displacements alleged to have occurred in the pan-Amazon region. Based on the information at its disposal. the IACHE notes that the forced displacement of indigenous peoples and/or communities is triggered by organized crime, drug trafficking, and the violence practiced by military groups, as well as a result of the implementation of projects by the State and/or private companies aimed at exploiting natural resources.. The severe impact of those occurrences forces indigenous peoples to abandon their area of origin, induces a loss of their culture and identity, and may lead to their disintegration as an indigenous collective entity.

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<sup>299</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018.

<sup>300</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 33.

<sup>301</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 25.

<sup>302</sup> OEP (Observatory of Political Ecology) of Venezuela. Ficha sobre Indígenas arawaks del sur afectados por minería ilegal en la cuenca del río Atabapo, p. 8. Ficha sobre Impactos socio ambientales de la mina de bauxita a cielo abierto Los Pijiguaos, p. 8. UCAB. Informe sobre Derechos de Pueblos Indígenas Cuestionario sobre Panamazonía Venezuela, December 10, 2018. p. 45.

179. An instance of this, according to information received by the IACHR, reportedly occurred in Bolivia, in January 2010, with the violent eviction of the inhabitants of the La Selva community in the municipality of Nueva Esperanza in the province Federico Román, in the department of Pando, Bolivia. Allegedly, whole families, including pregnant women, were violently evicted by the Mabet S.A. logging company and their houses burned to the ground. Mabet reportedly had received four logging concession in Pando, according to the Indigenous Center for Native Peoples in the Amazon region in Pando (CIPOAP). Worth noting, in this connection is the fact that in February 2013 a judgment handed down by the Constitutional Tribunal ordered a reversal of the eviction of two indigenous communities in the municipality of Nuevo Esperanza and a stop to logging activities. Nevertheless, they had reportedly only been allowed to return to their community in 2015, by which time their territory had been converted into "an area in which their houses and fields no longer existed, everything had been set fire to and razed to the ground in 2009."<sup>303</sup> Reportedly, there have been other such cases of forced displacements of indigenous communities by private agents/interests in Bolivia.<sup>304</sup>
180. According to the information available, forced displacements in the Brazilian Amazon region, including those associated with mega hydroelectric, mining, agribusiness, and transportation works projects, have been documented and discussed for decades, without any progress having been made with regard to regulations and public policies to protect those who rights were violated as a result of them. While the circumstances involved are complex, allegedly the Brazilian State has no mechanism for preventing or making reparation for displacements. Construction of the Belo Monte plant, for instance, allegedly required relocating at least 30,000 people, according to Norte Energía. Nevertheless, according to information received by the IACHR, there are no exact figures for the number of persons resettled.<sup>305</sup>
181. In the same vein, according to official figures, the number of victims of forced displacement totals 7,535,682, including 223,972 indigenous persons. Specifically as regards departments in the Amazon region, 34,938 indigenous persons are officially recorded as displaced.<sup>306</sup> According to information at the disposal of the IACHR, the hardest-hit ethnic groups are the Siona Nukak, Jiw, Tukano, and Sikuani. The IACHR notes that, historically, displacement of indigenous communities in the

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<sup>303</sup> CEDIB (Documentation and Information Center Bolivia). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, p. 44.

<sup>304</sup> For instance, in January 2010, 15 homes pertaining to the Masetén indigenous people were allegedly burned down by settlers and campesino farmers attempting to occupying its land in the municipality of Palos Blancos, in the Sud Yungas province of La Paz. In March 2012, a similar incident allegedly occurred, in which some 50 families were evicted from their land. CEDIB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, p. 43.

<sup>305</sup> PUC-Río. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, par. 101. AIDA. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 1, 2018, p. 11.

<sup>306</sup> RNI (National Information Network), Registro Unico de Victimas administered by the Unit for the Care and Integral Reparation of Victims, August 1, 2019.

Colombian Amazon region has occurred at specific times characterized by different types of social change, each with its own momentum.<sup>307</sup> In the most recent instance, under the Peace Agreement, the withdrawal of various sectors of the FARC reportedly encouraged the return of indigenous and Afro-Colombian families displaced by the conflict in an attempt to recover their lands. On the other hand, that sense of restored peace to the regions has reportedly prompted, since mid-2017, an influx of traders, tourism projects, livestock breeders, and large-scale capital investments.<sup>308</sup>

182. As regards Ecuador, there have been reports of violent evictions allegedly perpetrated by police and military personnel. Food security plummeted during displacement, with families eating whatever they could grow on the land of families that took them in. Reportedly out of fear of persecution and harassment, evicted families were reluctant to go out and buy other produce to supplement their diet. In many cases, they are said to have lacked the money to do so, anyway, as their main source of income was the sale of the crops they had lost.<sup>309</sup>
183. By way of illustration, following is an account of the evictions of the Shuar Arutam communities of Nankints and Tsuntsuimi in Ecuador. On August 11, 2016, some 2,000 police and military units came unannounced to the Shuar Arutam community of Nankints, in the province of Morona Santiago, to evict eight families (32 people in all). The Ministry of the Interior announced several days later that members of the community had invaded 28 properties belonging to Ecuacorriente (ECSA). The evicted families moved to Tsuntsuim, where they are said to be living in extremely precarious conditions. It was also reported that, for its part, the community of Tsuntsuimi had been displaced in December 2016, when a police contingent had gone into the community. According to eye witnesses, heavily armed police and military had fired shots into the air shouting "land invaders." The families reportedly fled into the jingle, with no time to collect their belongings. One of the women displaced commented that, when they saw the raid, the Shuar families had fled "into the bush, where they had had to cover the mouths of the children who

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<sup>307</sup> As a first step, the consolidation of the first farms was identified, along with the strategic territorial oversight corridors designed to facilitate the war and drug trafficking. That was the time of the so-called "guahibadas", or hunting down of indigenous persons. They were accompanied by threats, violent evictions, and selective murders. Later on, other armed actors appeared, fighting for control of these territories. The indigenous were caught in the crossfire and then fell victim to the violence wrought by the various actors in the area. Subsequently, the State embarked on a strategy to reinforce its presence in the regions, with a view to militarizing the area, along with new war strategies that used the indigenous peoples as instruments to achieve their goals. Later on came the spraying of chemicals from the air to eradicate illegal crops in the region, contaminating many traditional territories, plots of land, and stocks of supplies. That is known as environmental displacement.<sup>307</sup> Finally, that whole context was reportedly exacerbated by threats and deceit on the part of settlers or others interested in taking possession of indigenous territories. Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 44.

<sup>308</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on Monday, December 10, 2018, p. 35.

<sup>309</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 54.

were crying out of fright" to prevent the police and military from coming after them. Included in the group were some of the families previously evicted from Nankints. Celina Chumpi, a mother of four evicted from the community of Tsuntsuimi when she was several months pregnant tells how she slept in the jungle for a week: "The military evicted us from the community of Tsuntsuimi at 9 p.m. We went and stopped on the way and slept for a week there with my children and husband. We had nothing to eat or anything. My chickens were left behind and the military took them. The next day I went back to confront the military who had gone into the community. That same day my husband said we should go to Guapis, me holding him (a boy about 2 years old) and also pregnant. I couldn't walk any further [...]."<sup>310</sup>

184. With regard to Venezuela, a matter of concern to the IACHR is that part of the Warao people, in Delta Amacuro, is reported to have lost its cultural identity due to economic activities that are detrimental to the biological heritage of their territories forcing the inhabitants to leave and become displaced. Contamination of the lower Orinoco Delta with waste from Corporación Venezolana de Guayana and illegal mining meant that the water and fish needed for their livelihood were infected. For that reason the Warao indigenous people had emigrated away from the waterways they had traditionally lived next to adopt other forms of subsistence, alien to their ancestral cultures. The new forms of settlement altered their farming practices and food patterns, forcing them to survive by begging in urban centers, in Maturín, Puerto Ordaz, Ciudad Bolívar, and Caracas, exposed to considerable discrimination.<sup>311</sup>

### ***K. Major Difficulties and Obstacles to Access to Justice***

185. The IACHR notes that most indigenous peoples are more unprotected than non-indigenous people, as is evidenced by a large ongoing gap in access to justice.<sup>312</sup> The obstacles to justice faced by indigenous peoples have to do not just with their inability to afford a lawyer, linguistic barriers, or ignorance of their human rights. They also stem from failure on the part of justice system operators to adopt an intercultural approach, a key factor for resolving issues that are vital for an indigenous people or community to be able to exercise its rights.
186. For example, with respect to recognition as a person before the law (juridical personality), the IACHR received information to the effect that in Brazil, even though

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<sup>310</sup> Interview conducted by the Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE), provided to the Commission as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 55.

<sup>311</sup> OEP (Observatory of Political Ecology) of Venezuela. Ficha sobre Indígenas warao en el bajo Delta del Orinoco contaminados por desechos de la Corporación Venezolana de Guayana y de la minería ilegal, p. 7.

<sup>312</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 139.

its current Constitution abandons the assimilation model upheld in the previous Constitution and recognizes the juridical personality of indigenous peoples and their communities and organizations and their entitlement to be a party to legal proceedings, the Judiciary has allegedly not absorbed that new paradigm and has systematically refused to let indigenous communities be a party in proceedings debating their rights and interests. Likewise, there have been several reports, in Brazil for instance, of refusal to recognize their right to collective property and the guarantees that go with it.<sup>313</sup> Another instance cited concerns the judiciary in Guyana. According to information received by the Commission, that judiciary has been loath to recognize traditional possession as the basis for indigenous land titles. The High Court in Guyana has twice supported legal claims by miners to exploit land to which indigenous peoples have title.<sup>314</sup> Thus, the IACHR was told about the judicial finding in the Isseneru community case. That community reportedly obtained title to its territory in 2007. Nevertheless, in 2011, a miner had begun exploration activities based on a permit obtained in 1989. In its ruling on the matter, the court took only the chronological criterion into account. Likewise, the president of the Supreme Court allegedly asserted that indigenous claims to title deeds had been invalidated (*viciado*) by the British conquest.<sup>315</sup>

187. In other cases, there have reportedly been judgments accepting the ownership rights of indigenous peoples or communities, which were not however complied with in practice. A case in point is said to be the Gran Jardín de la Sierra ruling in Colombia. Here, the IACHR received information to the effect that, since 2013, the Gran Jardín de la Sierra and all indigenous reservations backed by registered deed No. 509 from colonial times had been denounced as infringements of property (*usurpación*). Three petitions were allegedly filed and some 100 letters written mainly to the Office of the President of Colombia, the Ministry of the Interior, and the Colombian Rural Development Institute (INCODER) (now known as the National Land Agency - ANT). An action for protection of constitutional rights (*acción de tutela*) was reportedly brought the Higher Court of the judicial district of Cali, which ruled in favor of the action and ordering the ANT to determine the establishment of the Gran Jardín de la Sierra reservation. Nevertheless, according to information received by the IACHR, the ANT allegedly never executed that court order because it considered that, within the territory, there were national parks, private estates, and other indigenous reservations. The same court judgment had ordered the necessary steps to be taken to prevent the territory being occupied by third parties,

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<sup>313</sup> In one of those proceedings, there was a first instance court ruling, issued in 2014, but reversed in 2016, refusing to recognize the existence of the Maró indigenous land pertaining to the Borari and Arapium peoples, which covers part of the Gleba Nova Olinda, in Santarém, in western Pará, as traditional communities. PUC-Río. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, par. 102.

<sup>314</sup> GHRA. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 24.

<sup>315</sup> GHRA. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 24.

but, reportedly, title deeds continued to be issued and mining projects were authorized.<sup>316</sup>

188. At the same time, the IACHR has noted a high level of impunity in the region with respect to human rights violations committed in connection with mining, natural resource exploitation, or development projects. That takes the form of multiple legal or administrative barriers that are difficult to overcome. The obstacles to justice faced by indigenous peoples have to do not only with lack of the funds needed to hire a lawyer or ignorance of their human rights, but also with the very high burden of proof of violation imposed on them and the costs that entails. It needs to be recognized that it is particularly difficult to prove the existence of human rights violations in cases involving environmental damage, which typically entail huge costs of technical tests and scientific or expert opinions, not to mention the death threats and threats to the bodily integrity against those initiating these kinds of lawsuit.<sup>317</sup>
189. The Commission underscores the fact that indigenous peoples are especially vulnerable given that, in many cases, the companies or business groups they are up against are typically powerful economic agents in the countries in which they operate, above all in economies that are highly dependent on extractive industries, so that there is little political willingness to guarantee due access to justice. A typical case in point is what happens to appeals (actions for protection of constitutional rights, appeals against unconstitutional acts, or criminal charges) against mining projects undertaken without consulting local communities, which are typically rejected or if, exceptionally, they are admitted, are then not enforced by the competent authorities.<sup>318</sup>
190. Then there are also delays and impunity when it comes to investigating environment accidents. In Peru, for instance, there are reports of several judicial or administrative proceedings to impose sanctions beginning but then ending in nothing effective being done. In particular, the Environmental Assessment and Audit Body (OEFA) reportedly started several proceedings against oil companies, such as Pluspetrol and Petroperú, with very few positive outcomes for the indigenous peoples and the environment. According to the information provided to the Commission, usually the companies accused appeal the finding and by so doing shift administrative proceedings to the courts, where they drag on and result in

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<sup>316</sup> The Gran Jardín de la Sierra indigenous reservation from colonial times. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 18, 2018, p. 10.

<sup>317</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, paragraphs 136-137.

<sup>318</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, paragraphs 138-139.

judgments that do not protect the rights of the indigenous peoples harmed.<sup>319</sup> For instance, the IACHR was told of court rulings in response to contamination of the Pacaya Samiria reservation in Peru, contaminated by oil spills. In 2000, reportedly, 5,000 barrels had spilled inside the reservation, prompting the indigenous peoples to file criminal charges. However, the case was allegedly shelved because the judge determined that the crime had prescribed. Subsequently, in 2010, it was reported that 500 barrels of oil had spilled into the Marañón River from a barge hired by Pluspetrol Norte. That triggered a lawsuit for an environmental offense, which was then shelved because the Special Public Prosecutors' Office for Environmental Issues found no evidence of a crime having been committed. Another accusation for environmental contamination was reportedly filed in 2012 and in 2013, the Public Prosecutor's Office in Nauta ordered a preliminary investigation into the perpetrators of contamination to the detriment of the State.<sup>320</sup>

191. The IACHR also received information regarding cases in which, after obtaining judgments protecting the rights of affected peoples and/or communities, those peoples or communities had faced huge difficulties getting them enforced. Indeed, in 2015, communities in the lower Marañón river basin -such as Cuninico, Nueva Esperanza, Santa Rosa, and San Francisco- reportedly filed suit demanding that the State fulfill its health-care related obligations. Early in 2017, the Mixed Court in Nauta is said to have ruled in favor of the communities, ordering the Ministry of Health to implement a public health strategy including epidemiological, environmental, and health surveillance, and to provide health care for the populations of those communities. Those measures have yet to be fully implemented. Another example of the difficulty of obtaining effective judicial protection is that encountered by the communities of Nazareth, Huachapea. After the Chiriano River was contaminated in 2016, those and other communities filed a suit for protection of a constitutional right (*demanda de amparo*) against the Regional Government of Amazonas, the Ministry of Health, and OEFA. However, that suit has allegedly not yet been heard and a ruling is still pending. Under those circumstances, a request for precautionary measures was filed with the Judiciary to protect the families and communities affected by the contamination. It took until the end of 2018 for those measures to be granted and the Ministry of Health (MINSA) was ordered to draw up a Specialized Health Care Plan for the population affected. That plan was allegedly drawn up and presented by MINSA at the beginning of 2019, but implementation has apparently not yet begun.<sup>321</sup>
192. Exacerbating the above, allegedly, is failure by the State judicial system to adopt an inter-cultural approach. Each indigenous community has its own way of administering justice, based on its own rules and principles. According to the

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<sup>319</sup> The Catholic University's Center for Research, Training, and Legal Advice (CICAJ - PUCP) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 11.

<sup>320</sup> The Catholic University's Center for Research, Training, and Legal Advice (CICAJ - PUCP) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 11.

<sup>321</sup> CICAJ - PUCP Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 11.

information at the IACHR's disposal, the State judicial system does not take the particularities of the community justice system into account; nor do the bodies receiving complaints or judicial bodies have interpretation facilities to ensure that complaints and proceedings are conducted in the main indigenous language.<sup>322</sup>

193. The IACHR was further told that indigenous justice, as an alternative mechanism for conducting proceedings, was not being taken into account in proceedings against indigenous individuals facing criminal charges, which means that there is a legal gap between the ordinary and indigenous jurisdictions. The indigenous authority is also reportedly at a disadvantage because it is unable to act in cases within its sphere of competence. In many cases it opts to cede that competence to the ordinary justice system for fear of being punished by State authorities.<sup>323</sup>

### ***L. Criminalization of Leaders and Members of Indigenous and Tribal Peoples***

194. The IACHR has voiced its concern at the existence of a pattern of criminalization of demonstrations or social protests by the leaders of indigenous and tribal peoples, in connection with extractive industry activities, making it harder for those peoples to defend their rights. The Commission notes that there is a paradox here in that "often these peoples and the defenders of their rights try to use several legal or political actions with the aim that the States meet their demands, which often do not succeed and then lead to actions of social protest, which are themselves criminalized."<sup>324</sup>
195. That criminalization is manifested in the misuse of criminal law by justice operators to label peaceful protests as contempt for authority, incitement, offenses related to terrorism, rebellion, and others. These criminal charges are joined by arrests, imprisonment and the use of pre-trial detention for periods exceeding any reasonable time and without appropriate safeguards. The IACHR is worried that such charges encourage stigmatization and de-legitimize defense of the rights of peoples to their territories by casting them as criminal groups. The IACHR has been informed of some cases in which media have had a role in such stigmatization.<sup>325</sup>

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<sup>322</sup> IDEHPUCP. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 29.

<sup>323</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR in October 2018, p.75. Missionary Indigenous Council (CIMI). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 4, 2018, p.40.

<sup>324</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 297.

<sup>325</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15, 2016, paragraphs 298-301.

196. The IACHR has stressed that peaceful social protest is a manifestation of the right of assembly. In that context, it is a fundamental tool in the defense of human rights and is essential for engaging in political and social criticism of authorities' activities as well as for establishing positions and plans of action with regard to human rights.<sup>326</sup> This right to public demonstrations is protected by Article XXI of the Declaration of the Rights and Duties of Man and Article 15 of the American Convention on Human Rights, provided that they are peaceful and unarmed. The Commission points out that in order to comply fully with their obligations to respect and guarantee the right of assembly, State must not obstruct the exercise of that right and must take positive steps to safeguard said exercise from the moment that administrative authorities become aware or the desire to carry out a demonstration. In particular, during the demonstration, they must protect the rights of participants and third parties involved; subsequently, they must investigate and punish anyone, including State agents, who commit acts of violence against the life or bodily integrity of the demonstrators or third parties.<sup>327</sup>
197. According to the information available, in 2018, 321 human rights defenders were murdered in 27 countries, whereby the IACHR stresses that 73% of them occurred in just four countries: Brazil, Colombia, Mexico, and the Philippines, the first two of which are in the Amazon region.<sup>328</sup> 77% of the victims defended land ownership and the rights of indigenous peoples and the environment in connection with mega-projects and extractive industries. Other sources indicate that 164 murders of environmental defenders were reported worldwide, with the most dangerous countries in South America being Colombia (24), and Brazil (20).<sup>329</sup> These scenarios of increasing violence have been reported in territories with scant presence of the State and territories associated with the promotion and development of mining or infrastructure projects, many of which are also areas inhabited by indigenous peoples.<sup>330</sup>
198. As regards Brazil, the IACHR recently ascertained that one of the major problems associated with the delimitation and demarcation of indigenous territories concerns threats, harassment, and attacks on defenders, leaders, and communities defending their land. According to the information available, there is increasing criminalization of the struggle to protect rights, of leaders, and of social movements. Criminalizing indigenous leadership is a recurrent phenomenon on Brazil, exacerbated by the aforementioned vulnerability of indigenous persons, as a result of their ethnic and racial origins. Other attacks on them take the form of reprisals.

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<sup>326</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 129.

<sup>327</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 303.

<sup>328</sup> Front Line Defenders *Annual Report on Human Right Defenders at Risk in 2018*. Dublin, 2018, p. 7.

<sup>329</sup> According to this report, agroindustry is the business most associated with the murder of activists. Global Witness. *"New data reveal that 197 land and environmental defenders were murdered in 2017"*. February 2, 2018.

<sup>330</sup> DAR. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 10.

On this, Vanderlecia Ortega Dos Santos, a member of the Witoto people, stated that: In one case in which our community recovered possession of land, our leader was brutally arrested as a "bandit" for fighting for a home to live in. The women were forced to strip because "real indigenous people go around naked."<sup>331</sup>

199. Through specific cases handled by the courts, the IACHR has learned of processes designed to criminalize chieftains and other important leaders of indigenous peoples who are deemed indispensable for the communities' social organizations. Imprisoning or prosecuting such leaders is an attempt to weaken and destabilize communities, as a way to gain easier access to natural resources. In Brazil, for instance, it was reported that in August 2017 the first instance judge of the District of Sananduva in the State Justice system of Rio Grande do Sul had convicted four members of the Kaingang indigenous people. The judgment was handed down against the chieftain and principal leaders in connection with a land dispute.<sup>332</sup>
200. One case of criminalization of efforts to defend territory in Ecuador that was brought to the attention of the IACHR involved the Shuar Arutam indigenous people. In a public hearing before the Commission, the Shuar leaders and defenders denounced the existence of criminalization by justice system operators. Specifically, they pointed out that, after being evicted, the community had returned to its territory in November 2016, and was again driven out on the grounds that the territory allegedly was owned by a company. The State's response had been to have the security forces retake the settlement, so that hundreds of policemen and military personnel regained control of it, with people getting wounded in the confrontation. The Ministry of the Interior had then brought criminal charges for attacking and attempted murder of policemen and soldiers. It was also reported that proceedings had been started for the crime of inciting unrest against four people allegedly involved, including Agustín Wachapá, a Shuar leader and president of the Arutam branch of the Federación Interprovincial de Centros Shuar, who was held in pre-trial detention in the maximum security prison in Latacunga. In addition, most of the accused reportedly hid in the jungle for fear of being detained and because they had no private defense attorneys and in several proceedings had been defended by lawyers from the Public Defender's Office (Defensoría Pública), whose counseling had been met with a fair amount of criticism<sup>333</sup>.
201. The IACHR has also commented on the situation in Venezuela, characterized by a steady weakening of democratic institutions and deterioration in the human rights

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<sup>331</sup> ORTEGA DOS SANTOS, Vanderlecia. Document provided to the Commission by the Human Rights and Environmental Law Clinic of the University of the State of Amazonas as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 3.

<sup>332</sup> CIMI. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 4, 2018, p.39.

<sup>333</sup> The Human Rights Center, an academic department in the law faculty of the Catholic University of Ecuador (PUCE). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 65. Tiam Foundation (2017). Informe sobre la situación de los derechos humanos de las comunidades del Pueblo Shuar Arutam afectados por el proyecto minero San Carlos Panantza, Quito. [Report on the human rights situation of the communities of the Shuar Arutam people affected by the San Carlos Panantza mining project], p. 21.

situation that over the past few years have reached acutely alarming levels.<sup>334</sup> In that context, there were reports of the security forces persecuting, threatening and punishing anyone opposing the current system of government. Criminalization of indigenous leaders, especially in the Amazon region, is reportedly being stepped up. In Bolívar, for example, tensions between the State-owned mining company *CVG Bauxilum* and the Eñepa (or Panare) communities reportedly led to complaints by indigenous leaders of armed bands harassing them for their protests against the company.<sup>335</sup>

## **M. Other Impacts on the Rights of Indigenous Peoples in the Pan-Amazon Region**

202. The Amazon region is characterized by remote forests and hard-to-reach areas, which challenge States' abilities to comply with their oversight and audit obligations. The IACHR observes a range of different circumstances relating to illegal economic activities that are reportedly triggering new conflicts in the Amazon region.<sup>336</sup> In this section, the IACHR refers to violence and militarization issues stemming from armed conflicts; human mobility; trafficking in persons, forced labor, and new forms of slavery; drug trafficking and biopiracy (Tr. the illegal exploitation of plant and animal species). These circumstances exacerbate the vulnerability of indigenous peoples, especially when States fail to take steps to safeguard and ensure respect for their human rights vis-à-vis the illicit activities of private individuals or companies.

### **1. Violence, Militarization, and Armed Conflict**

203. The IACHR highlights the fact that the history of the rights of the indigenous peoples of the Amazon region is plagued with violence. The very territory of the region facilitates the presence of armed groups, which, in many instances, opt to develop an economy based on illicit crops to sustain their activities. Those activities, in turn, tend to attract State agents bent on combating those criminal activities, who thereby expose the indigenous peoples to more violence, in which they are placed in the crossfire of the parties to conflicts or forcibly recruited.

204. In the case of Brazil, according to available data. Altamira (the city closest to Belo Monte) was reckoned to be the most violent city in the country in 2017, with a homicide rate of 133 per 100,000 inhabitants (four times the national average). The

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<sup>334</sup> IACHR. *Situation of Human Rights in Venezuela - "Democratic Institutions, the Rule of Law, and Human Rights in Venezuela"*. OEA/Ser.L/V/II. December 31, 2017, par. 470.

<sup>335</sup> OEP Ficha sobre Impactos socio ambientales de la mina de bauxita a cielo abierto Los Pijiguaos, pp.7 and 8. UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.39.

<sup>336</sup> IEI of the Pontificia Universidad Javeriana in Cali. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 15, 2018, p. 54.

state of Pará has a record of violence relating to land disputes and today's rates are reportedly in part due to the social disruption associated with construction of the hydroelectric plant.<sup>337</sup> The IACHR has also been told about the development of areas to facilitate militarization of the Amazon region encompassing 7 million hectares [TR. CHECK the unlikely Spanish] in border areas (1.5% of the total area)<sup>338</sup>. Another case that has been reported regards the Uru-Yo-Wau-Wau people, who inhabit the state of Roraima. That people has reportedly dwindled over the past 50 years, owing to conflicts, invasions, and disease. The indigenous people and those who attempt to defend them are allegedly up against violent and well organized invaders.<sup>339</sup>

205. For its part, the Colombian Amazon region has been fought over, for several decades now, by a variety of legal and illegal armed actors: drug traffickers; various different guerrilla groups ( Revolutionary Armed Forces of Colombia – People's Army [FARC-EP], the National Liberation Army [ELN], and others; various paramilitary groups; post-demobilization groups; and the Armed Forces. In addition, illegal economic activities are practiced all along its rivers and in other places. The armed conflict itself has reportedly never stopped in the Amazon region, where the violence is perpetrated by other actors. Some 44,585 incidents resulting in victims were reported between 1958 and 2018, although the number is believed to be underestimated, and official sources are considered deficient in that respect. Selective murders and forced disappearances are said to account for the majority of acts related to the armed conflict in the Amazon region. The departments with most violent incidents as a percentage of the indigenous population are Amazonas, Vaupés, Guainía, and Vichada, with 18%, 17%, 9%, 3%, respectively.<sup>340</sup>
206. Numerous indigenous people in Colombia are said to have been caught in the middle of clashes between guerrillas and paramilitary groups or the Army. More recently, there are ongoing reports of the indigenous territories still being besieged by rebels from the National Liberation Army (ELN), FSARC dissidents, paramilitary and drug traffickers, especially in areas like the Department of the Cauca. The data available show 158 indigenous leaders allegedly murdered between the signing of the Peace Agreement and August 2019.<sup>341</sup> The limitations imposed by the establishment of reservations in 1991 have reportedly made displacement impossible. Reportedly, communities that did not choose displacement had to tailor their cultural practices to the realities of the war surrounding them. Many indigenous people became guides

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<sup>337</sup> Institute of Applied Economic Research (IPEA) and Fórum Brasileiro de Segurança Pública. *Atlas da Violência. Retratos dos Municípios Brasileiros*. Rio de Janeiro, Brazil, July 2019, p. 25

<sup>338</sup> PUC-Río.. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 101.

<sup>339</sup> Grupo de Investigación Estratégica de la Pan-Amazonía [Pan-Amazon region strategic investigation group] at the Escuela Superior Dom Helder Câmara. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 22.

<sup>340</sup> IEI of the Pontificia Universidad Javeriana in Cali. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 15, 2018.

<sup>341</sup> Organización Nacional Indígena de Colombia. "Declaración de Emergencia Humanitaria de y por los Pueblos Indígenas". August 9, 2019. Diario El Comercio. "Dos indígenas muertos en enfrentamiento con disidencia de FARC en Colombia". August 10, 2019.

to the jungle, or carriers, or even joined the armed groups, either forcibly or of their own volition, given the impossibility of ignoring the fighting.<sup>342</sup>

207. As regards Venezuela, there were reports that the State was militarizing indigenous territories, using State agents and irregular groups. In 2005, it had reportedly organized the "National Strategic Plan for the Defense, Development, and Consolidation of the South" (PENDDCS) with a view to ensuring a greater State presence in border areas in the south of the country and indigenous communities.<sup>343</sup> "Plan Caura" was announced in 2011, as a way to exercise control over illegal mining in the states of Amazonas, Bolívar, and Delta Amacuro. In connection with that Plan, complaints were filed by representatives of the Ye'kuana and Sanemá (a sub-group of the Yanomami people) alleging abuses by State agents.<sup>344</sup> In 2014, "Operation Roraima" was allegedly implementing illegal mining. In March 2016, a few days after the alleged the Tumeremo massacre,<sup>345</sup> President Nicolás Maduro announced the launching of the Special Military Mining Protection Zone to bring order to the mining areas known as the Arco Minero del Orinoco. To that end, more than 1,000 men pertaining to the Bolivarian National Armed Forces (FANB) were reportedly deployed to the zone, along with units of the security forces, public prosecutors, and the Office of the Ombudsperson. From then on, there were reports that the militarization had spread to the mining municipalities in the state of Bolívar, and in particular to indigenous territories with extractive activities without thereby reducing the violence or providing protection to communities.<sup>346</sup>
208. At the same time, according to the information available, there are ongoing instances of violence against peoples and communities perpetrated by illegal miners, especially in the Venezuelan states of Amazonas, Bolívar, and Delta Amacuro. For example, there are reports of attacks by miners and the raping of women in the Yanomami people's communities, where illegal mining is practiced. The same is said to be true for members of the Arawaks del Sur people, subjected to the impacts of illegal mining in the Atabapo River, including threats against indigenous leaders. Illegal mining has allegedly triggered practices involving over-exploitation and semi-slavery as well as fights resulting in several deaths<sup>347</sup>.

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<sup>342</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.15.

<sup>343</sup> The Plan was said to have been officially instated on April 11, 2006, when it was dubbed "Exceptional Economic and Social Plan for the Construction, Repair, Equipping, Overhaul and Operation of Civic-Military Units for Endogenous Development, Air Force Bases and Riverine Command Posts for the Defense, Development, and Consolidation of the South," via Presidential Decree No. 4,405, published in Official Gazette No. 38,417.

<sup>344</sup> Report on Indigenous Rights by Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA). 2011.

<sup>345</sup> The Tumeremo massacre is alleged to have taken place on March 5, 2016 in the municipality of Sifontes in the state of Bolívar. 17 people were reportedly murdered at the Hojalata mine. The Government blamed the El Topo band.

<sup>346</sup> UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.36. OEP of Venezuela.

<sup>347</sup> UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.36. OEP of Venezuela. Ficha sobre Indígenas arawaks del sur afectados por minería ilegal en la cuenca del río Atabapo, p. 7. OEP of Venezuela. Ficha sobre

209. According to information received by the Commission, the National Liberation Army (ELN) has been displacing the illegal groups running the mines in order to take over those territories. The presence of the ELN in the state of Bolívar reportedly occurred at the time of the Tumeremo massacre, allegedly with the Government's acquiescence, with a view to restoring order in the mining municipalities.<sup>348</sup>

## 2. Human Mobility, Trafficking in Persons, Forced Labor, and Newer Forms of Slavery

210. From an indigenous perspective, intergenerational solidarity is widely understood to mean social cohesion among generations. The IACHR notes that many indigenous peoples opt to migrate to cities for reasons related to their history of being dispossessed of their territories, forced displacements, and obstacles to access to natural resources. In the new urban environment, they have to adapt and, in most cases, abandon the traditional survival practices they followed in their territories. The Commission also observes that various indigenous peoples living in an urban environment are discriminated against when it comes to access to health, education, and political participation, as well as in other spheres. Many stay poor, which increases their vulnerability. During preparatory work for this report, an interview was conducted of Vanderlecia Ortega Dos Santos, a member of the Witoto indigenous people in Aldea Colonia, in the municipality of Amaturá-Amazonas, Brazil, who stated that: "Here in Manaus, there are about 35,000 indigenous persons living in the city and we suffer in this urban setting because we are not recognized as "Traditional Indigenous Peoples" as we are outside our villages. For that reason, people discriminate against us, they don't respect our culture, our way of thinking and being. We are in the city to seek improvements for our villages. There our relatives are dying because they have been abandoned by the authorities. If we don't leave, we are going to die and in a few years we may have no descendants. We are in the city on search of education because we believe that today education is our

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Afectación de comunidades indígenas yanomami de la cuenca del río Ocamo por minería ilegal, p. 6. Kapé Kapé. Civil Association. Observatory of Indigenous Rights. Informe Anual de los derechos de los pueblos indígenas en Venezuela. [Annual Report on the rights of indigenous peoples in Venezuela] Resumen Ejecutivo [Executive Summary]. Ciudad Bolívar: 2019, p. 17. Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p.67..

<sup>348</sup> In July 2018, five members of the Pemón indigenous people were allegedly killed by members of the ELN. According to an indigenous leader, Ana Mercedes Figueroa, a group identified as pertaining to the ELN arrived at her community, San Antonio de Roscio, in September 2018. For their part, teachers also stated that in their visits to indigenous schools in Sifontes they had encountered individuals identifying themselves as members of the ELN. On October 14, 2018, alleged guerrilla fighters in Colombia's ELN reportedly ambushed a group of miners in El Bochinche, in the municipality of Sifontes in the state of Bolívar, on the border between Venezuela and Guyana. Interview conducted by UCAB and provided to the Commission as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.60. See also: El Nacional. "De Grazia: Hay preocupación indígena por posicionamiento del ELN en el país". October 23, 2018. Tal Cual Digital. "Romel Guzamana alerta que el ELN entrena indígenas de Amazonas y Bolívar para su causa". November 6, 2018. Oro Información. "Los guerrilleros del ELN controlan las minas de oro ilegales en Venezuela y Maduro no lo impide". November 16, 2018.

best "weapon" in the fight for our rights; our bows and arrows were vital in the struggles of our ancestors, but today they serve to remind us of the strength and courage of our warriors of the past whom we must never forget and who give us certainty and strength to continue fighting for a more dignified life."<sup>349</sup>

211. The IACHR is keeping especially close track of the situation in Venezuela because the profound economic, political and social crisis in that country, has led to considerable domestic and international migration of indigenous persons<sup>350</sup>. Inside Venezuela, it has meant that large numbers of indigenous persons have had to live in deplorable conditions in the cities. Several ethnic groups reliving in the streets, such as the Warao (about 625 people) and the Eñepa (100 people)<sup>351</sup>. One particularly worrying case is that of the indigenous communities settled near the Cambalache Garbage Dump, in Ciudad Guayana, as the health authorities have allegedly reported the death of two Warao children from malnutrition<sup>352</sup>.
212. As regards international migration, one worrisome case is the plight of members of the Warao indigenous people reported to have emigrated from Venezuela to the Barima Waini and Pomerron Supanaam regions in Brazil. The Warao were reportedly received at the at the Pintolandia shelter of the United National High Commissioner for Refugees (UNHCR), located in the border state of Roraima. Nevertheless, according to information received by the IACHR, the Federal Police attempted to deport 450 indigenous persons in December 2017. Reportedly, the Fourth Federal Court Judge admitted a habeas corpus filed by the Union's Ombudsperson's Office in order to stay the deportation. In the three years between 2014 and 2016, according to the data available, 532 deportations were carried out.<sup>353</sup>
213. At the same time, trafficking in persons, forced labor or other forms of slavery are ubiquitous throughout the region. Women are disproportionately victimized, and indigenous women even more so. In the Amazon region, those scenarios are typically associated with other illicit activities, such as drug trafficking.<sup>354</sup> In the department of Guaviare, in Colombia, for instance, there have been reports of recent

<sup>349</sup> Interview conducted by the Human Rights and Environmental Law Clinic of the Amazonas State University and provided to the Commission as an attachment to the Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 2.

<sup>350</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 63.

<sup>351</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 63.

<sup>352</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 63.

<sup>353</sup> PROVEA. *Rights of Indigenous Peoples* January-December, 2017, p. 54. El Universal. *OIM distribuye ayuda entre venezolanos de etnia warao desplazados a Guyana*. Geneva, October 12, 2018.

<sup>354</sup> IACHR. *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II. December 31, 2015, par. 66. IACHR. *Indigenous Women and Their Human Rights in the Americas*. OEA/Ser.L/V/II. Doc.47/17. 2017, par. 121. Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.45.

cases of sexual enslavement, trafficking in persons, and child prostitution, as well as other crimes. Likewise, in the department of Amazonas, there has been a complaint of an increase in sexual tourism with indigenous persons, in which girls and adolescents are allegedly recruited by prostitution networks also operating in Peru and Brazil.<sup>355</sup> In addition, the massive emigration of Venezuelans is reportedly being exploited by human trafficking and smuggling networks, which take the victims to places like Cúcuta, in Colombia, where they are used for sexual exploitation purposes<sup>356</sup>. There are said to be no official figures for human trafficking or smuggling: just approximations and significant under-reporting. The Commission points out that lack of information prevents proper diagnostic assessment of the problem and the scope of it, as well as the drawing up and implementation of public policies and interagency coordination to prevent this scourge.

214. The trafficking of girl and women has been reported as a serious problem in Guyana. For example, based on information received by the Commission, in Hiawa, the closer Lethem communities are to the center of the region and to the port of entry into Brazil, the greater the exposure of local inhabitants to the trafficking, prostitution and sexual abuse associated with the illegal movements of persons. Over the past year, those movements have reportedly been exacerbated by the increased number of Venezuelan migrants, many of whom are smuggled to mining areas in Guyana. According to medical personnel treating women and girls involved with prostitution, recruitment is especially intense in the interior of the country. Girls are reportedly recruited to be taken to Region 7 from other parts of the interior. Those activities are also said to be spreading HIV and other sexually transmitted infections (STIs).<sup>357</sup> According to information furnished to the IACHR, there is a shortage of contraceptive methods in Guyana. Combined with trafficking and prostitution, the incidence of STIs and HIV among young women and indigenous girls poses a major health problem. Another factor worth bearing in mind is that, for religious reasons, older people reportedly advise girls not to be use contraceptive methods.<sup>358</sup>
215. According to information received regarding Peru, extractive and infrastructure activities in indigenous territories are forcing indigenous peoples either to participate in the companies' economic activities or to form part of the other economic circuits generated by their presence, such as prostitution and trafficking. Currently, there are very few data available for trafficking, most of them focusing on denunciations. The IACHR point out that, nationwide, the departments of Loreto and

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<sup>355</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 45.

<sup>356</sup> Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 69.

<sup>357</sup> Guyana Human Rights Association (GHRA). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 22.

<sup>358</sup> Guyana Human Rights Association (GHRA). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. [TR. page number missing]

Madre de Dios register the second and third highest incidence of denunciations of trafficking in persons.<sup>359</sup>

216. As regards forced labor, the IACHR was informed about illegal miners in Venezuela forcing members of the Sanema and Ye'kwanas indigenous peoples to carry supplies, luggage, or food.<sup>360</sup> There were also reports of Yanomami communities being forced to work for miners in exchange for clothes or food in the Ocamo river basin in Amazonas,<sup>361</sup> and of indigenous mining operations in the southern part of the state of Bolívar, inside the Canaima National Park in the Caura, Paragua, and Ikararú river basins.<sup>362</sup>

### a. Drug Trafficking

217. Drug trafficking is an illicit activity in which both the crops and production are generally located in remote regions difficult to get to deep inside the Amazon region, as a result of which indigenous peoples in isolation and initial contact are especially affected (*infra Section V*). According to information regarding Bolivia, coca growing has increased in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS). That is said to entail destruction of forests and soil exhaustion due to intensive use of agricultural chemicals and constant inroads by settlers toward ancestral community lands. Those crops are said to have led to the depletion of natural nutrients in the soil, as well as land degradation and erosion.<sup>363</sup>
218. According to the information available for Peru, there are clandestine landing strips for dispatching drugs in the Manu National Park (in Madre de Dios) as well as in much of the valley alongside the Apurímac, Ene, and Mantaro rivers (VRAEM) and adjacent areas. Those areas are said to be part of the ancestral territory of indigenous peoples in isolation and initial contact as well as of such indigenous

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<sup>359</sup> National Institute of Statistics and Information Processing (INEI). Technical report. [Estadísticas de Seguridad Ciudadana N° 02 - Marzo 2019](#). September 2018 – February 2019. No. 2 - March 2019, p. 149; CHS Alternativo. VI Informe Alternativo. Balance de la sociedad civil sobre la situación de la trata de personas en el Perú 2017 – 2018. Lima: Capital Humano y Social Alternativo, 2018; McEvoy, Carmen. “[Es tu culpa y ahora te aguantas](#)”. *El Comercio*, August 21, 2016; McEvoy, Carmen. “[La pampa del horror](#)”. *El Comercio*, July 11, 2016. DAR. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 9.

<sup>360</sup> Centro de Investigaciones Ecológicas [Ecological Research Center], Venezuela. *Capitanes Indígenas de El Caura advierten la Neo-Esclavitud de muchos hermanos*. 2013. Maffia, C. *Indígenas del Caura reavivan denuncias contra mineros y militares*. 2013. Venezuela Awareness.

<sup>361</sup> OEP Ficha sobre Afectación de comunidades indígenas yanomami de la cuenca del río Ocamo por minería ilegal, p. 6.

<sup>362</sup> Video “El Arco Minero Indígena y sus consecuencias sociales y ambientales en la Guayana venezolana”, recorded by researcher José Rafael Lozada, a member of the Forestry and Environmental Sciences Faculty of the Universidad de Los Andes

<sup>363</sup> Panamazonian Ecclesial Network (REPAM). *Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia*. 2018, p. 80. See also:

The Expert Observers Commission of the Rights of Nature Tribunal, [Cartilla explicativa el caso Tipnis y los derechos de la Madre Tierra](#), 2019, January 16, 2019, pp. 7 – 10; UNODC. [Plurinational State of Bolivia Coca crop monitoring](#), 2016. 2017, p. 37.

peoples as the Machiguengas, Harambut, Mashco Piro, and others. According to findings from interventions by Peru's National Anti-drugs Police (DIRANDRO), the drugs extracted from those areas are sent to Bolivia and Brazil for re-export to Europe and Asia.<sup>364</sup>

219. In Colombia, the increase in illicit crops was accompanied by violence and the creation of residual militias formed by former guerrillas and paramilitary groups. Coca growing has reportedly increased in Guaviare and Caquetá. Under those circumstances, numerous indigenous persons have allegedly been forced to serve the interests of dealers, State agents, and armed groups. Solutions to the problem are said to have focused on fumigation and chemical eradication of crops, but have failed to break the vicious circle of production and marketing, as a result of which communities remain at the mercy of criminal gangs.<sup>365</sup>
220. As for Venezuela, alerts regarding the presence of armed groups associated with drug trafficking in indigenous territory directly connected to the area where the Amacuro delta flows into the Caribbean suggest that drug trafficking is increasing. This is reportedly linked to the increasingly severe economic crisis that has forced indigenous peoples to seek other forms of subsistence or to migrate to urban centers or to the border with Brazil, in the state of Roraima.<sup>366</sup> For example, in 2015, 50 indigenous persons were prosecuted for transporting drugs or drug trafficking-related offenses.<sup>367</sup>

## b. Biopiracy

221. Biopiracy in the Amazon region not only encompasses contraband in various types of flora and fauna, but also, and above all, the appropriation and monopolization of the knowledge acquired by traditional populations about how to use natural resources. The IACHR observes that, although biopiracy is not new to the Amazon region or to other parts of the planet that are rich in biodiversity, it has seldom been documented.
222. As regards Brazil, given the technical and empirical difficulties of assessing the phenomenon, regulations were reported to be both ineffective and fragmented in

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<sup>364</sup> DAR. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 8. See also: VRAEM, "[Ministerio del Interior de Perú, Policía Nacional realiza operativos contra el tráfico ilícito de drogas](#)", June 7, 2018.

<sup>365</sup> PUJ Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, pp.44-45. See also: Ministry of Justice - UNODC, Colombia "[Atlas de la caracterización regional de la problemática asociada a las drogas ilícitas en el departamento de Guaviare](#)", 2015, pp. 7 - 27; Ministry of Justice- UNODC, Colombia "[Atlas de la caracterización regional de la problemática asociada a las drogas ilícitas en el departamento de Caquetá](#)", 2015, pp. 7-26.

<sup>366</sup> UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.63.

<sup>367</sup> La telaraña del Narcotráfico atrapa a los waraos. Armando.info. Accessed at: <https://armando.info/Reportajes/Details/253>.

the Amazon basin. In the Amazon region, biopiracy thrived on a lack of oversight and a confusing regulatory framework.<sup>368</sup> After a decade of domestic debate, the country enacted Law 13.123 of 2015, which provided "enabling regulations for the International Convention on Biological Diversity, access to the biological heritage, protection of and access to related traditional knowledge, and the distribution of benefits for the conservation and sustainable use of biodiversity."

223. In Colombia, illegal trafficking in wildlife is a crime characterized in Decree 1608 of 1978 and Law 599 of 2000. According to the information available, while the environmental authorities do exercise control, numerous species are traded illegally inside Colombia.<sup>369</sup> According to Ministry of the Environment data, some 23,605 species were confiscated in 2017 alone.<sup>370</sup>
224. In Venezuela, for decades, the authorities reportedly permitted their Venezuelan jungles of the North American evangelical "New Tribes Mission", an institution associated with the Summer Institute of Linguistics (ILV). That mission had allegedly impaired the cultural heritage of indigenous communities and conducted explorations to locate, identify, and quantify strategically important mineral and biological resources and to appropriate much of the ancestral knowledge of the indigenous communities. The mission was expelled from Venezuela in 2005.<sup>371</sup>

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<sup>368</sup> Grupo de Investigación Estratégica de la Pan-Amazonía [Pan-Amazon region strategic investigation group] at the Escuela Superior Dom Helder Cámara. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 44.

<sup>369</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 45.

<sup>370</sup> El Espectador. [Más de 23 mil animales incautados por tráfico ilegal en 2017](#). December 29, 2017.

<sup>371</sup> Survival International. "[President expels fundamentalist New Tribes Mission](#)". Survival International, October 27, 2005. Wayuu Taya Foundation. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 30, 2018, p. 30.

CHAPTER 3  
PRINCIPAL IMPAIRMENTS TO  
THE HUMAN RIGHTS OF  
INDIGENOUS AND TRIBAL  
PEOPLES IN THE PAN-AMAZON  
REGION



## PRINCIPAL IMPAIRMENTS TO THE HUMAN RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES IN THE PAN-AMAZON REGION

225. As the IACHR ascertained in the previous chapter, despite the enormous diversity of indigenous and tribal peoples inhabiting the pan-Amazon region, they share similar sets of problems that substantially impair the exercise of both their individual and collective human rights. Those threats and impairments tend to be directly or indirectly related to the hefty pressures exerted on their territories in the Amazon region, owing to the natural resources they harbor. Looking at the main issues identified in this Section, the Commission conducts an analysis based on State obligations under the inter-American human rights system.

### ***A. Right to Collective Ownership and Guarantees Related to Land, Territory, and Natural Resources***

226. The Commission notes that indigenous and tribal peoples and communities in countries in the Amazon region are still striving to obtain recognition of their historical occupancy of lands and territories. As the IACHR has previously pointed out, one of the major hurdles they face is lack of political will to move ahead with the process of rehabilitating and demarcating indigenous lands and territories. On top of that, there are areas in conflict and not being processed due to the existence of pressures being exerted by a variety of groups on the territories and their natural resources. In cases in which progress has been made with the granting of legal title, it transpires that the territories recognized do not encompass the whole of the area traditionally used and occupied by the people concerned, and exclude parts of the territory with forestry potential or that are not used for agriculture. The IACHR also observes widespread dispossession of land and territories through the use of violence, threats, and other impairments to the life and personal integrity of members of the indigenous peoples, especially their leaders (*supra* Chapter [III.A](#)).

227. Here, the IACHR reiterates that their territory is singularly important for indigenous peoples, given that it is a pre-requisite for the subsistence of their culture, spiritual life, integrity, and economic survival. These collective entities regard certain places,

phenomena, and natural resources as sacred elements in their "cosmovision" or worldview and traditions.<sup>372</sup>

228. In the inter-American system, these spiritual ties to land collectively occupied by indigenous peoples are protected under Article 21 of the American Convention and Article XXIII of the American Declaration, as the Inter-American Court of Human Rights has sustained in its case law through an evolutive interpretation of the concept of property. That Court has likewise expressly recognized the right of indigenous peoples to the natural resources located in the territories that "they have traditionally used and are necessary for the very survival, development and continuation of such peoples' way of life."<sup>373</sup>
229. Standards of protection have been developed based on the recognition of the collective ownership of their territories by indigenous peoples. As regards the geographical scope of indigenous property rights, those rights encompass all the lands and resources they are currently using, and those lands and resources they formerly possessed and of which they were dispossessed, with which they maintain a special, internationally protected, connection. In the case of the indigenous peoples of the Amazon region, States must adopt measures to safeguard the protection of their territories from intrusions and undesired contacts. Furthermore, given that many of those peoples maintain a nomadic way of life, based on hunting and gathering, States must take into account that the protection of their territories entails guaranteeing them sufficiently extensive high quality space.<sup>374</sup>
230. With regard to property titling and registration, the indigenous and tribal peoples are bearers of the rights to property and ownership over the lands and resources they have historically occupied and therefore they have the right "to be recognized as the legal owners of their territories, to obtain a formal legal title to property over their lands, and to the due registration of said title."<sup>375</sup> It needs to be underscored that said titling must be collective, with due respect for indigenous peoples' forms of internal organization with regard to land tenure. Titling procedures must be effective and take into account the respective people's distinctive traits.

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<sup>372</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the case of *Sawhoyamaxa v. Paraguay*. Cited in: I/A Court HR. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 113(a). IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 150

<sup>373</sup> 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 par. 122. I/A Court HR. *The Mayagna (Sumo) Awas Tingni Community Case v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, par. 148.

<sup>374</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 81. IACHR. *Indigenous peoples in voluntary isolation and initial contact in the Americas. Recommendations for the full respect of their human rights*. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 70.

<sup>375</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 82.

231. The State must likewise guarantee the legal certainty of the title deed. The IACHR has recognized that demarcation and legal registry of the indigenous lands is in fact only the first step, given that the "ownership and effective possession are constantly being threatened, usurped or eroded by various de facto or legal acts."<sup>376</sup> The right to legal certainty of territorial property requires the existence of special, prompt and effective mechanisms to resolve existing legal conflicts over the ownership of indigenous lands.
232. The Commission considers that the delimitation and demarcation of ancestral territory is the main mechanism for guaranteeing the property rights of indigenous peoples. For that, those peoples need specially tailored, prompt, and effective procedures for obtaining the delimitation, demarcation, and titling of their territories. During those delimitation, demarcation, and titling processes, there has to be provisional protection of their territories, which means, for instance, that the State cannot grant concessions to explore or exploit natural resources within the territories being delimited or demarcated without first consulting the people or community concerned.<sup>377</sup>
233. Indigenous peoples are also entitled to the possession, use, occupation, and inhabitation of their ancestral territories. The Inter-American Court of Human Rights has declared that right to be embedded in the right to property protected under Article 21 of the American Convention, which must be exercised without any external interference.<sup>378</sup> In connection with that right, indigenous peoples must be effectively protected against claims or acts by third parties. In the event of disputes, those collective entities are entitled to receive protection and reparation, through appropriate and effective procedures; to be guaranteed effective enjoyment of their right to property; to effective investigation and punishment of the perpetrators of such attacks; and to the establishment of special, prompt, and effective mechanisms for settling legal conflicts over the ownership of their lands. Likewise, they are entitled to keep their territories to themselves, without settlements inside their lands or the presence on non-indigenous third parties or settlers.<sup>379</sup>
234. Whenever legal disputes arise with third parties regarding the ownership of territories, the principles governing limits to human rights need to be observed. According to the I/A Court of Human Rights, for restriction to the enjoyment and exercise of those rights to be admissible, they must be: (a) established by law; (b) necessary; (c) proportionate; and (d) designed to achieve a legitimate objective in

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<sup>376</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 86.

<sup>377</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraphs 94-96

<sup>378</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 110.

<sup>379</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 114.

a democratic society. In principle, indigenous and tribal peoples are entitled to certainty that their ownership of the territory cannot be impaired by alleged property rights of third parties. That assumes that such third parties do not possess a bona fide property right or legitimate expectations based on such bona fide ownership rights. That being so, the entitlement of indigenous and tribal peoples to property and restitution persists even when the lands claimed are in the possession of third parties, and it is unacceptable for indigenous territorial claims to be rejected automatically for that reason. Likewise, they are entitled to the restitution of ancestral territory. It is worth stressing that indigenous peoples that have lost all or part of their territories still maintain their right to ownership of those territories and have a preferential right to recover them, even though they may be in the possession of third parties.<sup>380</sup>

235. Indigenous peoples are entitled to basic services and to establish their own development priorities, because guaranteeing the rights of indigenous and tribal peoples to their land and natural resources is not limited to the demarcation of their lands. Thus, 'while the territory is fundamental for development of the indigenous populations in community, it must be accompanied by health, education, and sanitary services, and the protection of their labor and social security rights, and, especially, the protection of their habitat.'<sup>381</sup> That duty arises from the right to live in dignity protected by the American Convention and the American Declaration of the Rights of Man, and the general duty of States to guarantee members of indigenous and tribal communities access to decent conditions with respect to health, food, and housing.
236. Indigenous peoples are also entitled to the exercise of spiritual ties to territory and access to sacred sites. In that respect, the Commission reiterates that States are obliged to protect the territory and established relationship between indigenous or tribal peoples and their lands and natural resources, as a means to allow for the exercise of their spiritual life.<sup>382</sup>
237. Indigenous peoples have a right to be protected from forced displacement induced by violence, which commonly occurs in contexts of armed conflict. The IACHR has pointed out that forced displacement directly threatens the very existence of indigenous peoples, as it severs the fundamental relationship that a given people has to its territory, both in terms of physical survival (as that territory is the source of their material livelihood) and in terms of its cultural survival. It needs stressing that "the indigenous population is exposed to many dangers in the urban

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<sup>380</sup> 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, par. 115; IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 118-123.

<sup>381</sup> IACHR. *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 47; IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 149.

<sup>382</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 151.

environments to which they move, dangers that include –in addition to poverty and discrimination- labor exploitation, sexual violence, human trafficking and common crime."<sup>383</sup> For that reason, States must adopt special protection measures. That does not preclude their obligation to take all necessary steps to allow for the safe and dignified return of indigenous peoples to their traditional territories.<sup>384</sup>

238. At the same time, the Commission observes that State regulations and policies reportedly fall short when it comes to guarantees to indigenous and traditional territories, because they also envisage the execution and viability of mega-projects in the Amazon region. The State reportedly uses its legal framework to permit violations of the human rights of indigenous peoples, for instance via very broad concepts of "public utility" and "the interests of society" used to justify interventions on land belonging to indigenous peoples. The Commission is aware that the precariousness and lack of recognition of the right to property has to do with the pressure to implement extractive industry, infrastructures, and development projects, because less protection of indigenous lands and territories renders those peoples more vulnerable to those projects.

## ***B. The Right to Self-Determination and the Right to Prior, Free, and Informed Consultation***

239. Based on the information it has received (*supra* Chapter III.B and III.E), the IACHR notes that in most Amazon region States, extractive, natural resource exploitation or development projects of varying magnitude are being carried out and that they are having a substantial impact on the territories of indigenous and tribal peoples. The Commission notes that some such projects are declared to be "in the public interest" and eschew the prior consultation processes required by international standards in this field. Rather, the Commission discerns practices designed to avoid initiating or conducting such processes as a formality that does not meet the goal of achieving prior, free, and informed consent. In addition, disruptive mechanisms are deployed in order to divide communities in such a way that some leaders go along with the project in exchange for perks for themselves. The Commission also ascertains failure to use consultation procedures when it comes to the establishment of protected natural areas or the expansion of extractive industry projects. This failure to consult indigenous peoples has led the latter to engage in protests to protect their rights, which in turn have been met with reprisals against them.
240. Indigenous peoples, as societies pre-dating the establishment of State borders, are collectively entitled to self-determination, the exercise of which presupposes free determination of their economic, social, and cultural development in a way that

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<sup>383</sup> IACHR. *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.Doc 2013, párr. 800.

<sup>384</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 152.

safeguards their existence and welfare as distinct groups. In that way, these collective bodies are able to shape their own destiny on an equal footing and effectively participate in all decision-making processes that affect them. Recognition of that right is a pre-requisite for the full exercise of the other, individual and collective, human rights of indigenous peoples, including their rights to their ancestral territories and natural resources. Accordingly, the Commission considers that the imposition of extractive industry activities and mega development projects without their prior, free, and informed consent, which is currently the norm in the Amazon regions of many States, constitutes a violation of the substance of their rights.<sup>385</sup>

241. As pointed out in the Section on the regulatory framework, this right is expressly recognized in such international instruments as the United Nations Declaration on the Rights of Indigenous Peoples (Article 3), and the American Declaration of the Rights of Indigenous Peoples (Article 3); and implicitly in ILO Convention No. 169 (preamble, Articles 1.3 and 7.1). It has further been recognized that Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights is applicable to indigenous peoples, so that those collective entities can "determine and enjoy their own social, cultural and economic development" and freely dispose of their wealth and natural resources", so that they are not deprived of "their own means of subsistence."<sup>386</sup> In the same vein, the I/A Court H.R. held that the rules of interpretation established in Article 29 (b) of the American Convention prohibit it from construing Article 21 of said instrument in such a way as to restrict that enjoyment and exercise to something less than is recognized in said Covenants. Consequently, Article 21 of the American Convention includes the right of members of indigenous and tribal communities to freely determine and enjoy their own social, cultural and economic development. That right to self-determination has been pointed to in several Inter-American Court cases regarding indigenous and tribal peoples, such as the case of the Kichwa People of Sarayaku v. Ecuador, an Amazon region indigenous people.<sup>387</sup>
242. The right to self-determination of indigenous peoples is closely related to the use and disposal of lands and territories. As a corollary, the State has an obligation "to adopt special measures to recognize, respect, protect and guarantee the communal

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<sup>385</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 237; ; IACHR. *Indigenous peoples in voluntary isolation and initial contact in the Americas. Recommendations for the full respect of their human rights*. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 70; IACHR. *Indigenous Women and Their Human Rights in the Americas*. OEA/Ser.L/V/II. Doc.47/17. 2017, par. 43.. United Nations *Permanent Forum on Indigenous Issues. Consolidated report on extractive industries and their impact on indigenous peoples*. E/C.19/2013/16. February 20, 2013, par. 19. Human Rights Council. "Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, James Anaya" United Nations Doc. A/HRC/12/34, 15 July 2009, para. 41.

<sup>386</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 166.

<sup>387</sup> I/A Court HR. *Kichwa Peoples of the Sarayaku community and its members v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012, par. 217, footnote 288. 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, par. 166.

property right of the members of indigenous and tribal communities to such territory."<sup>388</sup> In the specific case of indigenous peoples in isolation and initial contact, it has been recognized that self-determination presupposes respect for their physical and cultural survival mechanisms based on their practices and customs, which includes voluntary isolation and other selective forms of coexistence.<sup>389</sup>

243. On the other hand, although the right to collective property is not absolute, consideration should be given to specific State obligations with respect to extractive, natural resource exploitation and development projects in the territories of the indigenous peoples. The rapid expansion of an extractive industry-based economic model in the Americas calls for an urgent response by States in order to avoid irreparable impairments of the right of certain groups that are especially vulnerable to environmental damage to their territories, as is the case with indigenous peoples. For that reason, the IACHR has defined "extractive or development plan or project" as "any activity that can affect the lands, territory, or natural resources of any indigenous peoples or Afrodescendent community, especially any proposal related to the exploration of natural resources."<sup>390</sup> In particular, in its report on Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, the Commission referred to six core concerns (supra Chapter II.A.iv).
244. Regarding the duty to design, implement and effectively apply an appropriate regulatory framework, the State needs to adopt solid and effective laws to protect key human rights relating to extractive activities and to repeal laws that are incompatible with the rights upheld in inter-American instruments Article 2 of the American Convention). Likewise, States must have provisions that enable them to protect the property rights of indigenous peoples vis-a-vis extractive industry, exploitation, and development activities that include recognition of the right to be consulted and to prior, free, and informed consent, as an essential safeguard of that right. Similarly, it is essential to have legislation and other regulatory provisions that clearly define liability for potential human rights violations.
245. As regards the duty to prevent, mitigate, and eliminate impairments of human rights, there are two levels of prevention: (i) a general duty to prevent, which requires taking steps to establish a regulatory and institutional framework geared to preventing, prosecuting, and punishing offenses committed in a particular area

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<sup>388</sup> IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 166.

<sup>389</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. *Guidelines for the protection of indigenous peoples in isolation and in initial contact in the Amazon region, the Gran Chaco, and the Eastern Region of Paraguay. Findings of consultations carried out by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and Venezuela*. Geneva: OHCHR, 2012, para. 22.

<sup>390</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 12.

that the State is aware of; (ii) a specific duty to prevent that is incumbent upon the State from the time it becomes aware or a real and immediate risk for a person or group of persons in a concrete situation. Accordingly, the I/A Court HR has pointed out that, if it is known that ecological damage is being done by development or investment projects or plans, they then become illegal and must be suspended; reparation must be made for the environmental damage done and those responsible must be investigated and punished.<sup>391</sup> In this regard, the IACHR has been told of the existence of projects that constantly damage the environment, for instance via oil spills or contamination with mercury and yet are not suspended by States.

246. In addition, there is an obligation to supervise and audit extractive, exploitation, and development activities. Since it is evident that States must supervise and audit the activities of private agents to avoid human rights violations, in the case of extractive industry enterprises that obligation may be stricter, depending on the activity and the nature of the enterprise, as when the enterprise is State-owned or under State control. The oversight systems to be implemented by States need to provide effective responses and be tailored to the culture involved. In addition, they need to have procedures capable of identifying technical aspects of the activities carried out and their flaws.<sup>392</sup>
247. Regarding the duty to guarantee mechanism for effective participation and access to information, the IACHR stresses that said obligation is closely tied to the indigenous peoples' right to consultation and prior, free, and informed consent. That requires States to conduct effective and previously announced consultations with the indigenous communities regarding acts and decisions that may affect their traditional territories. That information, construed as that which is necessary for the exercise and protection of human rights in the context of extractive, exploitation, or development activities, needs to be clear and easily understood and, if necessary, transmitted with the help of an interpreter or in a language or dialect that allows the members of the indigenous peoples involved to fully understand it.<sup>393</sup> The Commission points out once again that the right to prior consultation is not dependent upon the existence of a title deed or its registration in a public registry, as is (reportedly) sometimes claimed.
248. There is also a duty to **prevent illegal activities and forms of violence**. In contexts in which indigenous and tribal peoples oppose extractive industry plans or projects, acts of harassment, threats, and attacks are known to have occurred against indigenous authorities, community leaders or others who fulfill a key role for the defense of indigenous rights. Accordingly, it needs to be stressed that actively

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<sup>391</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 97.

<sup>392</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 105.

<sup>393</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 107.

protecting the right to life and the other rights enshrined in the American Convention forms part of the State's duty to guarantee the free and full exercise of all rights and requires the adoption of measures designed to punish deprivation of life or other human rights violations, be it by private agents acting with the acquiescence of the State or by State agents themselves. This obligation also includes the State's duty to control, prevent, investigate, and punish illegal extractive activities in ancestral territories.<sup>394</sup> The IACHR observes the information regarding acts of violence related to extractive projects, the main victims of which are indigenous leaders and authorities who oppose those activities in their territories. Those acts range from sundry acts of aggression to the murders committed in a cruel and inhuman fashion.

249. Finally, there is the duty to guarantee access to justice by investigating, punishing, and making appropriate reparation for violations of human rights committed under these circumstances. The IACHR has ascertained the existence of widespread impunity in the Americas in respect of human rights violations committed in natural resource extraction contexts. It is therefore particularly important that States possess adequate and effective judicial resources with which to defend rights, such as the right to life, to integrity, and to live in a healthy environment.<sup>395</sup> In this regard, the IACHR has pointed out that in the Amazon region there are a number of cases that are not being diligently investigated and in which violations committed against indigenous peoples and members of those peoples are not being punished in a timely manner, thereby engendering an atmosphere of impunity that encourages the continuation of such crimes.

### ***C. The Right to Prior, Free, and Informed Consultation in States in the Amazon Region***

250. During its on-site visit to Brazil, the IACHR ascertained the existence of a restrictive interpretation of the right to free, prior, and informed consultation. Thus, that right appeared to apply only to investment projects and not all legislative and administrative measures capable of directly or indirectly affecting indigenous peoples.<sup>396</sup> Moreover, the IACHR was told about projects that had been approved without prior consultation processes during the concession phase, at which time there had simply been meetings with the indigenous peoples affected. The Commission points out that such meetings reportedly do not meet the standards set in the inter-American system, as manifested in a lack of sufficient information

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<sup>394</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 127.

<sup>395</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 130.

<sup>396</sup> IACHR. Press release [238/18 - CIDH concludes visit to Brazil](#). Washington, D.C., November 12, 2018. [Preliminary Observations on the IACHR's on-site visit to Brazil](#), p. 11.

regarding the scope of the projects, its impacts, and measures to mitigate those impacts as well as in the lack of reports translated into the indigenous language or communicated in a culturally appropriate manner.<sup>397</sup>

251. At the same time, the IACHR was informed about processes whereby indigenous and traditional peoples in Brazil themselves draw up consultation protocols establishing their rules, forms of participation and decision-making. Several such protocols have been developed with the help of civil society and the Federal Public Prosecutors' Office (Ministerio Público Federal). Nevertheless, in January 2018m the Government of the state of Pará amended Decree 1,969, which institutes the Study Group on Prior, Free, and Informed Consultations with traditional peoples and populations and adopts provisions for drawing up the State Plan for Prior, Free, and Informed Consultations. When that Decree was amended, the Public Prosecutors' Office of the State of Pará,, the Ombudsperson's Office of the Union, and the Ombudsperson's Office of the state of Pará recommended that it be repealed immediately on the grounds that it allegedly violated ILO Convention No. 169 with respect to the right to prior, free, and informed consultation of indigenous peoples, Quilombola communities, and traditional peoples and communities.<sup>398</sup>
252. For its part, the Bolivian Constitution recognizes the self-determination of small-farmer native indigenous nations and peoples (Article 2) and indigenous autonomy (Articles 289 and 290). Bolivia also has Law No. 031 establishing the Framework for Autonomies and Decentralization, adopted on July 19, 2010 and implementing recognition of "Small-farmer Native Indigenous Autonomies" (Autonomías Indígena Originario Campesinas -AIOC). At the same time, the IACHR received information to the effect that serious limitations are being imposed on the law's implementation. One of the main issues reportedly has to do with the establishment of a long and complex procedure that is said to make it very difficult to constitute the AIOC. According to the information available, almost a decade after the regulation was adopted, of the 35 indigenous peoples that had begun the changeover to AIOC, only one had achieved that status. As for the indigenous peoples in the Amazon region, only three had initiated that procedure: Yuracaré, TCO TIM I, and Nación Cabineña. Nevertheless, all applications have reached a stage in which their autonomy statutes are being drawn up and approved.<sup>399</sup>
253. As regards prior consultation, the IACHR was told that Law No. 535 on Mining and Metallurgy was adopted on May 28, 2014. In addition to not itself having been consulted with interested parties, that norm has a chapter specifically devoted to consultation in the mining sector containing several provisions that run counter to the right to consultation of indigenous peoples nationwide and in the Amazon region. The IACHR was informed that one such provision restricts consultation to new mining rights procedures subsequent to the passing of the Law (Article 207. III and IV) and excludes prospecting and exploration from the consultation

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<sup>397</sup> PUC-Río.. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018.

<sup>398</sup> PUC-Río.. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018.

<sup>399</sup> CEDIB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, pp. 6-7.

requirement. (Article 207. II.) It also established that in order for indigenous peoples to participate in prior consultation processes, they need to certify their existence in pre-colonial times and ancestral ownership of the territory, which entails compliance with an administrative procedure (Article 216. I). The IACHR was likewise informed of serious objections regarding the guarantees that come with this right, particularly as regards its being prior, informed, and in good faith according to norms and procedures that the norm itself establishes (Articles 207-209).<sup>400</sup>

254. Similar restrictions and curtailments of consultation rights have reportedly been introduced in the hydrocarbons sector since 2008. While the regulations contained in Supreme Decree N° 29033 of February 16, 2007 contain some positive elements, it reportedly limits the provisions of the Hydrocarbons Law of May 17, 2005 (Law No. 3058). The most serious restrictions are shortening the time provided for consultation and reducing consultation to the allocation of a pre-established (fixed) amount of compensation.<sup>401</sup>
255. In contrast to this legislation, information received by the IACHR indicates that in recent years, instead of regulations being issued to protect indigenous peoples from extraction, exploitation, and/or development activities, numerous norms have been issued to increase the flexibility of the parameters, criteria, and mechanisms governing environmental protection and consultation of indigenous peoples in a variety of sectors.<sup>402</sup>
256. In the case of Bolivia, according to the information received by the IACHR, the new mining law enacted in 2014 granted preferential rights to miners to encourage the expansion of mining areas throughout the national territory, including to the east, the Amazon region, and protected areas in which mining was hitherto prohibited. Apart from preferential rights for private agents, the law grants the right to use and

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<sup>400</sup> CEDIB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, p.46.

<sup>401</sup> CEDIB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, pp.49-50..

<sup>402</sup> Several supreme decrees have reportedly been issued for the hydrocarbons sector, including the following: i) DS 2195 of November 2014, Establishing compensation percentages for petroleum sector activities; ii) DS 2298 of March 2015: Amending the time and nature of prior consultation in the hydrocarbons sector; iii) DS 2366 of March 2015, Opening up of protected areas to oil exploration; iv) DS 2366 of May 2015, Establishing mechanisms for building and/or operating pipelines in the national interest; v) DS 2368 of May 2015, Establishing mechanisms for building and/or operating pipelines in the national interest; vi) DS 2549 of May 2015, Expanding the oil frontier to 29, 966,894 hectares; vii) DS 3107 of March 2017, Modifying the oil frontier and increasing to 100 the areas reserved for YPFB; viii) DS 2992 of November 2016, Expanding the Category 4 list in the Environmental Prevention and Oversight Regulations and guidelines for Category 3. In the mining sector, Law No. 536 on Mining and Metallurgy was enacted on May 28, 2014. This law will reportedly: i) Lift restriction on vulnerable environmental zones (headwaters, lakes, rivers, dams, hillsides, glaciers) (Article 93); ii) Allow Protected Areas "provided that they are compatible with the Management Plan" (Article 220); iii) Foster expansion of gold mining cooperatives in the Amazon region (mining royalty percentage, Article 227); iv) Not require consultation regarding mining rights granted prior to the Law (Article 207. IV) When no agreement is reached, the Ministry of Mining and Metallurgy will decide (Article 215, par. I).

rights of passage through the concession area and properties adjacent to the exploitation area and rights to water sources. It also legalizes concessions that were obtained illegally and delivers to private sector miners much of the State-owned reservation (reserva fiscal) and areas nationalized in 1952, and denies the possibility of protest, defense, and resistance to mining activities by establishing mechanisms to come to the immediate aid of miners, who, when confronted by any acts by society that hamper their activities, may receive immediate protection from the State, enforced by the security forces. This expansion of the mining area reportedly extends from the traditional area in the western highlands down to the low lands; in the east to the department of Santa Cruz, to the northern Amazon area in the department of La Paz, and with alluvial mining to the Madre de Dios and Beni rivers in the midst of the Beni and Pando Amazon region.<sup>403</sup>

257. In Colombia, prior consultation focuses on establishing compensation measures for a project. It is not about whether a project goes ahead or terms governing it. That is a reflection of the power gap between the parties to negotiations: large enterprises and indigenous peoples. The IACHR has heard of a number of consultations processes conducted with very little transparency on the part of both the companies coordinating the projects and the leaders representing the communities. Incomplete information regarding the projects is reportedly given to the communities or simple workshops are arranged for briefing purposes. The IACHR was also told of dealings with community leaders to get them to promote projects in return for personal perks.<sup>404</sup>
258. The IACHR appreciates a recent pronouncement by the Supreme Court of Justice of Colombia, ordering "the Office of the President of the Republic and other national, regional, and municipal authorities with responsibilities in this field to adopt a short-, medium-, and long-term plan to protect Colombia's Amazon region." That stance was adopted when the Civil Cassation Chamber became aware that the Regional Autonomous Corporations were failing to perform their functions of assessing, overseeing, and monitoring natural resources and failing to punish violations of environmental protection rules. Triggering the reaction, reportedly, was the deforestation in Colombia's Nature Parks and non-compliance with environmental protection duties.<sup>405</sup>
259. As regards Ecuador, the Constitution recognizes and guarantees communes, communities, and indigenous peoples and nationalities, the collective right to "prior, free, and informed consultation, within a reasonable period of time, regarding plans and programs for the prospecting, exploitation, and marketing of non-renewable resources located on their lands and that may affect them environmentally or culturally." The Constitution further establishes that said consultation must be

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<sup>403</sup> CEDIB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 29, 2018, p. 28.

<sup>404</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 61.

<sup>405</sup> Supreme Court of Justice of Colombia. *Corte Suprema ordena protección inmediata de la Amazonía Colombiana*. April 5, 2018.

mandatory and timely and that if the consent of the community consulted is not granted, the parties shall act in accordance with the Constitution and the law.

260. Also in effect in Ecuador is Decree 1247, which regulates the consultation process for tenders and the allocation of hydrocarbon mining areas and lots. It entered into force prior to the judgment handed down by the I/A Court of HR and therefore does not embody those standards. Moreover, no legislative process has yet started to regulate prior consultation, nor has the Sarayaku people been asked to participate in the regulation process. According to the information received by the IACHR, the lack of consultation mechanisms indicates that there was never any intention of heeding the opinion of the indigenous persons likely to be affected, of establishing serious dialogue with them, or of obtaining their consent, as required by the Constitution and international instruments.<sup>406</sup> The IACHR observes, rather, that certain interventions using machinery for eviction and destroying homes point on the contrary to arbitrary use of State force and a blatant violation of the rights of the community.<sup>407</sup>
261. Another relevant aspect of the right to prior consultation in Ecuador is the fact that, via the institutions responsible for mining matters, prior, free and informed consultation has been equated with just the "socialization" (or sharing) of the benefits of extraction projects, in such a way as to get the affected communities to sign agreements that will bring them financial rewards, whereby the communities sign on the basis of slanted and inaccurate information about the project. Nevertheless, concessions and the signing of contracts for exploitation projects have allegedly occurred without first establishing or proposing to the indigenous communities a mechanism for their participation in the development and implementation of the projects. The information available suggests that the authorities involved, including the Mining Regulation and Oversight Agency (ARCOM), have not engaged in prior consultation or even minimal information regarding large-scale mining projects. For lack of such prior consultation, instead what has allegedly occurred is a series of forcible evictions, in which agents of the mining company, accompanied by military personnel, have forcibly and illegally evicted communities, thereby failing to comply with constitutional and legal obligations.
262. For its part, the IACHR was told about the new Mining Law, in effect since January 29, 2009, declaring "mining, at each phase, in or outside mining concessions, to be in the public interest (*de utilidad pública*)" (Article 15). The law further establishes that "therefore, such easements as are needed may be constituted, within the framework and limits established in this law, bearing in mind the prohibition and exception set forth in Article 407 of the Constitution of the Republic of Ecuador." That Article in the Constitution bans the extraction of non-renewable resources in

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<sup>406</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 41.

<sup>407</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 41.

protected areas and zones declared out of bounds (intangibles), except when such extraction is declared to be in the national interest. According to the information available, that regulation has led in recent years to enormous problems in terms of the loss and dispossession of indigenous lands and territories. Mining easement is reportedly a final administrative measure not subject to appeal in the new Mining Law being applied by the State's Mining Regulation and Oversight Agency (ARCOM).<sup>408</sup> Based on the information at the IACHR's disposal, the 2009 Mining law has led to the loss and dispossession of territories because it declares mining to be in the national interest and allows easements.<sup>409</sup>

263. In Peru, where gold, oil, and gas are frequently located in indigenous territory, the right of indigenous peoples to respect for their land is allegedly often ignored so as to allow extractive activities to take place. The IACHR was indeed told that a series of Legislative Decrees and laws have been issued or passed that impair communal property rights.<sup>410</sup>
264. According to information provided by the Peruvian State, there are a series of rules and public policies regarding prior consultation, including, in particular, Law 29785, Law on the Right to Prior Consultation of Indigenous or Native Peoples, promulgated on September 6, 2011; Supreme Decree 001-2012-MC, which provides enabling regulations for that law; Supreme Decree 021-2013-MC (amended by Supreme Decree 52-2016-MC), creating a Standing Multisectoral Commission on Implementation of the Right to Consultation; and a number of ministerial resolutions.<sup>411</sup> In addition, the IACHR was informed that, in the years following the promulgation of Law 29785, the principal indigenous and civil society organizations pointed out its shortcomings. In particular, it was alleged that, while the text recognizes the right to self-identification, its criteria were more restrictive than those established in international law.<sup>412</sup> According to Ministry of Culture

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<sup>408</sup> Article 15 of the Mining Law reads as follows: "Mining, at each phase, in or outside mining concessions, is hereby declared to be in the public interest. Therefore, such easements as are needed may be constituted, within the framework and limits established in this law, bearing in mind the prohibition and exception set forth in Article 407 of the Constitution of the Republic of Ecuador." (underlining added)

<sup>409</sup> Human Rights Center of the Law Faculty of the Catholic University of Ecuador (PUCE) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 18.

<sup>410</sup> For example, Legislative Decrees were issued for economic reactivation purposes that have weakened or eliminated rights: in this case the territorial rights of communities. On top of that, there is Law 30723 which declares that it is in the national interest and a priority to build roads in border areas and paths that can be used by vehicles in the department of Ucayali. That declaration allows a number of specific administrative procedures to be activated to develop road infrastructure via expropriation processes and transfers of native communities, and the removal of protection for so-called Protected Natural Areas, all of which mainly endangers indigenous peoples in voluntary isolation and initial contact in the pan-Amazon region. CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 5, 2018, p. 31.

<sup>411</sup> Peruvian State. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region. Note No. 7-5-M /053 March 15, 2019.

<sup>412</sup> In particular, it is argued that the descent (descendencia) of native populations in Peru must be "direct," a requirement that is not contemplated in Article 1.1.b of ILO Convention No. 169. At the same time, mention is made of the need for spiritual and historic ties to the territory they have traditionally occupied, which, again, is not cited in ILO Convention No. 169, and could lead to an inaccurate interpretation that

databases, by October 2018, fifty (50) prior consultation processes had been implemented (including past, suspended processes and processes currently in effect).<sup>413</sup> Notably, two prior consultation processes concerning oil and gas exploration and drilling promoted by the Ministry of Energy and Mines (Lot 181 in San Martín and Loreto and Lot 157 in Madre de Dios) and Petroperu have been indefinitely suspended for more than two years.<sup>414</sup>

265. With regard to oil and gas mining, the regulations are deemed deficient inasmuch as they favor the extractive sector to the detriment of the international obligations that the State entered into, with respect to the rights of indigenous peoples. That is allegedly reflected, for instance, in the dearth of strict environmental supervision and audit rules or the lack of effective implementation of such rules. That was said to have permitted spills from the North Peruvian Pipeline administered by Petroperu, both in Nieva (in the province of Condorcanqui) and in the Chiriaco river in the district of Imaza (Bagua province), in that there was a failure to comply with the Environmental Adaptation and Management Program (PAMA). In the same vein, OEFA is said to have acknowledged that, in cases such as the one that occurred on the Chiriaco River, lack of maintenance caused the spills, not "an attempt at sabotage," as Petroperu likes to claim. For that reason, it has been said that while the Peruvian State does have multiple commitments to preserve the environment - especially in connection with indigenous peoples, and their rivers and sources of water -- it fails to honor those commitments owing to the economic interests associated with extractive industry activities. Along similar lines, while indigenous peoples have achieved significant progress thanks to protest demonstrations and the demands they have made, that has not resulted in a coherent response by the State, which allegedly only honors its commitments in some cases in which not just the environment but also the health of indigenous peoples is irremediably affected.<sup>415</sup>

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if de facto no ties exists. they could not be recognized as indigenous peoples, whereas history shows that numerous communities were forcibly evicted from their territories. Finally, no mention is made of the requirement to "partially" conserve social, cultural, religious, political, and other institutions, as established in ILO Convention No. 169. That could be wrongly be construed to imply that all ancestral customs must be conserved. CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 5, 2018, p. 19. RUIZ MOLLEDA, Juan Carlos. La consulta previa de los pueblos indígenas en el Perú. Análisis y comentarios de cada artículo de la Ley de Consulta Previa y su Reglamento. Lima: Legal Defense Institute (IDL), 2012, p.151

<sup>413</sup> Here it should be explained that past consultation process are those in which the Ministry of Culture and the competent authorities in the proceedings have declared an end to the dialogue initiated for prior consultation; current processes are those still under way, and suspended processes are those that have stopped for a variety of reasons. CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 5, 2018, p. 21.

<sup>414</sup> CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 5, 2018, p. 21.

<sup>415</sup> CAAAP - Antonio Ruiz de Montoya University (UARM) Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 5, 2018, p. 7.

266. Another relevant example is the waterway. As part of the prior consultation process, reportedly three indigenous wise men were to be included in the preparation of the environmental impact study. The idea was to tap the ancestral know-how of the indigenous peoples and their knowledge regarding management of the territory and its ecosystems. However, one of the wise representatives allegedly complained that they had not been consulted for the gathering of information or planning of the tools needed for it; and that their contribution had merely been to sit in on preparations.<sup>416</sup> That would suggest a weak inter-cultural approach, particularly if one considers that, in many instances, the places affected by these projects are sacred and related to the indigenous peoples' worldview and spirituality: places that play a vital role, balance the river, and shape their relation to it.<sup>417</sup> Here, the Commission appreciates the incorporation of wise men in the prior consultation process and points to the importance of ensuring that the necessary safeguards are in place to ensure that their participation is effective.
267. With respect to Suriname, according to the information available, the State did make an effort to consult indigenous peoples. However, reportedly, there were cases in which this did not happen.<sup>418</sup> The I/A Court of HR has ruled on cases of violations of the right to prior consultation in Suriname, specifically to the detriment of the Saramaka, Kaliña, and Lokono indigenous and tribal peoples.<sup>419</sup> According to information elicited during monitoring of compliance with the ruling in the Saramaka case, the I/A Court of HR found that the State had not yet complied with the need to adopt measures to guarantee prior consultation, so that it had decided to continue its monitoring of compliance with prior consultation measures.<sup>420</sup> At the same time, the draft 2004 Mining Law was reported to be still before Parliament which had not yet adopted it and there were reports of the Ministry of Natural Resources continuing to grant mining concession to companies, without first consulting or informing indigenous and tribal peoples.<sup>421</sup>
268. As regards Venezuela, Decree No. 2,248 created the "Arco Minero del Orinoco" (AMO) National Strategic Development Zone<sup>422</sup> to provide "a sectoral boost to

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<sup>416</sup> DAR. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 8.

<sup>417</sup> DAR. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 6.

<sup>418</sup> United Nations Committee on the Elimination of Racial Discrimination. Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination, Suriname. CERD/C/SUR/CO/12, March 13, 2009, para. 18.

<sup>419</sup> 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, par. 147; I/A Court H.R. Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, par. 212.

<sup>420</sup> I/A Court HR. *Case of the Saramaka People v. Suriname*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 26, 2018, par. 30 and operative paragraph 2.

<sup>421</sup> United Nations Committee on the Elimination of Racial Discrimination. Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination, Suriname. CERD/C/SUR/CO/12, Friday, March 13, 2009, para. 14.

<sup>422</sup> Decree No. 2,248, published in Official Gazette No. 40,865 of February 24, 2016, through which the Executive establishes the "Arco Minero del Orinoco National Strategic Development Zone."

mineral resources-related activities."<sup>423</sup> The AMO project encompasses 111,843.70 km<sup>2</sup> in the south-eastern part of the state of Bolívar, or 12% of the national territory. The decree declares the area to be a strategic zone, so that the National Armed Forces have been assigned competence to protect and safeguard it pursuant to Article 89 of Decree No. 295, which ranks as a Mining law, Articles 109ff of the General Regulations to the Mining Law, and Article 40 of Decree No. 1,395 which has the rank, status, and strength of an Organic Law that reserves for the State all gold exploration and mining activities, as well as related and auxiliary activities.<sup>424</sup> That decree will reportedly boost open pit mining by the State, with enormous environmental and socio-environmental impacts. Here, the Commission points out that, given the magnitude of those impacts, the State is obliged to conduct environmental impact studies as well as to engage in prior, free, and informed consultation with the indigenous peoples and communities settled in the area.

269. According to information received by the Commission, the project coexists with indigenous territories self-demarcated by the Pumé (Yaruro), Kariña, Pemón, Sapé, Uruak (Arutani), Hoti (Jodi), Eñepa (Panare), Mapoyo (Wanai), Piaroa (Wötüja o Huottüja), Jivi (Guajibo), Ye'kuana (Ye'kwana), and Sanemá (Sanüma) peoples.<sup>425</sup> Reportedly, the project will impair traditional activities of the indigenous peoples, especially those relating to their diet (sowing, hunting, fishing, and gathering); reduce Amazon region biodiversity; contaminate the Cuchivero, Aro, Cuyuní, and Orinoco rivers; contaminate and greatly increase the transfer of sediment from the Icabarú river to the Caroní river and from there to the Guri reservoir, the country's main source of electric power; and increase the proliferation of diseases such as malaria to which the indigenous communities present in the zone are especially vulnerable.<sup>426</sup> It has also been pointed out that there is no good way to quantify the impacts of the AMO due to the absence of official studies describing the social and cultural impacts or of an inventory of possibly affected indigenous communities.<sup>427</sup> The IACHR was also told that protected national parks would be affected.
270. At the same time, the project has reportedly triggered large scale migration in this zone. That in turn has allegedly resulted in a cultural and socio-environmental clash between the traditional ecological practices of the indigenous peoples and those of irregular groups and miners contaminating and destroying the environment. According to information passed on to the IACHR, one example is that pointed out by Chieftain Cayetano Pérez, leader of the Ye'kwana and Sanema peoples, who notes that some indigenous persons are using machinery and working in the mines, which

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<sup>423</sup> Cf. Articles 1, 2, and 3 of Decree No. 2,248.

<sup>424</sup> Cf. Articles 13 of Decree No. 2,248.

<sup>425</sup> Informe El Mundo Indígena 2018, p.136. UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.38.

<sup>426</sup> Wataniba and Orpia. Informe Situación Actual de los Grupos de Pueblos Indígenas en Aislamiento Relativo y Poco Contacto en Venezuela (Jödi, Uwottüja, y Yanomami), p. 18-20.

<sup>427</sup> PROVEA, Working Group on Indigenous Affairs at the Universidad de Los Andes and Peace Laboratory. Informe Derechos humanos en el contexto del proyecto "Arco Minero del Orinoco" en Venezuela.

runs counter to traditional environmental conservation and preservation methods.<sup>428</sup>

271. At the same time, according to the Society for Conservation Biology (SCB), the State's mining policy is having major negative impacts on biodiversity, especially in the area affected by the AMO project. That Society also considers that those impacts could transcend Venezuela's borders and reach far beyond the Orinoco river drainage area, damaging the southwestern Caribbean, which would make it a regional threat."<sup>429</sup>

#### **D. *The Right to a Healthy Environment from an Indigenous Worldview Perspective***

272. Based on the information it has received (*supra* III.C, III.D, III.E and III.M), the IACHR notes that most of the major impacts on the environment in the Amazon region stem from extractive and development activities, as well as from livestock farming, drug trafficking, and illegal logging. In fact, the IACHR has received reports of instances of irreparable environmental degradation caused by the contamination of rivers and water sources, deforestation, and the loss of biodiversity. According to the information available, those impacts are exacerbated by the failure of State in the Amazon region to mitigate the effects of those activities, be they legal or illegal. Those hardest hit are the indigenous and tribal peoples, who are highly dependent on the ecosystems they inhabit, due to the decline in the availability of natural resources. At the same time, the difficulty of accessing other sources of water and delays by States in supplying that resource in sufficient quantities and quality, are undermining the health of whole communities.
273. The Commission has recognized the close ties between human survival and the preservation of a healthy environment and points out that environmental degradation can impair access to water and the enjoyment of several human rights, including the rights to life, health, and food.<sup>430</sup> In Advisory Opinion OC-23/17, the I/A Court of HR held that, in order to respect and guarantee the rights to life and integrity of the persons under their jurisdiction, States are obliged to prevent significant environmental damage, both inside and outside their territory.<sup>431</sup>

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<sup>428</sup> Universidad Católica Andrés Bello, Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p.34.

<sup>429</sup> Society for Conservation Biology (SCB). Section for Latin America and the Caribbean. Statement by the Section for Latin America and the Caribbean of the Society for Conservation Biology (SCB): Regional implications of the Arco Minero del Orinoco. Trinidad and Tobago, July 25-27, 2018

<sup>430</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 62.

<sup>431</sup> I/A Court HR. *Environment and human rights* (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, opinion 7.

274. In that same Advisory Opinion, the I/A Court of HR not only stressed that the Protocol of San Salvador expressly includes the right to a healthy environment in Article 1; it also emphasized that it must be considered protected by Article 26 of the American Convention on economic, social, and cultural rights. For that, the I/A Court of HR took into consideration that the OAS Charter, the instrument referred to in said Article, includes achieving integral development as a commitment of the member states, and that, since there is a close connection between protection of the environment, sustainable development, and human rights, the right to a healthy environment may be considered a right in itself.<sup>432</sup>
275. The I/A Court HR also asserted that "the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals."<sup>433</sup> Along those same lines, in April 2018, the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (SRESCER) of the Inter-American Commission on Human Rights (IACHR) welcomed the decision by the Supreme Court of Justice of Colombia, STC 4360-2018, upholding the right to a healthy environment and recognizing the Colombian Amazon region as entitled to legal rights, when it affirmed that forests play an important part in mitigating climate change and may in themselves be entitled to juridical protection.<sup>434</sup>
276. In the same vein, it is worth mentioning the Convention on Biological Diversity, to which several States with an Amazon region are party, such as Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, and Suriname, and Venezuela.<sup>435</sup> The objectives pursued by that instrument are: "the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources"<sup>436</sup>. Complementing that Convention is the Nagoya Protocol Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, an instrument that contains provisions with a bearing on the rights of indigenous peoples.
277. In the specific case of indigenous peoples, pursuant to Article XIX of the American Convention on the Rights of Indigenous Peoples, "Indigenous peoples have the right

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<sup>432</sup> I/A Court HR. [Environment and human rights](#) (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraphs. 57 and 58.

<sup>433</sup> I/A Court HR. [Environment and human rights](#) (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 62.

<sup>434</sup> SRESCER [SRESCER Welcomes Decisions Taken in the Region to Face Climate Change](#). April 17, 2018.

<sup>435</sup> Ratification dates for that instrument were as follows: Bolivia (October 3,1994), Brazil (February 28, 1994), Colombia (November 28,1994), Ecuador (February 23,1993), Guyana (August 29,1994), Peru (June 7,1993), Suriname (January 12,1996), and Venezuela (September 13,1994). ECLAC. [Observatory on Principle 10 in Latin America and the Caribbean](#).

<sup>436</sup> ECLAC. [Observatory on Principle 10 in Latin America and the Caribbean](#).

to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmivision, and collective well-being."<sup>437</sup> Worth highlighting is the point made by the I/A Court of HR that indigenous peoples are particularly vulnerable to environmental degradation, not just because of their spiritual ties to their territory, but also because they depend for their survival and economic practices on the natural resources it harbors.<sup>438</sup> That being so, adverse impacts to their surroundings may significantly impair the natural resources available, thereby undermining their traditional way of life.<sup>439</sup>

278. Accordingly, the contexts surrounding natural resource extraction projects -- activities that are generally carried out in lands and territories historically inhabited by indigenous and tribal peoples -- may generate serious impacts on the environment. That is the case with illegal mining, above all in Amazon regions, where it leads to rapid deforestation and contamination of soils and rivers, due to the use of substances such as mercury.<sup>440</sup>
279. Other consequences of those activities are: a decline in the quantity and quality of water sources; impoverishment of the soil for agriculture; disruption of community production systems; a decline in fish, wildlife, flora and biodiversity in general; and alteration of the balance needed to ensure the ethnic and cultural reproduction of indigenous peoples.<sup>441</sup> As the IACHR has previously pointed out, in Amazon regions, environmental impacts are reported to be having dire consequences for the physical and cultural survival of indigenous peoples. Hence the urgency of States taking steps to prevent further harm being done and a point being reached at which those peoples are at risk of disappearing.

## **E. Right to Water and Food**

280. The IACHR observes, based on the reports it receives (*supra* III.C, III.D and III.E), the whole range of environmental impacts in the Amazon region are to a large extent undermining the indigenous peoples' enjoyment of the rights to water and food. In many cases, contamination by mercury, the use of toxic chemicals in agriculture, or oil spills have triggered serious violations of those rights, given that those

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<sup>437</sup> OAS. *American Declaration on the Rights of Indigenous Peoples*. AG/RES. 2888 (XLVI-O/16). June 4, 2016.

<sup>438</sup> I/A Court HR. *Environment and human rights* (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 121.

<sup>439</sup> Human Rights Council. *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, 16 January 2009, Doc. United Nations A/HRC/10/61, para. 51.

<sup>440</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 126.

<sup>441</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 250.

substances are transmitted through drinking water and contaminated animals and reduce access to those resources. At times, the pollution of water resources prompts a food crisis, given that fish are a vital part of their traditional diet for many communities in the Amazon region. The IACHR likewise notes that, since dietary habits are tied in with the cosmovision of indigenous peoples, some of the food supply measures taken by States have been culturally inappropriate: for instance, when industrialized products are distributed. In addition to the above, there are also impacts related to deforestation and the loss of biodiversity, which have reportedly impaired traditional hunting and gathering practices.

281. Regarding the right to water, even though there are no concrete regulations governing this right in the inter-American system, the IACHR has held that, taken together, its instruments recognize a series of rights that are closely tied to access to water and related factors, such as availability, quality and non-discriminatory access to water.<sup>442</sup> Specifically, the IACHR has taken the view that, while the American Declaration does not expressly recognize the right to water, it establishes the right to life, personal integrity, and the right of every person to have his or her health preserved through sanitary and social; measures related to food, clothing, and housing.<sup>443</sup> The American Convention likewise upholds a series of human rights (such as the right to life and personal integrity) that are closely linked to access to water and sanitation as inherently required for their realization. Consideration must also be given to Article 26 of the same Convention, which provides for deriving human rights provisions from the "economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States" and Article XI of the above-mentioned American Declaration. The protection of this right may also be derived from the provision in Article 11.1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, which points out that "Everyone shall have the right to live in a healthy environment and to have access to basic public services." In their jurisprudence over the past decade, both the IACHR and the Inter-American Court have tackled a range of questions in connection with access to water poverty by interpreting the content of a series of human rights recognized in inter-American instruments. In doing so they have given consideration to contributions from the universal system and to technical information from different specialized agencies.<sup>444</sup>

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<sup>442</sup> IACHR. Annual report for 2015. Chapter IV.A. *Access to Water in the Americas An Introduction to the Human Right to Water in the Inter-American System*, par.. 26; IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15, 2016, footnote 2.

<sup>443</sup> Articles I and XI of the American Declaration of the Rights and Duties of Man. IACHR. Annual report for 2015. Chapter IV.A. *Access to Water in the Americas An Introduction to the Human Right to Water in the Inter-American System*, par.. 29.

<sup>444</sup> See, inter alia, I/A Court H.R. The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, paragraphs 144 and 191. I/A Court HR. Case of the Yakye Axa Indigenous Community v. Paraguay. Request for interpretation of the Judgment on merits, reparations, and costs. (Article 67 of the American Convention on Human Rights). Judgment of February

282. In the Universal System, General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights defined the right to water as "indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights." Water is a vital; resources for a range of different purposes and to realize various rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). The Comment also states that "priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease."<sup>445</sup>
283. With regard to a health environment, recently the I/A Court of HR maintained in its Advisory Opinion No. 23 that, in connection with the obligation to respect rights, derived from Article 1.1 of the American Convention, the State must refrain from: "(i) any practice or activity that denies or restricts access, in equal conditions, to the requisites of a dignified life, such as adequate food and water, and (ii) unlawfully polluting the environment in a way that has a negative impact on the conditions that permit a dignified life for the individual; for example, by dumping waste from State-owned facilities in ways that affect access to or the quality of potable water and/or sources of food." For its part, in connection with the obligation to ensure rights, States must take steps to disseminate information on the use and protection of water and sources of adequate food. Also, in specific cases of individuals or groups of individuals who are unable to access water and adequate food by themselves for reasons beyond their control, States must guarantee the essential minimum of food and water. If a State does not have the resources to comply with this obligation, it must "demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations."<sup>446</sup>
284. Furthermore, in 2017, the Minimata Convention on Mercury entered into force to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. This Convention has been ratified by such countries as Bolivia, Brazil, Ecuador, Guyana, Peru, and Suriname.<sup>447</sup>

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6, 2006. Series C No. 142, par. 161; I/A Court H.R. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C, No. 146; and I/A Court H.R. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, paragraphs 194 to 217.

<sup>445</sup> Committee on Economic, Social and Cultural Rights. General Comment No. 15. The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/2002/11. January 20, 2003.

<sup>446</sup> I/A Court HR. Environment and human rights, State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 118. Committee on Economic, Social and Cultural Rights. General Comment No. 11. The right to adequate food (Article 11 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/1999/5. May 12, 1999, para. 17.

<sup>447</sup> The specific dates of those ratifications were: Bolivia (JANUery 26, 2016), Brazil (August 8, 2017), Colombia (August 23, 2018), Ecuador (July 29, 2016), Guyana (September 24, 2014), Peru (January 21,

285. As indicated above, in the specific case of indigenous peoples, water resources are particularly important given those peoples' special ties to nature and the surrounding environment. First, it needs to be stressed that natural sources of water may be the only places where these communities can access it. That being so, rivers and streams are used by indigenous communities not only to fish in, for personal hygiene, washing clothes, and for transportation but also, and above all, for drinking water.<sup>448</sup>
286. Given the importance of rivers and water sources, international norms have been adopted to safeguard that essential component of a territory. Thus ILO Convention No. 169 is an instrument that considers that protection of a territory must be integral and encompass the whole habitat of the peoples, including the rivers and water sources within that territory.<sup>449</sup> Likewise the United Nations Declaration on the Rights of Indigenous Peoples recognizes that those collective entities have a spiritual relationship with the territories, which include waters and coastal seas (Article 25); and it establishes that the State has an obligation to ensure the conservation and protection of the indigenous peoples, to which end effective measures shall be taken particularly with regard to storage of hazardous materials, such as mercury (Article 29). For its part, the American Declaration on the Rights of Indigenous Peoples recognizes the right to protection of a healthy environment and establishes that these peoples "have the right to be protected against the introduction, abandonment, dispersion, transit, indiscriminate use, or deposit of any harmful substance that could adversely affect indigenous communities, lands, territories and resources." (Article XIX).
287. For its part, through its Report on Activities, the IACHR emphasized that the main impediments to access to water in the Americas derived from "the negative effects resulting from the implementation of extractive projects and the use of agricultural chemicals in the region, from the pollution and contamination of water sources, from the lack of access to water for persons and communities who live in poverty and extreme poverty, especially in rural zones, and from the cutbacks in safe water provision service. These are all problems which cause disproportionate impacts on the human rights of persons, groups and communities which have suffered historical discrimination."<sup>450</sup>
288. Along those lines, in contexts involving infrastructure and natural resource extraction projects, the building of dams in indigenous or tribal lands and territories has been found to cause serious disruption to the ways indigenous peoples use water, by altering waterbeds and interrupting the natural course of rivers. Those

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2016), and Suriname (August 2, 2016). Thus the countries with an Amazon region that have not ratified this instrument are Colombia, French Guyana, and Venezuela.

<sup>448</sup> IACHR. *Maya Indigenous Communities and their Members v. Belize*. Report No. 78/00, Admissibility. Case 12,053. October 5, par. 31.

<sup>449</sup> ILO Convention No. 169: Indigenous and Tribal Peoples Convention: A manual. Geneva: ILO, 2003

<sup>450</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 291.

dams, in turn, facilitate a disproportionate accumulation of minerals when mining activities are carried on in adjacent areas. Informal mining likewise contaminates soils and waters. On top of that, there are projects of various kinds that could destroy essential water sources, as is reportedly the case with the construction of the transoceanic canal in Nicaragua, which would impact the Cocibolca lake, Central America's largest natural fresh water reservoir, and which scientific opinion describes as a "catastrophe", because nothing will be able to replace it as a fresh water reservoir.<sup>451</sup>

289. It needs to be stressed that, in the case of indigenous peoples, both the right to water and the right to food are rights that are closely tied in with the enjoyment of their territorial rights. It has been ascertained that lack of access to their ancestral territories exposes these peoples to precarious or infra-human living conditions with respect to access to food and water, as well as other basic services. The consequences of that include high mortality and child malnutrition rates, as well as increased vulnerability to diseases or epidemics.<sup>452</sup> Along those same lines, the I/A Court of HR has maintained that "[s]pecial detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity."<sup>453</sup>
290. As regards the legal framework with respect to the contamination of rivers, water sources, and soils, and clean-up processes, specific regulations applicable to Amazon regions have generally been vague and imprecise. Environmental policies with respect to the contamination and cleaning up of water sources have not focused on pan-Amazon territory in particular. Studies are needed to quantify the current levels of contamination of water sources in the pan-Amazon region.
291. Here, the IACHR reiterates the following recommendations specifically tailored to the rights of indigenous peoples. On the one hand, it is up to States to prevent, mitigate, and suspend the adverse impacts on human rights and in particular the obstacles to access to water for persons, groups, and communities who are impacted by extraction, development, and investment activities. They must also conduct prior, adequate, effective consultations with the peoples and communities in keeping with international standards applicable to the matter, whenever there are intentions to undertake any natural resource extraction activity or project on indigenous lands and territories or to draw up an investment or development plan

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<sup>451</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 282.

<sup>452</sup> IACHR, *Access to Justice and Social Inclusion: The Path to Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II Doc. 34, June 28, 2007, paragraphs 257-268, 297 - Recommendation 8; IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 57; IACHR, *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II Doc. 54, December 30, 2009, paragraphs 1076-1080.

<sup>453</sup> 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, par. 167.

of any other kind that would entail potential impacts on their territory, especially with respect to possible impacts on the access to quality water in adequate amounts for a dignified life.<sup>454</sup>

## ***F. Right to Cultural and Spiritual identity, and to the Indigenous Cultural Heritage***

292. As noted in Section III.E, the IACHR received abundant information about impacts on the ancestral territory and natural resources traditionally used by indigenous peoples that reportedly had significant consequences for their cultural and spiritual practices. That is evident in the case of rivers and water sources that, for some communities, are a core part of their material and spiritual culture. Thus, cases have been reported in which the contamination of those resources or the execution of projects have markedly impaired the reproduction of their culture and the exercise of their religiosity. The IACHR was also made aware of certain attempts to remedy environmental crises that were allegedly culturally inappropriate and shaped by a western rationale, with no regard for those communities' cosmovision or particular ways of grasping the world. On top of that, there have been instances of forcible religious conversion and tourism projects violating their sacred sites.
293. Regarding the indigenous' peoples' right to cultural and spiritual identity, the I/A Court of HR has pointed out that "it is a fundamental and collective right of indigenous communities that has to be respected in a multicultural, pluralist, and democratic society."<sup>455</sup> Moreover, as the IACHR has said, that right is directly tied to their right to possess ancestral lands, given that culture is a way of life inextricably linked to a people's own territory.<sup>456</sup>
294. That is the case not just because their territories constitute their principal means of subsistence, but also because they are a core part of their cosmovision and religiosity, and, hence, their cultural identity.<sup>457</sup> In other words, it needs to be taken into account that, for indigenous peoples, the land "is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their

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<sup>454</sup> IACHR. [Annual Report for 2015, Chapter IV.A – Access to Water in the Americas: An Introduction to the Human Right to Water in the Inter-American System](#), par. 152.

<sup>455</sup> I/A Court HR. [Kichwa People of the Sarayaku community v. Ecuador](#), Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, par. 217.

<sup>456</sup> IACHR. [Democracy and Human Rights in Venezuela](#), Doc. OEA/Ser.L/V/II Doc. 54, December 30, 2009, par. 1050; IACHR. [Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System](#). OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 108.

<sup>457</sup> 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 par. 135; and I/A Court H.R., [Case of the Sawhoyamaya Indigenous Community v. Paraguay](#), Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 118; IACHR. [Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System](#). OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 418.

knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values." Accordingly, in connection with their milieu, "their integration with nature and their history, the members of the indigenous communities transmit this nonmaterial cultural heritage from one generation to the next, and it is constantly recreated by the members of the indigenous groups and communities."<sup>458</sup>

295. Consequently, for these communities "possession of their traditional territory is indelibly recorded in their historical memory, and their relationship with the land is such that severing that tie entails the certain risk of an irreparable ethnic and cultural loss, with the ensuing loss of diversity."<sup>459</sup> In other words, ownership of the land guarantees that members of indigenous communities conserve their cultural heritage.<sup>460</sup>
296. Apart from the reference in Article 26 of the American Convention to economic, social, and cultural rights, the Commission also observes that the OAS Charter, too, refers to cultural rights. Thus, the Charter establishes that States must give primary importance to the encouragement of culture, oriented toward the overall improvement of the individual, as a foundation for social justice and democracy (Article 47). It then goes on to recognize individual and joint commitment to preserve the cultural heritage of the American peoples (Article 48). In addition, it upholds the right to participation of the marginal sectors of the population discriminated against in the cultural life of the nation (Article 45.f). With respect to indigenous peoples in general, the IACHR construes these provisions as upholding the right to practice and, where applicable, to disseminate their own culture, and as a manifestation of the duty to ensure that their cultural practices and cosmovision are duly protected. Thus the ESCR Committee has underscored that "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity,"<sup>461</sup> that they may be associated, inter alia, with food, housing, the use of water, the way health and education services are provided, and so on. In particular, the Committee has stressed that the measures adopted by States to respect and

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<sup>458</sup> 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, par. 154.

<sup>459</sup> 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, par. 216; IACHR. Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 451.

<sup>460</sup> The IACHR has also taken this view. Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 117;

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, par. 146. See also: IACHR, Access to Justice and Social Inclusion: The Path to Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II Doc. 34, June 28, 2007, par. 241.

<sup>461</sup> ESCR Committee General Comment No. 21. United Nations document CRC/C/GC/21/Rev.1, 20 September 2006, para. 36.

guarantee participation in cultural life must be pertinent, that is to say, suitable to a given cultural modality or context that is respectful of the culture and cultural rights of individuals and communities.<sup>462</sup>

297. Within that framework, the right of indigenous peoples to be consulted regarding decisions that may affect them is also related to their cultural rights, inasmuch as that culture may be impaired by those decisions. Thus, the IACHR has recognized that States must respect, protect, and promote the traditions, institutions, and customs of the indigenous and tribal peoples, since they constitute an intrinsic part of their way of life.<sup>463</sup> In that sense, the obligation of the State to engage in consultation regarding business activities that may affect their rights is not only directly linked to those peoples' right to collective property but also to the State's obligation to adopt special measures to protect their cultural rights.<sup>464</sup>
298. In the specific case of indigenous peoples in isolation and initial contact, the World Conservation Congress voiced 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."<sup>465</sup>
299. In extractive industry contexts, the IACHR has become aware that natural resource exploitation projects or activities have ruptured the social fabric and fragmented communities in numerous indigenous peoples; and that the impacts from those activities have even triggered the total loss of, or seriously degraded, institutions that are an intrinsic part of their ethnic and cultural identity.<sup>466</sup> Moreover, the imposition of those projects has an adverse effect on the exercise of those communities' practices and religious ceremonies that are an expression of their cultural identity.<sup>467</sup>
300. Here, the IACHR reiterates that cases in which indigenous peoples have been deprived of, or prevented from engaging in, religious practices constitute a violation

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<sup>462</sup> ESCR Committee General Comment No. 21. United Nations document CRC/C/GC/21/Rev.1, 20 September 2006, para. 16.

<sup>463</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* OEA/Ser.L/V/II. Doc. 47/15, December 31, 2015, par. 164.

<sup>464</sup> ESCR Committee General Comment No. 24. United Nations document E/C.12/1999/24, (8 December 1999), paras. 12 and 17.

<sup>465</sup> 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 17-25, 2005.

<sup>466</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 264.

<sup>467</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 266.

of their right to cultural identity, which is intimately linked to the religious and spiritual manifestations of such peoples and their members that form part of their cultural heritage.<sup>468</sup> The cultural identity of the aforementioned indigenous peoples is endangered by large-scale oil and mining projects, above all because none of those processes was preceded by the kind of prior consultation required under national and international standards.

301. The IACHR reiterates the view taken by the I/A Court of HR that the culture of indigenous peoples corresponds to a particular way of life, of being, seeing, and acting in the world, forged by their close ties to their traditional lands and natural resources.<sup>469</sup> That being so, States must guarantee, on an equal footing, the full exercise and enjoyment of the rights of the persons within its jurisdiction, in order to ensure that those rights are effectively ensured, States must, when interpreting and enforcing domestic regulations, take into consideration the special characteristics that distinguish members of indigenous peoples from the general population and constitute their cultural identity.

## G. Right to Health

302. Based on the information provided (*supra* III.G), the IACVHR notes that public health care services are deficient, which means that indigenous peoples in remote parts of the Amazon region have only limited access to them. In addition, health professionals reportedly receive little training in providing care with an intercultural approach. In some countries, there are also acute shortages or only intermittent supplies of medicines and medical inputs, materials, and treatment. There have been reports of epidemics that could have been controlled by vaccination, impacting whole communities and even spreading to neighboring countries. At the same time, environmental impacts have wreaked havoc with the health of communities and made it difficult for them to develop their traditional medicine systems.
303. The right to enjoy the highest attainable standard of physical and mental health is a human right that is regarded as essential for the exercise of other rights and that, in turn, depends on other rights, such as the rights to food, housing, and other rights of a similar nature, such as water. The IACHR again points out that, in its case law, the

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<sup>468</sup> The I/A Court of HR has also taken this view. [Kichwa Peoples of the Sarayaku community and its members v. Ecuador](#). Judgment of June 27, 2012. Merits and Reparations, par. 212-219, and IACHR *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. D. paragraphs 160-162 [IACHR put the IACHR FIRST] *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 266.

<sup>469</sup> 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 par. 135; and I/A Court H.R., [Case of the Sawhoyamaya Indigenous Community v. Paraguay](#). Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 118; IACHR. *Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 418.

inter-American human rights system has maintained that Article 26 of the American Convention protects the right to health, which it has construed not only as the absence of ailments or diseases, but also as a complete state of physical, mental, and social wellbeing, derived from a lifestyle that enables people to achieve an integral balance in their lives. Within that framework, the general obligation to protect health translates into a State duty to ensure people's access to essential health services, goods, and medicines, to guarantee high-quality and effective medical care, and to foster improvement of public health conditions.<sup>470</sup> It also again points out that both the American Declaration (Article XI) and the Protocol of San Salvador (Article 10) expressly recognize protection of the right to health. According to the United Nations Committee on Economic, Social and Cultural Rights (hereinafter "CESCR"), this right encompasses four essential elements: availability, accessibility, acceptability, and quality.<sup>471</sup>

304. Along the same lines, the right to health of indigenous peoples is expressly recognized in such instruments as ILO Convention No. 169 (Article 25), the United Nations Declaration on the Rights of Indigenous Peoples (Article 24), and the American Declaration on the Rights of Indigenous Peoples (Article XVIII). All these instruments recognize, as a component of the right to health, that peoples are entitled to their own health systems and practices, and to the use and protection of the plants, animals, minerals, and other natural resources for medicinal use on their ancestral lands and territories. According to the CESCR, indigenous peoples have a right to specific measures to enable them to improve their access to health services and health care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines.<sup>472</sup>
305. In the inter-American system, the I/A Court of HR has also taken the same view, recognizing that indigenous and tribal peoples have a right to have access their territory and to the natural resources needed for them to practice preventive care and healing practices. Therefore, in circumstances in which indigenous peoples are deprived of nutrition, health, and access to drinking water because they are unable to access their ancestral territories, the State must take urgent steps to guarantee them access to that land and to the natural resources they depend on and to prevent impairments of their rights to health and life.<sup>473</sup>

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<sup>470</sup> I/A Court HR. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs. Judgment of March 08, 2018. Series C No. 349, par. 118; I/A Court H.R. Cuscul Pivaral et al. Case v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paragraphs 98-107.

<sup>471</sup> CESCR [General Comment No. 14](#). The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/2000/4. August 11, 2000, para. 12. CESCR [General Comment No. 15](#). The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/2002/11. January 20, 2003, para. 1.

<sup>472</sup> CESCR [General Comment No. 14](#). The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/2000/4. August 11, 2000, para. 27.

<sup>473</sup> IACHR. [Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System](#). OEA/Ser.L/V/II.Doc.56/09, December 30, 2009,

306. In the same vein, the IACHR has recognized the link between protection of the environment and the right to health, given that the environment is essential for a healthy population. For that reason, when the environment is polluted and degraded, there is a threat to the life and health of those inhabiting it. In connection with extractive industries, the IACHR has therefore voiced its concern over the presence of substances, such as mercury, in people's bodies that may cause neurological disorders, bacteria in the body, malformations, skin diseases, disabilities of various kinds, and other defects. Mercury is being deposited in rivers and other water sources and accumulates in animals, such as fish, which form part of the traditional diet of numerous indigenous peoples, especially in the Amazon region.<sup>474</sup>
307. It is also important to bear in mind that there are health impairments that may be devastating for certain groups, such as indigenous peoples in voluntary isolation or initial contact, facing inroads by settlers or people working for companies or the State itself. Because such peoples are not in contact with the wider population, their immune systems are unable to withstand common illnesses.<sup>475</sup>
308. it is obvious that for such peoples specialized and culturally appropriate health plans and prevention and contingency protocols need to be adopted, tailored to their special vulnerability, as required under the Guidelines for the protection of indigenous peoples in isolation and in initial contact in the Amazon region, the Gran Chaco,<sup>476</sup> and the Eastern Region of Paraguay and in the Report on Indigenous peoples in voluntary isolation and initial contact in the Americas. Worth stressing, too, is the point made by the IACHR that the best approach in the case of these peoples in particular is to respect the no-contact principle, because "if undesired contact is prevented, most of the threats are eliminated and respect for the rights of the peoples is guaranteed."<sup>477</sup>
309. The Committee pointed out that, in many communities, a person's health is related to the health of the society as a whole; that is to say, it has a collective dimension. Accordingly, development project-related activities that lead to the forced displacement of indigenous populations from their territories and traditional surroundings, accompanied by the loss of their food resources and the disruption of

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par. 158. 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, par. 168.

<sup>474</sup> IACHR. Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 277.

<sup>475</sup> IACHR. Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 285.

<sup>476</sup> OHCHR. Guidelines for the protection of indigenous peoples in isolation and in initial contact in the Amazon region, the Gran Chaco, and the Eastern Region of Paraguay . Findings of consultations carried out by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and Venezuela. Geneva: Office of the United Nations High Commissioner for Human Rights, 2012, paras. 62-65.

<sup>477</sup> IACHR. Indigenous peoples in voluntary isolation and initial contact in the Americas. Recommendations for the full respect of their human rights. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 21.

their symbiotic ties to the land, have an adverse impact on the health of those populations.

310. Under those circumstances, the State is obliged to provide the resources needed for indigenous peoples to establish, organize, and run health services with a view to be able to enjoy the highest standards of physical and mental health. Along those lines, the State must take steps to protect the medicinal plants, animals, and minerals needed to ensure for these peoples full enjoyment of their right to health.

## ***H. Life and Physical and Sexual Integrity***

311. Based on the information available (*supra* [III.H](#) and [III.M](#)), the IACHR observes that indigenous and tribal peoples in the Amazon region are repeatedly victims of acts of violence committed in their territories, which in some cases take the form of reprisals by private actors involved in extractive activities for the communities' opposition to those projects. There have also been reports of threats and attacks by State security forces. Other worrisome reports have to do with militarization and armed conflict. Other reports point to sexual violence against indigenous women, including girls and adolescents, along with cases of human trafficking and exploitation.
312. The right to personal integrity presupposes respect for its various dimensions, including physical, psychological, and sexual integrity. As established by the I/A Court of HR, violations of this right is a type of violation which has a variety of connotations ... whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proved in each specific situation.<sup>478</sup>
313. The Commission notes with particular concern the large number of murders and attacks against leaders of indigenous peoples, focusing on those defending protection of the environment and of their ancestral territories. It needs to be stressed that, as part of its due diligence duties, the State is duty-bound to initiate *ex officio* investigation of attacks on and murders of persons under its jurisdiction, especially those in vulnerable situations. In the specific case of investigations into violations of the rights of human rights defenders, the State must take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thereby, to establish lines of inquiry and hypotheses regarding the crime.<sup>479</sup>

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<sup>478</sup> I/A Court HR. Case of Caesar v. Trinidad and Tobago, [Merits, Reparations and Costs](#), Judgment of March 11, 2005. Series C No. 123, par. 69, and Loayza Tamayo Case [Merits](#), Judgment of September 17, 1997. Series C No. 33, par. 57.

<sup>479</sup> IACHR. [Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities](#). OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 269.

314. In the case of the raping of women as a form of sexual violence,<sup>480</sup> the I/A Court of HR maintains, pursuant to the jurisprudential and normative standards of both international criminal law and comparative criminal law, that rape does not necessarily entail vaginal sexual intercourse as considered traditionally. Rape should also be understood to include acts of vaginal or anal penetration using other parts of the perpetrator's body or objects, as well as oral penetration by the male organ."<sup>481</sup>
315. The I/A Court of HR has likewise considered rape an act comparable to torture, since it recognizes that rape is an extremely traumatic experience that has severe consequences and causes huge physical and psychological damage since it leaves the victim "physically and emotionally humiliated," a state that may prove difficult to overcome with the passage of time, unlike other traumatic experiences. Consequently, rape, like torture, seeks to intimidate, degrade, humiliate, punish, or dominate the person undergoing it.<sup>482</sup>
316. For its part, with respect to cases of sexual violence, the IACHR has underscored the triple discrimination that indigenous women have faced historically: for being women, indigenous, and poor. That makes them especially vulnerable to acts of sexual violence. On top of that, they face hurdles when attempting to access the justice system. The I/A Court of HR has underscored, in the cases of Inés Fernández Ortega and Valentina Rosendo Cantú, that those obstacles have to, inter alia, with their speaking a different language and the absence of interpreters, and inability to afford a lawyer. For the I/A Court of HR, those barriers are particularly serious because they also face rejection and are ostracized by their communities when they denounce gender-based crimes in particular. All that is exacerbated in armed conflict contexts, where rape is used as a tactic of war, to forcibly displace communities, or erode their ability to resist. In development mega-projects, too, it has been ascertained that women are exposed to sexual violence by workers for companies operating in their territories.
317. As regards the psychological integrity of indigenous peoples, it also needs to be borne in mind that, first, lack of access to their ancestral territories causes suffering to the members of the dispossessed indigenous communities, which has been regarded by the IACHR as a violation of their right to psychological and emotional integrity.<sup>483</sup> That was recognized by the I/A Court of HR in the Xákmok-Kásek Case v. Paraguay, in which the Court stated: "several of the alleged victims who testified

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<sup>480</sup> I/A Court HR. Case of Espinoza Gonzáles v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 192.

<sup>481</sup> I/A Court HR. Case of the Miguel Castro Castro Prison v. Peru Merits, Reparations and Costs. Judgment of November 25, 2006, par. 310.

<sup>482</sup> IACHR. Case of Fernández Ortega et al. v. Mexico Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010, par. 124; I/A Court H.R. Case of Rosendo Cantú et al. v. Mexico Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010, par. 114-115; I/A Court H.R., Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012, par. 132.

<sup>483</sup> IACHR. Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, par. 167.

before the Court expressed the sorrow that they and the other members of the Community feel owing to the failure to restore their traditional lands, the gradual loss of their culture, and the long wait they have had to endure during the ineffective administrative procedure. In addition, the wretched living conditions that the members of the Community experience, the death of several of the Community's members, and their general situation of abandonment give rise to sufferings that necessarily violate the mental and moral integrity of all the members of the Community. All this constitutes a violation of Article 5(1) of the Convention to the detriment of the members of the Xákmok Kásek Community."<sup>484</sup>

318. In the same vein, in extractive industry contexts, it has been ascertained in certain cases that indigenous peoples are prevented from pursuing their life plans or choices, which may trigger deep depression and anxiety. One example of that is what happened to the Embera Katío indigenous community in Colombia, which was impacted by the Mande Norte mining company. According to the information received by the IACHR, there were cases of suicide possibly caused, inter alia, by the inability to perform religious ceremonies. "The devastating impact on the ways of life of indigenous peoples caused by the internal armed conflict, forced displacement and development and extractive projects in their territories reportedly has resulted in members of indigenous peoples losing sense and value in their lives and seeking to end them."<sup>485</sup>
319. As regards State obligations in connection with sexual integrity, it should be stressed that States must take into account the special needs of indigenous women in response to the problem of violence and respect their cultural identity, ethnicity, and language, drawing on the testimony of female and male cultural experts in cases involving violence.<sup>486</sup> States also have a duty to act with due diligence to prevent, punish, and make reparation for acts of sexual violence against indigenous women, and provide the conditions needed for their complaints and cases to be exhaustively and swiftly processed, paying due heed to their worldview and cultural and community perspective.<sup>487</sup>
320. In settings involving natural resource extraction projects, States have an obligation to prevent violations by private agents of the rights to life and personal integrity. Two conditions need to be verified: i) the State authorities knew, or should have been aware, of a situation of real and imminent danger for a specific individual or group of individuals and ii) those authorities failed to take the necessary steps within their sphere of competence that might reasonably be expected in order to

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<sup>484</sup> 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, par. 163.

<sup>485</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 267.

<sup>486</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc. 63, December 9, 2011, par. 302.

<sup>487</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc. 63, December 9, 2011, par. 306.

prevent or avoid that danger.<sup>488</sup> The above does not apply to projects implemented directly by the State, where the State has a direct obligation to respect and guarantee the human rights involved with all due diligence.<sup>489</sup>

321. Finally, this Chapter represents an effort to draw attention to some of the principal impairments to the rights of the indigenous and tribal peoples of the Amazon region. The IACHR reiterates that those issues tend to be related to severe pressures exerted on their territories and the natural resources they contain. In light of the above, the Commission reiterates the importance of adopting the preventive and corrective measures needed to protect rights.

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<sup>488</sup> I/A Court HR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006, Series C No. 140, par. 123; I/A Court H.R. Case of González et al. ("Cotton Field") v. Mexico, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 283 and 284; Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 155, and Case of the Xákmok Kásek. Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, par. 188; Case of Castillo González et al. v. Venezuela. Merits. Judgment of November 27, 2012. Series C No. 256, par. 128. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 124; Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 143, and Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, par. 527.

<sup>489</sup> IACHR. *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. OEA/Ser.L/V/II.Doc. 47/15. 2016, par. 85.

CHAPTER 4  
INDIGENOUS PEOPLES IN  
VOLUNTARY ISOLATION AND  
INITIAL CONTACT IN THE  
AMAZON REGION



## INDIGENOUS PEOPLES IN VOLUNTARY ISOLATION AND INITIAL CONTACT IN THE AMAZON REGION

322. Beginning in the 16<sup>th</sup> century and throughout the colonization of South America, many indigenous peoples had experiences of contact that, in most cases, resulted in serious violations of their physical and cultural integrity. Thousands of indigenous people were met with massacres, forced assimilation, or deadly epidemics of contagious foreign diseases brought by the colonizers. This intensified during the rubber era, in the late 19th century and the beginning of the 20th, when many members of indigenous peoples were enslaved to extract this resource. Due to this and other traumas, some indigenous peoples decided to flee to remote forests, predominantly in the Amazon region.<sup>490</sup> They have been able to remain for years in these hard-to-reach geographical areas, isolated from outside forces that threaten their survival as culturally distinct groups.
323. Today, major pressures continue to be brought to bear on their lands and territories, driven in part by the natural resources found there. Activities such as illegal logging or mining, or even extraction projects approved by the States, increase the presence of other people in these areas and consequently the risks of forced contact. This situation has intensified concerns over the human rights of these communities, which, moreover, are unable to defend these rights on their own. This highly vulnerable situation has been addressed by various international bodies, as well as by indigenous and civil society organizations.
324. In terms of the inter-American human rights system, in 2013 the IACHR produced the report *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, based on information provided by indigenous and civil society organizations and by States in whose territories these indigenous peoples live.<sup>491</sup> That report, along with the *Guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay*, adopted in 2012 by the Office of the United Nations High Commissioner for Human Rights

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<sup>490</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, A/HRC/4/32, February 27, 2007, para. 42.

<sup>491</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013.

(OHCHR), establish considerations related to the standards of protection that should be followed by the States that are home to such peoples.<sup>492</sup>

325. Indigenous peoples in isolation are peoples or segments of peoples who do not maintain regular contact with the “majority population” and who generally shun any type of contact with anyone outside their group. For these communities, isolation is a survival strategy. As the IACHR indicated, it refers to these groups as “indigenous peoples in voluntary isolation” to highlight the importance of the right to self-determination, since isolation is an expression of autonomy that should be respected.<sup>493</sup> Indigenous peoples in initial contact are understood to be those with recent contact or those who, despite having had contact for some time, are not completely familiar with the social patterns and codes of the majority population. These are indigenous peoples or segments of peoples who maintain sporadic or intermittent contact with the non-indigenous population. The IACHR calls to mind that “initial” should not be understood merely as a temporal term but as a reference to the scant extent of contact and interaction with the majority society.<sup>494</sup>
326. The Commission notes that one of the fundamental premises for ensuring respect for the rights of these communities is respect for their decision not to have contact and their choice to remain in isolation. The situations that threaten the physical and cultural survival of these indigenous peoples share a common cause: contact, whether direct or indirect, with outsiders. The principle of no contact is thus established as a specific expression of the right to self-determination of indigenous peoples in voluntary isolation.<sup>495</sup> Both the IACHR and the United Nations Special Rapporteur on the rights of indigenous peoples have maintained that “the international legal framework requires that [the principle of no contact and] their manifest rejection of the presence of third parties be taken into account as assertions of their decision to remain isolated and their non-consent to...interventions or projects” in their territories.<sup>496</sup>
327. In terms of participation and prior consultation, the IACHR has stressed that it is impossible for indigenous peoples in voluntary isolation to be involved in

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<sup>492</sup> OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 7.

<sup>493</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 12; OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 8.

<sup>494</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 14; OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 12.

<sup>495</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, paras. 21-22.

<sup>496</sup> IACHR, *Press Release 26/18* – “Experts on the Rights of Indigenous Peoples of the IACHR and the United Nations express their concern at the adoption of a law that declares the construction of highways in the Peruvian Amazon as a priority and a national interest,” Washington, D.C., February 13, 2018; Tauli-Corpuz, Victoria, “Pueblos indígenas en aislamiento en el marco de los estándares internacionales de derechos humanos.” I Congreso sobre pueblos indígenas aislados en la Amazonía ecuatoriana: situación y problemática. Ecuador, November 22, 2016, p. 11.

conventional channels of participation and defend their rights on their own. Consequently, the role that States, international organizations, and other actors play in defending their human rights is critical. That, in turn, has repercussions on the implementation of consultation processes related to matters that affect their rights. The IACHR has thus maintained that, in keeping with the principle of no contact, two factors should be considered when analyzing whether the peoples in voluntary isolation do or do not give their consent to the presence of outsiders in their ancestral territories: (i) the manifest rejection of the presence in their territories of persons other than their own people, and (ii) their decision to remain in isolation with respect to other peoples and persons.<sup>497</sup> In the case of indigenous peoples in initial contact, the Commission has indicated that States should apply, in a culturally appropriate manner, the standards developed by the bodies of the inter-American human rights system, taking into account the circumstances of each specific case and the level of contact of the people in question.<sup>498</sup>

328. The Commission reiterates that the right to self-determination of indigenous peoples in isolation and initial contact presupposes respect for their means of physical and cultural survival, in accordance with their uses and customs, including situations such as isolation and other ways they choose to coexist.<sup>499</sup> States should adopt measures that guarantee the protection of their territories from intrusions and unwanted contacts.<sup>500</sup> Given that many of such peoples follow a nomadic way of life, characterized by hunting and gathering, States should consider that their territorial protection implies a guarantee that their territories will be sufficient in size and quality.<sup>501</sup>
329. In this chapter, the Commission once again examines the main standards it developed in its 2013 report and, based on new information it has received, discusses the most recent factors it has become aware of that threaten the full enjoyment of the human rights of these indigenous peoples. First, it addresses information related to peoples in isolation and initial contact in the Amazon countries. Next, the Commission refers to progress and challenges in the legal arena and measures that States in the region have adopted to the benefit of such peoples. The last section identifies the main threats indigenous peoples in isolation face today, such as activities related to extraction of natural resources, contagious diseases, direct attacks, tourism projects, and other threats. Since this report is

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<sup>497</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, paras. 24- 25.

<sup>498</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 26.

<sup>499</sup> OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 22.

<sup>500</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 70.

<sup>501</sup> 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.

specifically about indigenous peoples in the Amazon region, this section focuses on communities in isolation or initial contact who live in this geographical area.<sup>502</sup>

### **A. Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas**

330. It is estimated that there are around 200 communities in the Americas that maintain this way of life, in the exercise of their right to self-determination. Their presence is recognized predominantly in the Amazon area of countries such as Bolivia, Brazil, Colombia, Ecuador, Peru, and Venezuela. Some of these groups have also been known to live in the Gran Chaco of Paraguay. In addition, there have been indications of their presence in Guyana and Suriname, in areas bordering Brazil. The country with the highest number of indigenous peoples in isolation is Brazil, followed by Peru and Bolivia.<sup>503</sup>
331. In terms of Bolivia, according to information the Commission has received, multiple studies have determined the existence of up to 10 groups of indigenous peoples in isolation or initial contact, especially in the Amazon region. The Bolivian State, for its part, has reported only six: the Toromona-Esse Ejja, the Araona, the Pacahuara, the Chácobo, the Bio Yuqui, and the Ayoreo.<sup>504</sup> It also has records, as yet unconfirmed, indicating that there are segments of the Araona, the Mosetene,<sup>505</sup> the Yuracaré, the Tsimané, the Yaminawa, and another group, Ese Ejja, living in semi-isolation. These groups in voluntary isolation are in regions that overlap or are near protected areas and indigenous territories (native community lands) or in border areas.<sup>506</sup> In addition, the following communities were reported to have a presence in Bolivian territory: Baure, Cavineño, Guarasug'we, Machineri, More, M'bya Yuki, Pacahuara, Tapiete, Sirionó, Uru Chipaya, Uru Iruito, Uru del Lago Poopo, Uru Murato, and Yora.<sup>507</sup>

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<sup>502</sup> There are peoples living in isolation who face similar problems in areas other than the Amazon region, such as the case of the Ayoreo *Totobiegosode* people in the Gran Chaco, located in Paraguay and Bolivia. IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013.

<sup>503</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 15; OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica. el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 7.

<sup>504</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 62.

<sup>505</sup> Díaz Astete, Álvaro, "*Situación actual de los Pueblos Indígenas en Aislamiento Voluntario en Bolivia: Caso Tacana II.*" Presentation during a working meeting on "Norms of international humanitarian law on the rights of indigenous peoples in voluntary isolation and initial contact in the Amazon region and the Gran Chaco: review and proposals for action," Servicio de Noticias Ambientales (SENA), June 26, 2017.

<sup>506</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 62.

<sup>507</sup> Plurinational State of Bolivia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, July 5, 2013, p. 10; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact*

332. Among the six communities recognized by the Bolivian State, four have been identified as living in the northern Amazon region: the Toromona, the Esse Ejja, the Araona, and the Pacahuara. The Toromona and the Esse Ejja are transborder indigenous peoples who move across the borders of Peru and Bolivia, while the Pacahuara move across the borders of Bolivia and Brazil. The State also recognizes the Chácobo people; however, no information is available on them. It has been established that in the Amazon Basin, all the indigenous peoples identified as living in isolation, except for the Toroma, are segments that have separated themselves from larger communities as they fled rubber camps or missionary settlements.<sup>508</sup> In the case of some of the peoples mentioned above, their isolation is not strict but intermittent. Sometimes, these groups are said to initiate sporadic contacts with fellow members of their same larger community. Based on the biogeographical or ecological criteria applied to the Amazon region, there are two other indigenous peoples with groups or families in voluntary isolation or intermittent contact: the Bío Yuki and the Yuracaré.<sup>509</sup>
333. In 2013, the State of Brazil informed the IACHR that it had references to the presence of 77 indigenous peoples in isolation in its territory; however, only 27 had been located and identified. An additional 14 peoples had been identified as being in initial contact.<sup>510</sup> Examples 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 Zuruaha peoples.<sup>511</sup> The Yanomami people reportedly make up the largest population of indigenous peoples living in relative isolation in South America, with around 35,000 members. They are said to live in the forests and mountains of northern Brazil and southern Venezuela. The Yanomami are under constant threat from thousands of illegal gold miners and other outsiders who encroach on their lands. At the same time, cattlemen landowners are said to be invading and deforesting the eastern edge of their territory. Despite some efforts by the Brazilian authorities to dismantle certain illegal operations, neither of the two States has reportedly implemented adequate safeguards to eliminate the problem. The Yanomami apparently have usufruct rights to their lands but have not yet received a collective ownership title.<sup>512</sup>

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*in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 16.

<sup>508</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 63.

<sup>509</sup> Outside the Amazon region, the Ayoreo people living in voluntary isolation occupy part of the Chaco Boreal of Bolivia, in the transborder region with Paraguay. CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 63.

<sup>510</sup> Federative Republic of Brazil, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, June 14, 2013, p. 2.

<sup>511</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 16.

<sup>512</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, pp. 2.-3.

334. Updated information suggests that 114 indigenous peoples in isolation have a presence in Brazil. In recent years, FUNAI has recognized only one additional community in isolation, bringing to 28 the number of peoples officially protected by the State, 15 of which are found in the Javari Valley bordering Peru.<sup>513</sup> That is because FUNAI classifies its records into three categories: (i) records in which there is information or news about the existence of an isolated people but little data (60 listed); (ii) records of references under study, where there is plenty of data but not complete confirmation of existence (26 listed); and (iii) confirmed records (28 listed).<sup>514</sup> This would seem to indicate that 86 of the peoples found in the records have not been recognized by the State. The delay in the studies to confirm whether isolated peoples or segments of peoples exist or not means that there are no measures of protection in these regions. In the territories where the presence of isolated peoples has been confirmed, access by anyone is subject to authorization by FUNAI, and any economic activity carried out by other, non-indigenous parties is prohibited. This provision, however, is frequently flouted (see section V.C, below).<sup>515</sup>
335. In addition, there are reportedly 40 references to the presence of indigenous peoples in isolation living outside areas demarcated as indigenous lands or of restricted use. These places include the Amazon National Park in the Tapajós Basin, Bananal Island, Igarapé Pau Pixuna, and Pontal de los Apiacás. Peoples in isolation are also said to have a presence in transborder territories straddling Brazil and Peru, especially in the regions of Acre and Amazonas states and in Alto Jaquirana, in Sierra de Divisor. In addition, there has reportedly been a situation in which FUNAI has encouraged contact with the Xinane indigenous people in isolation, who emigrate from Peru to Brazil.<sup>516</sup>
336. The Colombian State reports that it has information on the presence of 18 indigenous peoples living in isolation; 2 of these have been confirmed, though it does not specify which. At the same time, the State indicated that, based on the legal framework, information on peoples in isolation “may be used only for official purposes related to the protection and guarantee of the rights of such peoples, and may be transferred to other public entities only through agreements covering the exchange and confidentiality of information.”<sup>517</sup> For its part, the IACHR has become aware specifically of the presence of the Nukak Makuk people, who live between the Guaviare and Inírida rivers, in the southeastern part of the country. Currently, the Nükak Makúk are said to be at high risk of extinction, as a result of famine,

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<sup>513</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 5.

<sup>514</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 6.

<sup>515</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 6.

<sup>516</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 5.

<sup>517</sup> State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019; Decree 1232 of 2018, Article 2.5.2.2.2.6.

epidemics, and the loss of their ancestral rituals, language, and ways of life.<sup>518</sup> As reported in 2013, Colombia is also home to the Yuri, Aroje, or Carabayo people.<sup>519</sup>

337. In Ecuador, as reported in 2013, there are the Tagaeri and Taromenane peoples in isolation and the Waorani in initial contact. They live in Yasuní National Park, specifically in the area that encompasses the Yasuní, Tivacuno, Tiputini, Cononaco, Cononaco Chico, and Tiwino rivers. Beginning in the 1950s, the members of the Waorani people were forced into contact with North American evangelical missionaries from the Summer Institute of Linguistics (SIL).<sup>520</sup> In addition, the State reported that the Dugakaeri people have been identified as being in isolation and that, although little information exists because of where they are located, they are assumed to live between the Yasuní and Curaray rivers, near the border with Peru.<sup>521</sup>
338. In 2013, the State of Guyana reported that there had been no sightings in its territory of indigenous peoples in isolation. That information was supported by the National Toshias Council (NTC), which comprises the elected Toshias (Heads of the Village Councils) representing all the Amerindian villages and communities.<sup>522</sup> However, recent reports indicate that members of the Kaibarupai community took their children out of school essentially to live in the forest. They made that decision because they considered community life too stressful. According to information received by the IACHR, the person who provided the background information was reprimanded by other members of the community for not managing to convince the parents about their children's right to education.<sup>523</sup>
339. According to information provided by the Peruvian State, 17 indigenous peoples in voluntary isolation have been officially recognized, by means of Supreme Decrees 001-2014-MC, 004-2014-MC, and 002-2018-MC. These indigenous peoples are the following: Maschco Piro, Matsigenka, Isconahua, Kakataibo, Murunahua, Chitonahua, Mastanahua, Marubo, Matsés or Matis, Mayoruna, Korubo or Kulinapano, Remo (Isconahua), and Flecheiro (Takaniva). There are an additional four indigenous peoples in this situation whose ethnic group has not yet been

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<sup>518</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 82.

<sup>519</sup> State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, July 8, 2013; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 16.

<sup>520</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 16; REPAM, "Tejiendo redes de resistencia y lucha en Colombia, Brasil, Ecuador, Perú y Bolivia," 2018, p. 41.

<sup>521</sup> State of Ecuador, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 4-2-044/2019.

<sup>522</sup> Resolution 2011 of the NTC meeting stated that no village leaders had any sighting of people living in isolation. Ministry of Foreign Affairs of Guyana, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, June 18, 2013; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, footnote 25.

<sup>523</sup> GHRA, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 28.

determined. The State has also recognized the presence of six indigenous peoples in initial contact: Yora (Nahua), Matsigenka, Mastanahua, Isconahua, Chitonahua, and Amahuaca. In its 2013 report, the IACHR indicated that it had also received information regarding the presence of the following peoples in Peruvian territory: Abijira, Arabela, Ashánika, Caquinte, Curanjeño, Iñapari, Iquito, Kapanahua, Kirineri, Maraktoa, Marubo, Mastanahua, Nanti, Pananujuri, Pano, Sharanahua, Taushiro, Waorani, Yaminahua, Yine, and Zápara.<sup>524</sup> The Peruvian State also informed the IACHR of 38 localities in which indigenous populations in initial contact had been identified.<sup>525</sup>

340. The State of Venezuela reported in 2013 that no indigenous peoples in voluntary isolation or initial contact were living in its territory.<sup>526</sup> However, according to the information available, the Ombudsman's Office in that country has recognized the presence of at least three different indigenous peoples living in initial contact: the Hoti (Jödi), Yanomami, and Piaroa (Uwottüja), whose territories are being severely affected by the presence of illegal miners. These indigenous peoples live in Amazonas and Bolívar states, in the southern part of the country. In the case of the Yanomami, they live in a transborder area shared with Brazil.<sup>527</sup>

## **B. Domestic Laws on Indigenous Peoples in Voluntary Isolation or Initial Contact**

### **1. Laws and Public Policies**

341. The last few years have seen progress on the legal front; practically every country in the region has adopted different types of laws and regulations related to the protection of the territorial rights of indigenous peoples living in isolation. However, the information available to the IACHR indicates that such laws and regulations are often not implemented effectively, either by central government authorities or by local authorities or civil servants in the territory.<sup>528</sup>

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<sup>524</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 16.

<sup>525</sup> State of Peru, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 7-5-M /053, March 15, 2019.

<sup>526</sup> Ministry of People's Power for Foreign Relations, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, May 23, 2013; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, footnote 24.

<sup>527</sup> IACHR, *Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco*, 165th session, October 23, 2017; Bello, Luis Jesús, and Díaz Mirabal, José Gregorio, *Informe sobre la Situación Actual de los Grupos de Pueblos Indígenas en Aislamiento Relativo y Poco Contacto en Venezuela (Jödi, Uwottüja, y Yanomami)*, Grupo de Trabajo Socioambiental de la Amazonía "WATANIBA" and Organización Regional de Pueblos Indígenas de Amazonas "ORPIA," 2017, p. 2.

<sup>528</sup> IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, 146th session, Sunday, November 4, 2012.

342. In the case of Bolivia, as the IACHR has noted, the Constitution expressly recognizes, in Article 31, the protection of peoples in voluntary isolation.<sup>529</sup> In addition, other articles of the Constitution establish provisions related to indigenous peoples in general. Among the rules with the status of law, Law 450 stands out: “Law to Protect Native Nations and Indigenous Peoples in a State of High Vulnerability,” which was passed in December 2013.
343. According to the information available, Law 450 is considered one of the most innovative at the regional level.<sup>530</sup> However, a series of difficulties have been identified. The main challenge is said to be that, despite several years having gone by since the law was issued, its regulations have yet to be adopted and the institution responsible for promoting implementation of the law, the General Bureau for the Protection of Native Nations and Indigenous Peoples (DIGEPIO), has yet to be created. In addition, the information received indicates that while this law uses the concept of indigenous peoples in a state of high vulnerability, which includes indigenous peoples in isolation, it does not address their specific situation. That could be resolved through the implementing regulations, as yet unissued. Also questionable is the existence of provisions governing exceptions by which activities for the use and exploitation of natural resources are allowed in the territories that are home to the aforementioned indigenous peoples, despite their vulnerable situation.<sup>531</sup> In the case of indigenous peoples in isolation, that could pose a direct threat to their life. The IACHR was also alerted to the fact that the institution contemplated under the law, DIGEPIO, lacks the autonomy it needs to fulfill its functions, especially when projects or actions of the State itself are what are threatening highly vulnerable indigenous peoples.<sup>532</sup>
344. The Constitution of the Federative Republic of Brazil expressly recognizes the social organization, customs, languages, beliefs, and traditions of indigenous peoples, as well as the rights over the lands they have traditionally occupied. It further establishes that indigenous peoples will have permanent possession of these lands they have traditionally occupied and the exclusive usufruct rights to the riches in the soil, rivers, and lakes in that geographical area.<sup>533</sup> Brazil also has Law 6001/1973, the “Indigenous Law,” which recognizes the presence of indigenous peoples in isolation in Brazilian territory. There are also other norms that include protection for indigenous peoples in isolation, such as Ordinance No. 281/PRES/FUNAI, which prohibits any economic or commercial activity in areas

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<sup>529</sup> Constitution of the Plurinational State of Bolivia, published in the Official Gazette of the Plurinational State of Bolivia on February 7, 2009, Article 31.

<sup>530</sup> State of Bolivia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region.

<sup>531</sup> Article 7.IV of Law No. 450, pertaining to health, states only that “Any individual or collective person who carries out activities in the areas of influence of the beneficiaries of this Law must observe and comply with any prevention mechanisms DIGEPIO may create in the area of health.” It therefore does not prohibit activities from being carried out in areas where there are indigenous peoples in isolation.

<sup>532</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, pp. 56-61.

<sup>533</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 63.

inhabited by such peoples.<sup>534</sup> Provisions have also been adopted related to health and education measures for indigenous peoples in initial contact.<sup>535</sup> However, it is troubling that the Brazilian State, the country with the largest number of indigenous peoples in isolation in the world, still does not have a specific law that protects these communities.

345. Likewise, the Statute and Regulations of FUNAI establish the duties to be carried out by the technical sectors and entities responsible for implementing the policies to protect indigenous peoples in isolation and initial contact. There are also 12 Ethno-environmental Protection Fronts with 26 Ethno-environmental Protection Bases (BAPEs), which are technical teams that carry out activities to protect indigenous peoples in isolation, such as collecting information, confirming references of presence, drawing up ethno-historical records, monitoring territory, and conducting surveillance to prevent the entry of outsiders. However, the IACHR has been informed that seven BAPEs have been shut down in recent years; one of these, on the Jandiatuba River, in the Yavari Valley/AM Indigenous Land, was reopened after reports of alleged massacres against indigenous peoples in isolation in the area. Recently, in November 2018, through actions undertaken by the Office of the Federal Prosecutor, the judiciary ordered the reinstatement of the three BAPEs that had been closed in the Yanomami Indigenous Land.<sup>536</sup>
346. The Constitution of Colombia includes a special regime of indigenous territories; however, it does not refer to indigenous peoples in isolation or initial contact.<sup>537</sup> Law No. 1.448, approved in 2011, defines measures for providing services, assistance, and full redress to the victims of the internal armed conflict, and establishes that these measures may be individual or collective.<sup>538</sup> The decree regulating this law, No. 4.633, spells out these measures as they relate to victims who belong to indigenous peoples and communities, and also expressly mentions indigenous peoples in isolation or initial contact, establishing that the State must guarantee their right to remain in that condition and live freely, in accordance with their culture, in their ancestral territories. It also provides that those communities are subject to special protection, which means that in no case should they be subject to intervention or dispossession of their territories, nor should they be targets of policies, programs, or actions, private or public, that promote contact or that intervene in their territories. Regulatory Decree No. 4.633 also established a series of institutions responsible for implementing prevention measures and measures for the protection of these communities. However, in 2018 these institutions were modified by Regulatory Decree No. 1.232, which regulates Law 21 of 1991 as

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<sup>534</sup> Ordinance No. 281/PRES/FUNAI of April 20, 2000.

<sup>535</sup> In the area of education, there is a ruling from the Ministry of Education, published in the Official Gazette on March 31, 2016, which contains guidelines for the promotion of access by indigenous peoples of recent contact to educational processes. In terms of the health of indigenous peoples in isolation, Ordinance No. 254, approved on January 31, 2001, includes two basic paragraphs on health care for indigenous peoples of recent contact. CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 2.

<sup>536</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 6.

<sup>537</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 63.

<sup>538</sup> Republic of Colombia, *Ley N° 1448*, June 10, 2011.

pertains to the special prevention and protection measures and creates the National System for Prevention and Protection of the Rights of Indigenous Peoples in Isolation or a Natural State. This system is currently made up of the National Commission for Prevention and Protection of the Rights of Indigenous Peoples in Isolation and by local Committees for Prevention and Protection of Indigenous Peoples in Isolation.

347. In terms of progress made, the IACHR notes that the Colombian State reported that “[i]n furtherance of the right to free self-determination of the Indigenous Peoples in voluntary isolation, a participatory process was begun through the Ministry of the Interior to craft two instruments for the protection of such peoples, a set of public policy guidelines and a legal framework, on which State institutions and indigenous organizations worked together.”<sup>539</sup> This has to do with Decree 1232-2018, approved in July 2018, by which the national authorities granted rights to indigenous communities and reserves in isolation, located primarily in the extension area of Serranía del Chiribiquete Natural National Park, between the departments of Caquetá and Guaviare, with an area of 1,298,955 hectares. Based on State records, 15 indigenous communities are assumed to live in this region. The decree establishes a National System for Prevention and Protection of the Rights of Indigenous Peoples in Isolation, as well as a National Commission for the same purpose, made up of different State agencies, indigenous movements, and indigenous peoples in neighboring areas. Despite the progress this represents, it should be noted that there are still major difficulties in the implementation of the mechanisms established, due to budget issues.<sup>540</sup> The Colombian State also reported that Resolution 0156 of 2018, issued by the Ministry of the Environment and Development, established guidelines for formulating and implementing, with a differentiated focus, instruments and mechanisms for planning, operations, and management in the protected areas of the Natural National Park System that have a presence or indications of a presence of peoples or segments of peoples in isolation.<sup>541</sup>
348. Ecuador, along with Bolivia, is one of only two States in the region with constitutional protections for indigenous peoples in isolation and initial contact. Article 57 of the Ecuadorian Constitution expressly prohibits the exploitation of natural resources in areas where such communities live. It also recognizes that the violation of these rights constitutes the crime of genocide. In addition, Ecuador adopted the “National Policy on Peoples in a Situation of Voluntary Isolation” in

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<sup>539</sup> Colombia also noted that it is the first country in the region to create participatory protection mechanisms for the population in voluntary isolation and to carry out a prior consultation process on legislative measures with the indigenous authorities and organizations that are neighbors to the peoples living in isolation. State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019.

<sup>540</sup> The Commission has information indicating that the Organización Nacional de los Pueblos Indígenas de la Amazonía Colombiana (OPIAC) is seeking funding so that the designated committees can carry out their monitoring efforts. PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, pp. 81-87.

<sup>541</sup> Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019.

2007<sup>542</sup> The IACHR notes that the Ecuadorian State reported that Executive Decree 552, of February 2, 1999, declares as “a restricted conservation area [*zona intangible*], barred in perpetuity from any type of extractive activity, the lands of habitation and development of the Huaorani groups known as Tagaeri, Taromenane, and other possible groups that remain without contact, located toward the south of the lands adjudicated to the Huaorani nationality in 1990 and of the Yasuní National Park.” The State also pointed to Executive Decree 2187, dated January 16, 2007, which demarcates the Tagaeri-Taromenane Restricted Area (ZITT in Spanish), covering 758,051 hectares, and establishes a buffer zone (10 kilometers wide around the restricted area).<sup>543</sup>

349. According to information received with respect to Peru, the first precedent for legal recognition of these indigenous peoples was Decree Law 22175 of 1978, “Law of Native Communities and Agricultural Development Communities of the Forest and Forest Edge,” which regulated the creation of territorial reserves of a provisional nature.<sup>544</sup> Between 1990 and 2003, at the initiative of Amazonian indigenous organizations, five reserves were created for the protection of indigenous peoples in voluntary isolation and initial contact; these reserves cover 2,871,464.39 hectares among the regions of Cusco, Ucayali, and Madre de Dios.<sup>545</sup> In 2006, Peru approved Law 28736, “Law for the Protection of Indigenous or Native Peoples in Isolation and Initial Contact,” a law which, in conjunction with its regulations (Supreme Decree 008-2007), establishes a territorial protection regime with the creation and recognition of indigenous reserves for these communities.<sup>546</sup> However, as the IACHR has noted, this law establishes a “public necessity” exception that allows rights for development of natural resources to be granted within the reserves.<sup>547</sup>
350. Supreme Decree 008-2016-MC, which amends the regulations to the law, establishes the Ministry of Culture as the governing body over the national policy for protection of indigenous peoples in isolation and initial contact, and the Vice Ministry of Interculturality as the technical body. In that regard, the State reported on a series of actions taken to coordinate with different sectors, such as with indigenous and civil society organizations.<sup>548</sup> Using its authority, the Ministry of

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<sup>542</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 69; PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 65.

<sup>543</sup> State of Ecuador, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 4-2-044/2019.

<sup>544</sup> CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 36.

<sup>545</sup> These are the Kugapakori, Nahua Nanti Territorial Reserve (2003), Murunahua Territorial Reserve (1999) Isconahua Territorial Reserve (1998), Mashco Piro Territorial Reserve (1997), and Madre de Dios Territorial Reserve (2002). CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 33.

<sup>546</sup> State of Peru, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 7-5-M /053, March 15, 2019.

<sup>547</sup> DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, pp. 12-13.

<sup>548</sup> State of Peru, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 7-5-M /053, March 15, 2019.

Culture categorized the previously designated territorial reserves as indigenous reserves. Of the five existing territorial reserves, it established the first four indigenous reserves for indigenous peoples in voluntary isolation and initial contact: Madre de Dios, Isconahua, Mashco Piro, and Murunahua.<sup>549</sup>

351. In its 2013 report, the IACHR welcomed the fact that the regulations established the binding nature of the Vice Ministry of Interculturality's technical opinions on environmental impact assessments related to extractive activities in the reserves; this entity has a Specialized Department on Indigenous Peoples in Isolation and Initial Contact.<sup>550</sup> The Commission has been informed that the regulations as amended by Supreme Decree 008-2016-MC omit the "prior" and "binding" nature of Vice Ministry's technical opinion. At the same time, the IACHR received information indicating that Article 7(e) of the decree in question contemplates the issuance of prior, binding technical opinions related to the social component of the environmental studies as one of the functions of the Ministry of Culture. This calls for the law to be interpreted in such a way as to ensure that it consistently preserves the prior and binding nature of that entity's technical opinions.<sup>551</sup>
352. Recently, the Peruvian State approved Legislative Decree No. 1374, dated August 12, 2018, which establishes the Sanctions Regime for Non-Compliance with the Provisions of Law 28736 for the protection of indigenous peoples in isolation and initial contact. This measure establishes administrative offenses, such as the implementation of natural resource development activities within territorial or indigenous reserves for reasons other than public necessity or for the purpose of subsistence, established in Article 5(c) of Law 28736. In that regard, the Ombudsman's Office has requested the Ministry of Culture to adopt the necessary management tools so that this can be implemented. These tools are essential for there to be a coordinated effort that involves all levels of government. For example, the law establishes criminal offenses, but the regulation of proceedings remains pending.<sup>552</sup> At the regional government level, the regional governments of Madre de Dios and Ucayali have reportedly implemented certain measures to protect these communities.<sup>553</sup> The Commission welcomes the legal measure in question and at the same time reiterates the importance of respecting the domestic legal framework of

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<sup>549</sup> CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 34.

<sup>550</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 68.

<sup>551</sup> DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 14.

<sup>552</sup> CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 35; Abrego Hinostrero, Jorge, "[Defensoría del Pueblo exhorta al MINCU aprobar el Plan Nacional de Protección de PIACI](#)" (Video), IDLADS PERU, consulted on October 1, 2018.

<sup>553</sup> Some of their actions have included declaring of regional public interest the protection of the indigenous peoples in voluntary isolation and initial contact who are inside their region, given their high vulnerability. Fundación Wayuu Taya, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 30, 2018, p. 78.

respect for and guarantee of the rights of indigenous peoples in the country, particularly in relation to Law 28736.<sup>554</sup>

353. Given that Peru is one of the countries with the largest number of indigenous peoples in isolation in the region, the Commission considers it essential for the State to implement a policy and a national plan in that regard. The Ministry of Culture reported that there is no national plan in place; nevertheless, in June 2017 a participatory process was launched for the creation of a proposed national policy for indigenous peoples in isolation and initial contact. As of the drafting of this report, the process is in the second of its three phases.<sup>555</sup>
354. In the Venezuelan State, the rights of indigenous peoples have special recognition in the Constitution, in the Organic Law on Indigenous Peoples and Communities, and in rules within the domestic legal framework that include different types of protection. However, none of these provisions expressly refers to the presence of peoples in isolation and initial contact or to the need to implement special measures for their protection. The Ministry for Indigenous Peoples, which is responsible for formulating public policies for the promotion of these rights, has not expressly recognized the presence of indigenous peoples in isolation with special protection needs, even though the Ombudsman's Office has confirmed the existence in Venezuela of isolated communities that belong to three indigenous peoples.<sup>556</sup> The Ombudsman's Office has indicated that even though there are no specific laws covering peoples in isolation or initial contact in the country, there are many provisions in force that apply generally and would allow for effective protection of the rights of such communities.<sup>557</sup> In that regard, the IACHR welcomes the Venezuelan State's adoption of specific laws pertaining to indigenous peoples. However, it observes with concern the lack of measures designed to ensure that these are implemented to the benefit of indigenous peoples in voluntary isolation and initial contact.

## 2. Decisions by Judicial or Administrative Bodies

355. The IACHR is concerned to observe the situation of impunity and the lack of effective judicial protection in the countries of the region with respect to populations in isolation and initial contact. It has been reported that although violent incidents of

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<sup>554</sup> IACHR, [Press Release 26/18](#) – “Experts on the Rights of Indigenous Peoples of the IACHR and the United Nations express their concern at the adoption of a law that declares the construction of highways in the Peruvian Amazon as a priority and a national interest,” Washington, D.C., February 13, 2018.

<sup>555</sup> IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 40. See also IACHR, [Human rights of indigenous peoples and the situation of isolation in the Peruvian Amazon](#), 172<sup>nd</sup> session, May 10, 2019.

<sup>556</sup> IACHR, [Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco](#), 165<sup>th</sup> session, Monday, October 23, 2017.

<sup>557</sup> Bello, Luis Jesús, and Díaz Mirabal, José Gregorio, [Informe sobre la Situación Actual de los Grupos de Pueblos Indígenas en Aislamiento Relativo y Poco Contacto en Venezuela \(Iñdi, Uwottüja, y Yanomami\)](#), Grupo de Trabajo Socioambiental de la Amazonía “WATANIBA” and Organización Regional de Pueblos Indígenas de Amazonas “ORPIA,” 2017, p. 6.

contact and deaths of members of indigenous peoples in isolation are known, investigations or judicial proceedings related to such acts are not being carried out.<sup>558</sup>

356. In the case of Bolivia, the Constitutional Court issued Judgment 0014/2013-L, a decision which would seem to reaffirm the right of indigenous peoples to their territory and the State's obligation to guarantee rights to peoples in voluntary isolation. According to the information the Commission received, the Constitutional Court ruled in favor of the Central Indígena de Pueblos Originarios de la Amazonía de Pando (CIPOAP) and ordered that the Pacahuara people living in isolation be guaranteed their territory, which was under logging concessions in the Amazonian department of Pando. At the same time, according to information received by the IACHR, even though the judgments of the Constitutional Court are not subject to appeal and compliance with them is obligatory, the ancestral territory of the Pacahuara has so far not been guaranteed.<sup>559</sup> Members of this indigenous people in initial contact, unable to enjoy their territory, were reportedly taken in by the Chácobo people in a place other than their own territory. According to the information available, the last Pacahuara indigenous woman in this group died a few years ago without being able to return to her ancestral territory. Now the descendants of the Pacahuaras who were taken in by the Chácobos have reportedly lost not only their territory but their language and have been assimilated by the Chácobo culture.<sup>560</sup>
357. With respect to Brazil, information was received indicating that the Yanomami territory was being systematically encroached upon by illegal miners (garimpeiros). Their numbers were said to be growing rapidly following the closure of the three BAPes from Serra da Estrutura, Demarcación, and Korekorema, which covered more than 4,000 people. The invaders pose a constant threat to the life of the Yanomami people, who are considered to be in a state of initial contact, and particularly to the life of the Yanomami group in isolation known as the Moxi Hatëtëa, who live in the Serra da Estrutura region.<sup>561</sup> According to information received by the IACHR, in October 2017 the Office of the Federal Prosecutor brought a public civil action against the federal government, FUNAI, and the state of Roraima to demand the immediate reestablishment of the permanent activities of the BAPes in the Yanomami Indigenous Land. In November 2018, the Office of the Federal Prosecutor obtained a judgment that ordered the reinstallation of the bases for the protection of Yanomami territory.<sup>562</sup>

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<sup>558</sup> IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

<sup>559</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 61.

<sup>560</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 61.

<sup>561</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 8.

<sup>562</sup> Office of the Federal Prosecutor, [MPF consegue reinstalação de bases de proteção etnoambiental da TI Yanomami](#), November 21, 2018.

358. In terms of indigenous peoples in isolation in Brazil's Javari Valley, the information available indicates that the weakening of FUNAI's Protection Bases has resulted in increasingly frequent encroachments by hunters, fishermen, and loggers in areas transited by isolated peoples. The IACHR received information indicating that the Office of the Federal Prosecutor in Tabatinga, based on a lack of evidence, had closed the police investigation that had been undertaken to investigate reports of a possible massacre, in August 2017, of isolated indigenous persons on the Jandiatuba River. Although the massacre was not confirmed, the information indicates that four boats belonging to garimpeiros had settled into an area inside the Yavari Valley Indigenous Land where there was a confirmed presence of indigenous peoples in isolation, without FUNAI's Protection Front noticing their encroachment. In September 2017, when news of the possible massacre became public, a FUNAI flyover reportedly spotted burned dwellings and a blue material, possibly a plastic tarp, very close to an area of illegal mining activity. The FUNAI Ethno-environmental Protection Base that had been closed in 2012 was reopened by FUNAI in 2018, according to available information.<sup>563</sup>
359. With respect to Colombia, the IACHR received information regarding the Mapayerri people, a semi-nomadic community in initial contact, who are said to maintain relations with some Sikuani persons, and to a lesser extent with settlers in the region, to trade goods. This community has reportedly become more vulnerable due to an increased presence of illicit crops. This has apparently led to forced displacements instigated by coca growers and armed individuals operating outside the law. Since 2011, members of the Mapayerri people have been calling for the Colombian Institute for Rural Development (now the National Land Agency) to establish an indigenous reserve for their protection. In 2014, the Constitutional Court's Seventh Chamber for Protection of Constitutional Rights handed down Judgment T-379, ordering that the process of establishing the reserve be completed within six months. The information available indicates that as of October 2017, two visits had been made to the site.<sup>564</sup> In that regard, the State provided information concerning other judgments and opinions of the Constitutional Court involving the Mapayerri people in initial contact, although it did not indicate the degree of compliance.<sup>565</sup>
360. Meanwhile, the Constitutional Court of Colombia declared that the Nukak Makú people, along with other indigenous peoples in Colombia, have been victims of serious violations of their individual and collective rights due to the internal armed conflict, which has led to their displacement. However, it should be noted that the

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<sup>563</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 9.

<sup>564</sup> IACHR, *Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco*, 165<sup>th</sup> session, Monday, October 23, 2017.

<sup>565</sup> Specifically, the State mentioned decisions T-247 of 2015, T-213 of 2016, T-110 of 2016, Order 266 of 2017, and Interlocutory Order AIR-18-068 of the Villavicencio, Meta, circuit specialized in land restitution, with respect to proceedings to guarantee rights of the Sikuani and Mapayerri peoples. State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019.

court recognizes that the Nukak Makú community is in danger of cultural and physical annihilation.<sup>566</sup>

361. In Peru, there is only one judgment of the Constitutional Court involving indigenous peoples in isolation and initial contact. It came about as a result of an *amparo* action filed by the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP) alleging that the contracts for exploration and exploitation of Lots 39 and 67 violated the rights of the Waorani (Tagaeri-Taromenane), Pananujuri (Arabela), and Aushiri or Abijira indigenous peoples in voluntary isolation in the Napo Tigre Proposed Natural Reserve, near the border with Ecuador. The suit also alleged that there was no consultation prior to the contracts being issued. The Constitutional Court found the *amparo* action inadmissible because the existence of indigenous peoples in voluntary isolation had not been shown, without prejudice to recognizing the inalienable right of indigenous and tribal peoples to be consulted, in keeping with ILO Convention 169.<sup>567</sup> In that regard, the IACHR reiterates its concern over the fact that the Constitutional Court declared the *amparo* action inadmissible based on the failure to establish the existence of an indigenous people in isolation, without considering that this was due to their very isolation. According to OHCHR guidelines, lack of contact should in no case be considered evidence that such peoples do not exist.<sup>568</sup>

### 3. Territorial Protection

362. In 2013, the IACHR noted that States in the Americas had recognized more than 9 million hectares for the benefit of indigenous peoples in voluntary isolation or initial contact, with different legal categories and different degrees of protection in practice. According to the information available, in many cases the level of protection established in the law for these territories varies considerably from the level of protection actually provided. Moreover, in most cases there are problems related to the delimitation of the geographical areas that are home to such peoples. Consequently, the areas established as off-limits or restricted (*zonas intangibles*)

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<sup>566</sup> In that judgment, the Constitutional Court ordered the officials in charge to adopt, within six (6) months from the date of notification of the order, the following coordinated actions: "First, that they design and implement, within their respective spheres of competence, a Program to Guarantee the Rights of the Indigenous People Affected by Displacement.... Second, that they formulate and begin implementation of ethnic safeguard plans, in light of the armed conflict and forced displacement, for each of the peoples identified in this court order." Order 004 of 2009 of the Constitutional Court of Colombia, January 26, 2009, p. 229.

<sup>567</sup> Constitutional Court of Peru, Exp. No. 06316-2008-PA/TC, Loreto, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), November 11, 2009. Subsequently, the Constitutional Court declared the request for clarification filed by AIDSESP to be inadmissible and confirmed the obligatory nature of prior consultation from the publication of judgment 0022-2009-PI/TC. Constitutional Court of Peru, Exp. No. 06316-2008-PA/TC, Loreto, AIDSESP, August 24, 2010.

<sup>568</sup> OHCHR, *Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la Región Oriental de Paraguay*, Geneva, 2012, para. 11.

apparently are not extensive enough to ensure the effective protection of these communities, who live and move about outside these areas as they carry out their cultural and survival practices.<sup>569</sup>

363. With respect to Bolivia, as the IACHR noted in its 2013 report, as part of its efforts to protect highly vulnerable peoples, the State in 2006 approved a declaration designating a restricted or off-limits area (zona intangible) of absolute protection within Madidi National Park, in the upper Amazon region of Bolivia, home of the traditional territory of the Toromona people living in isolation. This declaration of a restricted area seeks to guarantee respect for these indigenous peoples' decisions regarding their relations with the rest of society. It includes, as measures of protection, the prohibition of any type of settlement other than that of the peoples living inside the restricted zone, any contact not desired by the Toromona people, as well as any activity related to prospecting for or exploiting the area's natural resources.<sup>570</sup> Yet even though the creation of the reserve would seem to be a milestone in terms of legal measures related to the territorial rights of people in isolation, the information available indicates that in 2007, oil blocks were approved in areas overlapping the reserve.<sup>571</sup>
364. Moreover, as the IACHR has noted, with the approval of Supreme Decree 1286, a "Multidisciplinary Technical Study" was to be conducted to determine the presence of groups of the Ayoreo in voluntary isolation within the strict protection area of the Kaa-Iya del Gran Chaco National Park and Integrated Management Area, in southern Bolivia, near the border with Paraguay. The purpose was to identify the areas the Ayoreo occupy and move through, as well as determine mechanisms to ensure they can remain in isolation.<sup>572</sup> However, the IACHR was later informed that this decree was prepared without the participation of the indigenous peoples and their organizations, and that it was drafted in such a way as to allow oil-related activity in the area and not to guarantee the rights of the Ayoreo people living in isolation. That is because it states that Yacimientos Petrolíferos Fiscales Bolivianos (YFPB) may not carry out any activities in its reserved petroleum areas to avoid disturbing the Ayoreo people until the study is completed. Moreover, the measure assigns

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<sup>569</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 17; IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, Sunday, November 4, 2012.

<sup>570</sup> UN, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Rodolfo Stavenhagen, Mission to Bolivia, A/HRC/11/11, February 18, 2009, para. 49; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 81.

<sup>571</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 62.

<sup>572</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 61; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 81.

responsibility to the Vice Ministry of Lands and not of Justice, which is the entity responsible for guaranteeing the specific rights of indigenous peoples in isolation.<sup>573</sup>

365. Meanwhile, as the IACHR has noted, Brazil is the country in the region where the most lands have been designated for indigenous peoples in isolation.<sup>574</sup> By way of background, as of 2013 the State had reportedly demarcated more than 2,400,000 hectares exclusively for indigenous peoples in voluntary isolation, in the indigenous lands of Hi-Merimã, Jacareuba/Katawixi, Rio Omerê, Massaco, Tanaru, Riozinho do Alto Envira (Xinane), Alto Tarauacá, and Kawahiva do Rio Pardo.<sup>575</sup> According to recent information, there are three indigenous lands occupied exclusively by peoples in voluntary isolation in which the demarcation process has been completed,<sup>576</sup> in addition to the Kawahiva do Rio Pardo Indigenous Land, where the process has begun and boundaries have been declared, with official approval pending. There are also fully demarcated indigenous lands that are shared by isolated and contacted peoples, such as the Río del Alto Envira (Ashaninka and members of peoples in isolation), Yanomami, Caru, Araribóia, Javari Valley, and Awá Guajá peoples, among others. There are also lands under use restriction orders from FUNAI, which in the case of the indigenous peoples in isolation must be renewed every three years.<sup>577</sup> Similarly, there are a number of lands of indigenous peoples classified by FUNAI as peoples of recent contact.<sup>578</sup>
366. The Commission welcomes the Brazilian State's efforts to designate and demarcate lands for peoples in voluntary isolation. At the same time, it is concerned to observe serious situations occurring in the territory, such as the case of the Yanomami people in Brazil. Contact with gold prospectors would be very dangerous, especially for the "Moxateteu" people living in isolation. Hutukara, a Yanomami organization, is said to have reported the murder of two Moxateteu individuals by illegal miners in the Serra da Estrutura region. Despite official complaints and public communiqués, the authorities in Brazil reportedly have not investigated what happened. FUNAI's Ethno-environmental Protection Front in Boa Vista is said to lack the resources for an investigative flight. The protection outpost closest to the

<sup>573</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 61.

<sup>574</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 71.

<sup>575</sup> Vaz, Antenor, "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. 54.

<sup>576</sup> These are the Hi-Merima Indigenous Land (an area of 678,000 hectares, located in Amazonas), the Massacó Indigenous Land (422,000 hectares, located in Rondonia), and the Alta Tarauacá Indigenous Land (143,000 hectares, located in Acre). CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 4.

<sup>577</sup> Such is the case with the Pirititi lands (40,000 hectares, with restricted use order renewed on 10/03/2016), Jacareúba / Katawixi (647,000 hectares, renewed on 08/12/2016), Piripikura (242,500 hectares, renewed on 18/09/2018), Tanaru (8,000 hectares, renewed on 16/10/2015), Ituna / Itatá (142,000 hectares, renewed on 21/01/2016), and Igarapé Taboca Alto Tarauacá (278 hectares, renewed on 10/09/2012).

<sup>578</sup> These are the Zuruahã (239,000 hectares), Río Omerê (26,000 hectares), Yanomami (9,665,000 hectares), Zo'e (669,000 hectares), Awá (117,000 hectares), Koatinemo (388,000 hectares), and others. CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 4.

lands of the Moxateteu people reportedly was closed in 2015 due to budget cuts, leaving the Yanomami people in a highly vulnerable situation. It has been reported that conflicts such as this one are very likely to continue if the protection outpost is not restored and the miners are not expelled from the area. The Brazilian army is said to have established quarters in the heart of the Yanomami land, which has increased tensions. The IACHR points to reports indicating that soldiers have prostituted Yanomami women and that some of the women have become infected with sexually transmitted diseases.<sup>579</sup>

367. With respect to Colombia, the State reported that restricted areas were identified in the parks inhabited by indigenous peoples in isolation and that access to these areas—though the State did not specify which—was highly restricted. It also indicated that the Curare los Ingleses Indigenous Reserve abutted an area of their territory and was declared off-limits to protect peoples in isolation. The State also reported that in 2012 it created the Río Puré Natural National Park, whose objectives include protecting indigenous peoples in isolation, and that in 2013 and 2018 it reserved, defined, delimited, and declared a stretch of land to expand Serranía de Chiribiquete Natural National Park to protect peoples in isolation.<sup>580</sup> It also reported that, by means of Agreement 68 of 2018, it established the Nacuanedorro Tuparro Indigenous Reserve of the Mapayerri ethnic group in initial contact, in the municipality of Cumaribo, department of Vichada. The IACHR reiterates its concern over the fact that Colombia's protected areas are what are called “indigenous reserves” or “national parks”; however, these are reportedly not reserved exclusively for peoples in voluntary isolation or initial contact.<sup>581</sup>
368. As the IACHR has noted, in 1999 the Ecuadorian State created a restricted area for the Tagaeri and Taromenane peoples in voluntary isolation, in which all types of extractive activities were prohibited. It is therefore concerned to observe that such activities are taking place. In that regard, the State indicated that for petroleum-related projects not to violate Executive Decree 552, they must be outside the Tagaeri-Taromenane Restricted Area and areas of occupation of peoples living in isolation. Likewise, it reported that it has a Department for the Protection of Indigenous Peoples in Voluntary Isolation (DPPIAV), whose mission is to carry out public policies related to the protection of such peoples and to produce technical reports “tied to the execution of extractive activities in the Buffer Zone of the Restricted Area....”<sup>582</sup> Although the State indicated that the DPPIAV carries out monitoring in the area, the IACHR received information indicating that it does not have a sufficient presence or an adequate management plan to block incursions of settlers and illegal loggers, as well as to keep out ecotourism. There have reportedly

<sup>579</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, pp. 2-3.

<sup>580</sup> Ministry of Environment and Sustainable Development, Resolution 764 of 2012, Resolution 1038 of August 21, 2013, and 1256 of July 10, 2018, State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019.

<sup>581</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 84.

<sup>582</sup> State of Ecuador, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 4-2-044/2019.

been clashes between invaders (who now appear to include groups of Waorani) and the isolated indigenous peoples. It is worth noting that even though the IACHR suggested that the State adopt special protection measures for the Tagaeri and Taromenane peoples, these have apparently not been carried out; nor has the “restricted” nature of the area assigned to this community apparently been respected. Concessions reportedly continue to be awarded for petroleum and for timber-yielding species prohibited under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.<sup>583</sup>

369. With respect to Peru, as indicated earlier, there are two legal regimes in force that apply to the establishment of restricted areas for indigenous peoples in voluntary isolation and initial contact. The first regime established the creation of territorial reserves, via Decree Law 22175 of 1978. From 1990 to 2003, at the initiative of indigenous organizations in the Amazon region, this was used to create five reserves for the protection of indigenous peoples in voluntary isolation and initial contact; these cover 2,871,464.39 hectares among the regions of Cusco, Ucayali, and Madre de Dios.<sup>584</sup> It should be noted that the restrictions to enter these territorial reserves are not uniform, as they were created using different legal mechanisms. The second regime established the creation of indigenous reserves, via Law 28736 of 2006. This law would seem to allow economic activities to be carried out in the protected areas in situations of “public necessity.”<sup>585</sup> In recent years, a process has been underway to turn the territorial reserves into indigenous reserves, which would involve bringing the existing reserves into line with the legal framework of Law 28736. Currently, four of the five territorial reserves have become indigenous reserves: Isconahua, Madre de Dios, Murunahua, and Mascho Piro.<sup>586</sup> This regime establishes uniform standards for restricting access to enter indigenous reserves, as well as exceptions to the rules.<sup>587</sup>
370. The situation of the Nahua Kugapakori Nanti Territorial Reserve (RTKNN) in Peru is particularly worth noting. According to information provided by the State, the changeover of this territorial reserve<sup>588</sup> has yet to be finalized. However, the IACHR

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<sup>583</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 78; Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council.”* Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum, Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, paras. 40-41.

<sup>584</sup> These are the Kugapakori, Nahua Nanti Territorial Reserve (2003), Murunahua Territorial Reserve (1999), Isconahua Territorial Reserve (1998), Mashco Piro Territorial Reserve (1997), and Madre de Dios Territorial Reserve (2002). CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 33.

<sup>585</sup> IACHR, *Human Rights Situation of Indigenous Peoples in Voluntary Isolation in Peru*, 149<sup>th</sup> session, Friday, November 1, 2013.

<sup>586</sup> IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 42.

<sup>587</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 75.

<sup>588</sup> State of Peru, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 7-5-M /053, March 15, 2019.

has received information indicating that this process of turning the territorial reserve into an indigenous reserve is being done without safeguards and non-regression guarantees related to rights of intangibility of territory. This classification would appear to weaken the level of protection granted under Supreme Decree 028-2003-AG, which created the territorial reserve; Article 3 of that measure prohibited the granting of new rights that would entail development of natural resources. By contrast, as an indigenous reserve, the exception under Law 28736 could apply, which would seem to facilitate the granting of natural resource exploitation rights to third parties; the superimposition of natural protected areas that omit adequate protection and zoning of the areas that overlap the reserves; and the encroachment into these areas by individuals engaged in illegal activities.<sup>589</sup> On August 20, 2018, AIDSESEP reportedly filed an *amparo* action requesting that the Ministry of Culture be ordered to respect the prohibition on the granting of new rights that would involve the exploitation of natural resources inside the RTKNN. It likewise requested that the RTKNN not be turned into an indigenous reserve if that would mean lowering the social and environmental standards and collective rights of the indigenous peoples who are expressly recognized in the law creating the reserve. This *amparo* action was reportedly admitted by the Third Transitory Constitutional Court of Lima in October 2018 and is pending a decision.<sup>590</sup>

371. Even though there are four indigenous reserves to protect certain indigenous peoples in voluntary isolation and initial contact, requests to establish five other indigenous reserves are reportedly still pending review, after more than 20 years without an answer. These are the Yavarí Trapiche, Yavarí Mirín, Sierra de Divisor Occidental, Napo Tigre, and Cacataibo reserves. The failure to classify and protect these areas facilitates the encroachment of third parties, such as illegal loggers and drug traffickers, and the superimposition of rights in their favor.<sup>591</sup> Available information indicates that the Multisectoral Commission led by the Ministry of Culture is in the process of preparing additional classification studies with the aim of demarcating the territory traditionally occupied by the indigenous peoples in voluntary isolation and initial contact who live in the Yavarí Tapiche and Yavarí Mirim reserves.<sup>592</sup>
372. It should also be noted that there are difficulties associated with the demarcation of territorial or indigenous reserves, which do not cover the complete territory inhabited by indigenous peoples in isolation and initial contact. One illustrative case is that of the Mashco Piro, a nomadic people whose members live off of hunting and fruit-gathering. FENAMAD, as a regional organization assigned to AIDSESEP,

<sup>589</sup> IACHR, *Human rights of indigenous peoples and the situation of isolation in the Peruvian Amazon*, 172<sup>nd</sup> session, May 10, 2019.

<sup>590</sup> AIDSESEP, “[Poder Judicial admite demanda de amparo a favor de la Reserva Territorial Kugapakori, Nahua, Nanti y otros.](#)” Lima, September 16, 2018; IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 42; DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, p. 17.

<sup>591</sup> IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 42; IACHR, *Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco*, 165<sup>th</sup> session, October 23, 2017.

<sup>592</sup> CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 5, 2018, p. 35.

presented a proposal for more than 2,000 hectares for the territorial reserve. However, only 34% of this proposal was reportedly recognized. Given that the Mashco Piro people do not know the limits of their territory and move about according to the seasons, there are high risks of them entering forest concessions that abut with Line 343 of the territorial reserve. Moreover, the presence of illegal activities in the area has been reported.<sup>593</sup>

#### 4. Bilateral or Multilateral Cooperation Efforts for the Protection of Peoples in Isolation in Transborder Areas

373. When it comes to indigenous peoples in voluntary isolation and initial contact, the notion of territory tends to be based on natural boundaries, such as rivers or mountains, and not on political boundaries between countries or subnational divisions. That is why the IACHR has recognized that certain measures of protection for these indigenous peoples have transnational implications. In these situations, it is urgent for States to cooperate in coordination with each other, bilaterally or regionally as appropriate, to achieve a greater and more effective respect for the rights of these indigenous communities in the Americas.<sup>594</sup> Along the same lines, Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, maintained that coordination among States is necessary to address the threats that these indigenous peoples face across borders.<sup>595</sup>
374. The Bolivian State reportedly refused to adopt binational measures for protection of the Ayoreo people living in isolation along the borders of Bolivia and Paraguay. According to the information available, this refusal is related to the Bolivian government's decision to intensify hydrocarbon exploration and exploitation activities in the territory inhabited and occupied by the Ayoreo people.<sup>596</sup> While this involves a people living in isolation in El Chaco, the IACHR is concerned by the possibility that the State of Bolivia takes a similar position in relation to a people in isolation in the Amazon region.
375. The IACHR is pleased to note that the State of Colombia said it had signed memorandums of understanding with Peru and Brazil to exchange experiences and work together to advance the protection of indigenous peoples in isolation. It also indicated that it is participating in projects promoted by the Amazon Cooperation Treaty Organization (ACTO) to try to establish a regional framework for the

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<sup>593</sup> IACHR, *Human Rights Situation of Indigenous Peoples in Voluntary Isolation in Peru*, 149<sup>th</sup> session, Friday, November 1, 2013.

<sup>594</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, paras. 94, 137, recommendation 22.

<sup>595</sup> IACHR, *Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco*, 165<sup>th</sup> session, Monday, October 23, 2017.

<sup>596</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, p. 65.

protection of indigenous peoples in isolation.<sup>597</sup> The Commission also notes that Ecuador reported that it has participated in that program since 2013 with the aim of exchanging methodologies for the protection of such peoples.<sup>598</sup>

376. The IACHR also noted that in March 2014, a memorandum of interinstitutional cooperation was signed between Brazil and Peru, specifically between FUNAI and the Peruvian Ministry of Culture, for the protection and promotion of the rights of isolated and recently contacted indigenous peoples who live in both countries' border areas. According to the document, joint actions will be taken to locate and protect isolated and recently contacted peoples who live in Acre, in Brazil's Javari River Valley, and in the departments of Madre de Dios, Ucayali, and Loreto, in Peru.<sup>599</sup> The Commission also learned about a proposal to create the Pano-Arawak Transborder Territorial Corridor and other corridors between Peru and Brazil.<sup>600</sup> This area would comprise an expanse of nearly 9 million hectares in the departments of Cusco, Madre de Dios, and Ucayali, in Peru, and Acre, in Brazil. In the case of Peru, this corridor would encompass 4 territorial reserves or indigenous lands, 23 native communities, and 4 natural protected areas, conservation units, forestry concessions, and a conservation concession; in the case of Brazil, it would encompass 11 indigenous lands and 2 conservation units.<sup>601</sup> Finally, an anthropological assessment is reportedly being prepared for the presentation of a proposed Yavari Tapiche Territorial Corridor and uninterrupted forests (Northern Territorial Corridor), which includes the Ucayali and Loreto regions in Peru and the Yavarí Valley in Brazil.<sup>602</sup>
377. Given that the Tagaeri-Taromenane Restricted Area abuts similar territories in Colombia and Peru, emphasis has been given to the need for concerted international action to save these indigenous peoples from extinction. However, according to

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<sup>597</sup> Specifically, the State indicated that the Colombian government, led by the Ministry of the Interior, is the focal point for the development of an ACTO-IDB program: Regional Framework for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact. As part of this program, it has actively participated in technical exchanges and institutional strengthening. These experiences were essential for technical training of the officials in charge of designing protection policies in Colombia, to consider the successes and errors of countries that have made significant progress on this issue, understand the regional dimension, and create a very important regional technical and support network that continues to operate today. State of Colombia, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, MPC/OEA No.: 445/2019, April 12, 2019.

<sup>598</sup> State of Ecuador, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 4-2-044/2019.

<sup>599</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, 2018, p. 5.

<sup>600</sup> According to AIDSESEP, this involves major transborder expanses of continuous territory encompassing different legal mechanisms, with the common element being the presence and movement of indigenous peoples in voluntary isolation or initial contact, which requires implementing and managing their protection in a coordinated, strategic way with each of the players and sectors with connections to these corridors. AIDSESEP, Programa Nacional de Aidesep para Pueblos Indígenas en situación de Aislamiento y situación de Contacto Inicial (PIACI); IACHR, Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco, 165<sup>th</sup> session, Monday, October 23, 2017.

<sup>601</sup> Castro, Meylenn, "Debatén propuesta de Corredor Territorial para pueblos aislados," SERVINDI, December 16, 2016.

<sup>602</sup> AIDSESEP, Programa Nacional de Aidesep para Pueblos Indígenas en situación de Aislamiento y situación de Contacto Inicial (PIACI).

information received by the IACHR, the Ecuadorian State has not yet reached out to its neighboring countries regarding the protection of the members of the Tagaeri and Taromenane as they move about the area.<sup>603</sup>

### ***C. Main Threats to the Full Enjoyment of the Human Rights of Peoples in Voluntary Isolation and Initial Contact***

#### **1. Contact**

378. The IACHR reiterates that most of the threats to the life and integrity of indigenous peoples in voluntary isolation and initial contact stem from contact. This contact can be direct and deliberate, such as, for example, the arrival of religious missionaries who seek to evangelize the peoples in isolation. However, contact can also happen indirectly, in circumstances in which individuals enter territories transited by peoples in isolation and leave objects that may be found by members of the indigenous communities. This can create a risk of contagion, especially from infectious diseases.<sup>604</sup>

379. With regard to Brazil, the IACHR received information indicating that by the late 1980s, FUNAI had adopted a strategy of protection that involved “no obligation to have contact with the indigenous peoples in isolation,”<sup>605</sup> in a context in which this issue was being debated by indigenous leaders and indigenist organizations. This posture was apparently taken because of reports, widely publicized nationally and internationally, that entire indigenous communities were being wiped out by epidemics or massacres. Prior to this, there had been a policy of forced contact and removal of the indigenous peoples in isolation, as part of what was understood as “the path of economic expansion” projected for the Amazon region, with the construction of infrastructure works, primarily roads. Despite the adoption of this policy based on the principle of no contact, the IACHR received information indicating that the State had established permanent contacts with Korubo groups in the Yavarí Valley beginning in 1996, and with the “Xinane isolated ones” in Acre, bordering Peru, in 2014, based on the government’s evaluation and without the participation of indigenous and civil society organizations.<sup>606</sup>

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<sup>603</sup> UN, Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council.”* Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum, Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, para. 41; PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 68.

<sup>604</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 91.

<sup>605</sup> Article 2(d) of the FUNAI statute recognizes as a principle that isolated indigenous peoples will be guaranteed the exercise of their liberty and their traditional activities without there being any obligation to initiate contact with them (“garantia aos povos indígenas isolados do exercício de sua liberdade e de suas atividades tradicionais sem a obrigatoriedade de contatá-los”).

<sup>606</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, p. 6.

380. In addition, according to the information provided, the indigenous peoples in isolation who use transborder territories straddling Brazil and Peru are continuously exposed to the violence of loggers and drug traffickers. One example of this problem involves contact with the isolated Xinane people, in Brazil. In 2014, a group known as the “Xinane isolated ones,” in the area of the upper Enviro River (Brazilian side of the border), approached Ashaninka people in Peruvian territory, fleeing acts of violence perpetrated against them, possibly by loggers. Starting then, permanent contact was reportedly established between this group and the FUNAI Ethno-environmental Protection Base. In 2017, members of this group of 34 individuals left the FUNAI base and went down the Envira River to the cities of Feijó and Rfo Branco. The Commission was told that the situation of this indigenous community in isolation shows the trauma involved in their contact with the Ashaninka people and then FUNAI.<sup>607</sup>
381. In terms of Colombia, the Commission was informed about a very troubling case from the past involving contact with the Nukak Makuk people. During the 1990s, the Nukak underwent a violent process of Westernization. The armed conflict and the arrival of missionaries and settlers were factors that caused members of the community to become infected with new diseases. On top of that came the introduction of new tools and different clothing than that worn by their ethnic group, as well as new jobs that many members of the community began to perform on coca plantations. This accelerated Westernization significantly reduced their ranks. Finally, the petroleum industry and the increase in drug trafficking and illicit crops permeated the life of this indigenous community. The IACHR has now been informed that the ongoing threats to life and integrity have reduced the population of the Nukak Makuk to just 400 members. The Commission notes with serious concern that this situation puts them at risk of becoming extinct as a people. The information received indicates that if no action is taken, this community could disappear completely in fewer than five years.<sup>608</sup>
382. In Ecuador, the Waorani are one of the indigenous peoples of recent contact. The Waorani remained in isolation until the mid-19th century, when the Amazon Basin began to see incursions of rubber prospectors. Contact with the Waorani was sporadic, as they were considered fierce warriors. It is known that they required an extensive territory because of their nomadic way of life. The information available indicates that, due to circumstances related to internal social order, they move in cyclical fashion toward the territories of the women’s ancestors. Among the troubling situations that arise when they move from one place to another are the encounters with outsiders who have come to occupy these locations. This

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<sup>607</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 4, p. 10.

<sup>608</sup> PUJ, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 82; IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, 146<sup>th</sup> session, November 4, 2012; IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

destabilizes their traditional management of territory and leads to conflicts with other groups, which are manifested in attacks.<sup>609</sup>

383. In Peru, there were many situations of forced contact in the 19th century, as a result of religious missions in the Amazon region. Jaime Coricepa, a member of the Harakmbut people, put it this way: “The memory is fresh in our minds of how our people were contacted in the Madre de Dios region, in Peru, where more than 50,000 of us, approximately, lived. With the forced contact carried out by the Dominicans, there are now 3,000 to 4,000 of us who belong to the Harakmbut people.”<sup>610</sup> One recent situation involves members of the Mashco Piro people who appeared on the shores of the upper Madre de Dios River. The reason for their exposure to contact was presumably the enormous pressures from illegal loggers and oil and gas activities in their territory, a declared indigenous reserve. This situation was addressed by the IACHR, which maintained that the fact that members of this indigenous group are so close to areas of transit exposes them to possible contact, with all the consequences this may have. It has been reported that since 2015, the Vice Ministry of Interculturality has adopted a Special Plan to attend to the needs of this community. The IACHR cautions that this has reportedly intensified contacts between civil servants and the population in isolation and led to the establishment of relationships of dependence, attracting more members of this indigenous community.<sup>611</sup>

## 2. Pressure on Lands and Territories

384. The IACHR reiterates that the protection of territory is fundamental to protecting the physical, cultural, and psychological integrity of indigenous peoples in voluntary isolation and initial contact. Along these lines, it 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.”<sup>612</sup> However, as the IACHR noted, one of the main threats to indigenous peoples in voluntary isolation and initial contact is the enormous pressure on the territories they inhabit and move through, a situation that reportedly has not changed in recent years. While areas with varying degrees of protection have been established in many States,

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<sup>609</sup> PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, pp. 66-69.

<sup>610</sup> IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

<sup>611</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 96; IACHR, *Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco*, 165<sup>th</sup> session, Monday, October 23, 2017.

<sup>612</sup> 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.

outsiders continue to encroach on these territories, leading to contacts that not only are forced but that endanger their lives.<sup>613</sup>

385. The IACHR has been informed that in Bolivia, despite its constitutional recognition of the rights of indigenous peoples in voluntary isolation and initial contact, political will is needed to guarantee these rights in practice. In some cases, the existence of indigenous peoples in isolation has not been recognized, despite the evidence. Statements have also been made to the press denying the existence of such peoples.<sup>614</sup>
386. With respect to Brazil, the IACHR was informed that as of October 2018, there were 123 infrastructure projects (hydroelectric, thermoelectric, railways, waterways, and roads) planned for the coming years that would have a direct impact on 58 territories where the presence of peoples in isolation has been recorded. Added to that is the recent drastic budget cut to the General Coordination Office of Indigenous Peoples in Isolation and Recent Contact, which compromises the success of the policy of providing territorial guarantees and protection for such peoples. This budget cut reportedly has had a direct impact on FUNAI's 11 Ethno-environmental Protection Fronts, paralyzing or severely limiting their actions in the field.<sup>615</sup>
387. In the case of the Yanomami people, in Brazil, it has been reported that although they have usufruct rights to their lands, they still do not have collective ownership title; thus, their territory is currently part of the Biosphere Reserve. Moreover, there is opposition to recognition of Yanomami ownership, and a reduction in the size of this protected area is reportedly being promoted to favor mining, cattle ranching, and colonization.<sup>616</sup> The situation is even more serious in the case of peoples in isolation who have yet to receive official recognition. For example, there is said to be evidence pointing to the presence of an isolated people known as "Cara Preta" on Bananal Island, in the Mata del Mamón region. This community is reportedly threatened by the encroachment of cattle farmers, fires that have been set to restore natural grasses, predatory fishing and illegal hunting, and the construction of the TO-500 highway (Trans-Bananal).<sup>617</sup>

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<sup>613</sup> IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

<sup>614</sup> UN, "Summary of meeting, jointly prepared by the Special Rapporteur on the rights of indigenous peoples of the United Nations and the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights – Working meeting on the rules of international law relating to the human rights of indigenous peoples in voluntary isolation and initial contact in the Amazon and Gran Chaco," A/HRC/39/17/Add.1, June 27, 2018, paras. 15 and 28. It was also reported that CANOP's petition to adopt a decree for the protection of Ayoreo peoples in isolation had been rejected. IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

<sup>615</sup> Resources in the 2018 budget are reportedly 70% lower than in the 2014 budget and approximately 20% lower than in 2017. CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 6.

<sup>616</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 3.

<sup>617</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 11.

388. In terms of Ecuador, based on an application presented to the IACHR for the benefit of the Tagaeri and Taromenane peoples in isolation,<sup>618</sup> precautionary measures were granted to protect their life and health, because of murders over reprisals linked to illegal tree felling in Yasuní Park.<sup>619</sup> In April 2013, the petitioners claimed there had been a new massacre directed against these communities. They indicated that on March 30, between 12 and 18 Waorani individuals attacked the Taromenane with firearms and spears in revenge for the murder of a Waorani couple. As a result of these events, two Taromenane girls, ages 2 and 6, were abducted by members of the Waorani who had participated in the acts of violence. In January 2014, the IACHR requested that the Inter-American Court issue provisional measures “to order the Ecuadorian State to protect the life, physical integrity, right to family, and right of identity of the two girls from the Taromenani people.”<sup>620</sup> This request was dismissed because new information the State presented to the Court enabled it to ascertain that special measures had been adopted to address the girls’ complex situation.<sup>621</sup> Subsequently, the IACHR issued Admissibility Report 96/14.<sup>622</sup>
389. As for the territory of the Tagaeri and Taromenane peoples, the State created a “restricted area” (zona intangible) covering more than 700,000 hectares in the provinces of Orellana and Pastaza, inside the Yasuní Biosphere Reserve. The IACHR was informed that in January 2007, the area had been demarcated by means of Executive Decree 2187 (758,051 hectares). It was reported that there was a lack of funding for operating the restricted area and putting an end to illegal logging, and that the restricted area was not large enough, as it apparently does not cover the entirety of the Tagaeri and Taromenane territory. The State agreed with this last point, indicating that “the areas of occupation of these groups, and the places where there have been indications that they have passed by, exceed the territory that the Ecuadorian State has demarcated; thus it is essential for this area to be expanded in line with the patterns of habitation distinctive to these peoples.”<sup>623</sup> The IACHR also received information indicating that a portion of this territory extends into Peru, so that one pending task would be to work with that country on steps to protect the Tagaeri and Taromenane as they move about.<sup>624</sup>
390. According to recent information, in the context of Executive Decree 230 of November 2017, a referendum was held on February 4, 2018, in which the Ecuadorian people were asked whether they approved of increasing the restricted

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<sup>618</sup> IACHR, *Report on Admissibility No. 96/14*, Petition 422-06, Tagaeri and Taromenani Indigenous Peoples in Isolation (Ecuador), November 6, 2014, para. 15.

<sup>619</sup> IACHR, “*MC-91-06*, The Tagaeri y Taromenani Indigenous Peoples,” May 10, 2006.

<sup>620</sup> IACHR, *Report on Admissibility No. 96/14*, Petition 422-06, Tagaeri and Taromenani Indigenous Peoples in Isolation (Ecuador), November 6, 2014, para. 13.

<sup>621</sup> I/A Court H.R., *Matter Regarding Two Girls of the Indigenous People of Taromenane in Voluntary Isolation*, provisional measures regarding Ecuador, Order of March 31, 2014, para. 18.

<sup>622</sup> IACHR, *Report on Admissibility No. 96/14*, Petition 422-06, Tagaeri and Taromenani Indigenous Peoples in Isolation (Ecuador), November 6, 2014, para. 60.

<sup>623</sup> State of Ecuador, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, Note No. 4-2-044/2019.

<sup>624</sup> PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 68.

area by at least 50,000 hectares. This would mean reducing the area authorized by the National Assembly for oil and gas exploitation in Yasuní from 1,030 to 300 hectares. The referendum passed, with 67.31% voting in favor.<sup>625</sup> It should be noted that under Executive Decree 230, activities within the part of the buffer zone located inside Yasuní National Park (PNY) are subject to the park's operating plan. This area represents more than 85,589 hectares located in the northern part of the current Tagaeri-Taromenane Restricted Area (ZITT), in other words, more than 21% of the new buffer zone. This law is therefore believed to expand oil and gas exploitation to the proposed ZITT buffer zone, since petroleum extraction inside Yasuní National Park takes place in Blocks 16 (Repsol-YPF), 31 (Petroamazonas), and 43 (ITT-Petroamazonas). For this reason, it is believed that areas must not be subject to being defined in a park's operating plan, since such a plan would allow oil and gas exploitation.<sup>626</sup> Another aspect that warrants special attention is the fact that the decree in question grants the ability to authorize activities in the ZITT buffer zone to the authority in charge of protecting indigenous peoples in isolation; the decree's transitory provisions establish that this will be the responsibility of the Department for the Protection of Indigenous Peoples in Voluntary Isolation, part of the Ministry of the Environment's Sub-Secretariat for Natural and Environmental Patrimony. Available information indicates that the main challenge this presents is that the protection of indigenous peoples in isolation falls under the same authority that grants environmental permits and licenses for oil and gas development.<sup>627</sup>

391. In the case of Peru, the Commission learned of the recent approval of Law 30723, which declares as a priority and national interest the construction of roads in border areas and the upkeep of unpaved roads in the department of Ucayali. This law would reportedly enable activation of administrative expropriation proceedings so that roads can be built; the transfer of communities; and a lack of protection for natural protected areas.<sup>628</sup> The IACHR was told that the implementation of this law would have negative effects on indigenous peoples in isolation and initial contact, due to the construction of a 227-kilometer road between the districts of Puerto Esperanza (province of Purús, Ucayali) and Iñapari (province of Tahuamanu, Madre de Dios), along the entire border with Brazil. The road projects in this area are said to pose a risk to indigenous reserves that have been declared as such to protect these communities, specifically the Isconahua, Murunahua, and Mashco Piro indigenous reserves. Recently, the Peruvian executive branch promulgated Supreme Decree 005-2018-MTC, which establishes provisions so that road infrastructure projects are carried out in compliance with the body of laws that govern the environment and natural protected areas and ensure the protection of indigenous peoples in

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<sup>625</sup> PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 69.

<sup>626</sup> PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 70.

<sup>627</sup> PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 71.

<sup>628</sup> CAAAP- UARM, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 5, 2018, p. 31; IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 42; IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, 146<sup>th</sup> session, Sunday, November 4, 2012.

isolation and initial contact. However, this decree would not appear to eliminate the risk associated with Law 30723. The Commission reiterates that “it is essential that any infrastructure construction or maintenance project that could affect indigenous communities be carried out in full compliance with the national legal framework in Peru, and the international legal framework on the rights of indigenous peoples, including adequate processes of free, prior and informed consultation,” given the characteristics of these indigenous peoples.<sup>629</sup>

392. Another place where the IACHR was told there is pressure on indigenous territories is the Kugapakori, Nahua, Nanti, and Others Territorial Reserve, due to the existence of the PE-5S national highway project, or Longitudinal de la Selva Sur, whose Camisea-Boca Manu stretch overlaps the reserve. Added to that is the increase in deforestation, including illegal deforestation, in the territories inhabited by peoples in isolation, such as in the case of the Murunahua Indigenous Reserve, among others.<sup>630</sup>

### 3. Extraction of Natural Resources

393. The IACHR has taken note that legal measures that are contrary to the rights of these indigenous peoples and that jeopardize their existence have been enacted in Bolivia. These include various decrees that approve the expansion of areas of oil and gas activities into indigenous territories and protected areas. In addition, Mining Law 535, enacted in 2014, would allow mineral exploitation in national parks, native community lands (TCOs), and forestry production areas, among others. It also gives actors in the mining sector preferential usage, access, surface, mineral, and other rights, to the detriment of the collective rights of indigenous peoples to their territories and to management of their territories.<sup>631</sup> In this context, the IACHR has cautioned about the fact that the Madidi oil block overlaps Madidi National Park and the Toromona “absolute reserve” area (Reserva Zona Intangible y de Protección Integral de Reserva Absoluta-Toromona). However, according to available information, this situation is continuing. One recently reported case involves oil and gas exploration in the Nueva Esperanza and Río Beni blocks.
394. In fact, the available information indicates that in 2015, the State ordered seismic exploration in the Nueva Esperanza and Río Beni blocks, both of which overlap indigenous territories with title (in the case of TCO Araona) or in the process of obtaining title (TCO Tacana II), and overlap areas where the State has recorded the presence of one or several groups of indigenous peoples in isolation. In April 2016,

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<sup>629</sup> IACHR, [Press Release 26/18](#) – “Experts on the Rights of Indigenous Peoples of the IACHR and the United Nations express their concern at the adoption of a law that declares the construction of highways in the Peruvian Amazon as a priority and a national interest,” Washington, D.C., February 13, 2018.

<sup>630</sup> IDEH PUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 42; DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 18; IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011.

<sup>631</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 29, 2018, p. 66.

petroleum exploration reportedly began with the signing of a contract between YPFB and the company BGP. According to information received by IACHR, the seismic exploration produced significant direct impacts. The effects suffered by the Tacana people were said to range from changes in water use to the breakdown of harmony within the communities. Given that it was impossible for them to stop the entry of the oil company, the Tacana participated in a consultation process and managed to obtain the State's commitment to respect some of their demands, such as ensuring the rights and lives of the community living in isolation. Beginning in August 2016, the community in isolation began to show signs of pressure from the presence in their territory of more than 1,500 workers, the establishment of camps and heliports, the constant helicopter flights, and the use of explosives in underground detonations. Between September and November 2018, the incidents sparked growing tensions, with the potential to trigger violence. Despite that, available information indicates that the oil company YPFB denied that there was a "supposedly uncontacted people" and stated that the seismic exploration would proceed unchanged.<sup>632</sup>

395. As to Brazil, the Commission was previously informed about violent clashes in the state of Maranhão between illegal loggers and members of the Awá Guajá people living in initial contact. Recent information indicates that loggers continue to encroach into the area. Accumulated deforestation in this indigenous land reportedly totaled 24,028 hectares as of 2014. In 2015 and 2016, possibly illegal fires are said to have touched more than 200,000 hectares, around half the territory. The Commission was cautioned that unless the direct threat of the invaders could be controlled, as well as the deforestation and its impacts on food sources, these threats could pressure the Awá Guajá people into a situation of extreme violence and desperation and a situation in which they subject themselves to contact and to the inevitable relations of dependence that this implies.<sup>633</sup>
396. In addition, the Kawahiva people, whose existence was confirmed by FUNAI, live in the municipality of Colniza, in northern Mato Grosso, Brazil. The boundaries of their lands were declared by the federal government in April 2016. According to information received by the IACHR, the future of the Kawahiva people is seriously threatened, as their land—even with its official borders demarcated—is being encroached upon due to illegal logging, which supports a large concentration of logging companies in the region. Another area affected by illegal logging is said to be the Itata-Ituna Indigenous Land, which has been under a restricted use order since 2011; the construction of the Belo Monte hydroelectric dam has reportedly generated increasingly high rates of deforestation. Similarly, illegal extraction of

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<sup>632</sup> CEDIB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 29, 2018, pp. 66-71; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 107.

<sup>633</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 102; CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 8.

timber is said to be going on inside the Pirititi Indigenous Land, in Roraima, which is under a restricted use order from FUNAI.<sup>634</sup>

397. In the case of Ecuador, according to background information provided to the IACHR, the territory of the Waorani, located in the northeastern jungle of the Amazon region, has been under pressure since 1960 due to the activity of oil companies and evangelical organizations (such as the SLI). These processes severely affected the living conditions and the culture of the Waorani people, who in recent years organized to defend their collective rights. These pressures increased with the adjudication of oil and gas projects to two companies (Occidental and Petrobas) in Yasuní National Park, which is home to the Waorani and is also part of the migration territory of the Tagaeri and Taromenane peoples living in isolation. According to the information received by the IACHR, the environmental impact assessment for the original project recognized that the planned road and pipeline would go through mature forest and over hills, alluvial plains, river crossings, and swamps, jeopardizing one of the regions with the most biodiversity of fauna and flora, along with several animal species in danger of extinction. As was indicated earlier, the magnitude of the project led to its inclusion as one of seven issues submitted to referendum in 2018.<sup>635</sup> In June 2019, Presidential Decree No. 751 was approved. Although this law expands the restricted area of Yasuní National Park by more than 50,000 hectares, it also opens the door to oil production through the provisions established in Article 3.<sup>636</sup>
398. There is also Petroecuador's ITT Project, considered Ecuador's leading petroleum project, with proven reserves of more than 800 million barrels of heavy crude in the Ishpingo Tambocha-Tiputini oilfields, in Yasuní National Park. Initially, the intention was reportedly to refine the crude oil obtained from this block right in Yasuní National Park<sup>637</sup>; however, the plan was revised so that its activities would remain outside the buffer zone and would not exceed the 300 hectares established in the 2018 referendum. Nevertheless, according to a recent study carried out by the group Colectivo de Geografía Crítica de Ecuador at the request of an association of community leaders (Asociación de Líderes Comunitarios Red Ángel Shingre), oil and gas exploitation will occupy some 600 hectares of Yasuní National Park.<sup>638</sup>
399. With respect to Venezuela, the IACHR received information regarding the implementation of the Orinoco Mining Arc as a National Strategic Development Zone

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<sup>634</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 9.

<sup>635</sup> El Universo, [Resultados consulta popular 2018 en Ecuador](#), consulted on August 9, 2019; Telesur, ["Anuncian resultados oficiales de la consulta popular en Ecuador."](#) February 8, 2018.

<sup>636</sup> Republic of Ecuador, [Decreto Presidencial N° 751](#), June 11, 2019.

<sup>637</sup> Human Rights Council, [Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council."](#) Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum, Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, para. 37; PUCE, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 67.

<sup>638</sup> Colectivo de Geografía Crítica, [Informe de análisis de la explotación territorial por las actividades petroleras en los Bloque 31 y 43](#), November 2018, p. 10.

covering 111,846 square kilometers, across 12% of the national territory. It was reported that the project would produce severe impacts on peoples in isolation and initial contact, such as the elimination and alteration of land and water ecosystems; effects on traditional activities (especially planting, hunting, fishing, and gathering); reduction of Amazonian biodiversity; contamination of the Cuchivero, Aro, Cuyuní, and Orinoco rivers; contamination and major deposits of sediment from the Icabarú River into the Caroní River, and from the Caroní into the Guri reservoir; and the proliferation of diseases (such as malaria).<sup>639</sup>

#### 4. Infections and Other Diseases

400. Indigenous peoples in isolation and initial contact share the characteristic of being highly vulnerable to outside diseases, due to their lack of immune defenses.<sup>640</sup> Contagion can trigger a series of large-scale epidemics and deaths, which is why various experts indicate that the best prevention measure is to avoid contact.<sup>641</sup> That was recognized in 2007 in the “Quito Declaration,” which came out of an international meeting entitled “Toward the Establishment of Public Policies and Action Plans to Guarantee the Right to Health of Peoples in Isolation and Initial Contact in the Amazon Region, the Gran Chaco, and the Eastern Region of Paraguay.”<sup>642</sup>
401. In terms of contagion and disease, according to information received by the IACHR with respect to Brazil, FUNAI and the Special Secretariat for Indigenous Health (SESAI) have coordinated contingency plans. It was also reported that the State was not providing a higher level of health care to populations close to the territories of indigenous peoples in isolation. In that regard, the situation in the Javará Valley is troubling, a region with a confirmed presence of 15 peoples or segments of peoples in isolation, in which sporadic contacts with contacted indigenous peoples are relatively frequent. Contagious diseases are said to be common among these peoples. For example, in the village of Jarinal, within the Javará Valley Indigenous Land, home to the Kanamari and Djohum Djapá peoples, 15 individuals reportedly

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<sup>639</sup> UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 38.

<sup>640</sup> Huertas, Beatriz, “Autodeterminación y salud,” En Huertas Castillo, Beatriz, El derecho a la salud de los pueblos indígenas en aislamiento y en contacto inicial, Ponencias presentadas en la reunión internacional en Quito, Ecuador 19-20 de octubre de 2007, Copenhagen: International Work Group for Indigenous Affairs (IWGIA), 2007, p. 37. See also Sánchez Albornoz, Nicolás, La población de la América Española, Cambridge University Press, Editorial Crítica, Barcelona, 1990, p. 22; Nascimento, Hilton. Los pueblos indígenas aislados de la “Tierra Indígena Valle del Yavari” y la epidemia de malaria y hepatitis B y D, Copenhagen, 2007, p. 73.

<sup>641</sup> Cueva, Neptalí, “Una norma para la salud de los pueblos aislados y en contacto inicial,” in El derecho a la salud de los pueblos indígenas en aislamiento y en contacto inicial. Ponencias presentadas en la reunión internacional en Quito, Ecuador 19-20 de octubre de 2007, Copenhagen, 2007, pp. 47-48.

<sup>642</sup> Comité Indígena Internacional para la Protección de los Pueblos en Aislamiento Voluntario y Contacto Inicial de la Amazonía, el Gran Chaco y la Región Oriental del Paraguay, *Declaración de Quito*, Hacia el planteamiento de políticas públicas y planes de acción para garantizar el derecho a la salud de los pueblos en aislamiento y contacto inicial de la Amazonía, el Gran Chaco y la Región Oriental del Paraguay, Quito, October 19-20, 2007, para. 16.

died in 2018, primarily from respiratory diseases.<sup>643</sup> Prior to that, in 2014, members of the isolated Xinane people reportedly came into contact with members of the Ashaninka community in the village of Simpatía, in the Indigenous Land of Kampa and Isolated People of the Envira River/AC. As a result, they developed severe respiratory infections. The doctor who was called on to respond to the emergency said that the area's lack of infrastructure, such as adequate means of communication and equipment, could have compromised the operation.<sup>644</sup> Similarly, the IACHR received information indicating that gold prospectors operating in Yanomami territory are severely polluting the rivers with mercury. In 2016, a study was done on hair samples from members of 19 Yanomami communities, revealing that more than 90% of them had been severely affected.<sup>645</sup>

402. In Colombia, as indicated earlier, communities have been identified where the population suffers from high levels of mercury in the blood. In the case of the area around Caquetá, for example, a hair-sample study done among members of the Bora Miraña people found that they had mercury poisoning. Studies in the Putumayo area also identified communities in the same situation. There are no reports of prevention measures being adopted. This is of particular concern given that all these communities are near indigenous peoples living in isolation. This would suggest that isolated groups could become poisoned by eating contaminated food, especially fish from the river.<sup>646</sup>
403. In Peru, as the IACHR has noted, the public health crisis continues among indigenous peoples who live in the Kugapakori, Nahua, Nanti, and Others Territorial Reserve, due to the prevalence of anemia, malnutrition, hepatitis B, and tuberculosis.<sup>647</sup> One of the central risks faced by the inhabitants of this territory has to do with the Camisea project, which involves the exploitation of the largest natural gas reserve in the country and one of the most important in the region. Besides the extraction rigs, the need to transport the gas resulted in the construction of other infrastructure, including two pipelines that go through the territorial reserve inhabited by several indigenous peoples, some of them living in voluntary isolation. In November 2013, approval was given for a new expansion of this extractive project, which by 2004 had already had an impact on two thirds of this territorial reserve.<sup>648</sup> The impacts of this project on the Kugapakori, Nahua, Nanti, and other indigenous peoples have been severe and varied. In fact, as a result of the accidental discovery of mercury in the blood of a boy and his mother, both of them members

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<sup>643</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 12.

<sup>644</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 12.

<sup>645</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, p. 3.

<sup>646</sup> Pontificia Universidad Javeriana de Bogotá, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on December 10, 2018, p. 86.

<sup>647</sup> IDEHPUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on November 16, 2018, p. 43.

<sup>648</sup> Ministry of Health, [Pueblos en situación de extrema vulnerabilidad: El caso de los Nanti de la reserva territorial Kugapakori Nahua Río Camisea. Cusco](#), May 2004, p. 72.

of the Nahua de Santa Rosa de Serjali people, the Ministry of Health conducted a study which concluded that 78% of the samples taken from the Nahua population presented high levels of mercury.<sup>649</sup> The transformations in the reserve have also altered the migration routes of the indigenous peoples who live in the area, upsetting their equilibrium and exposing them to new risks. In addition, the IACHR received information indicating that the presence of Mashco Piros on the shores of the upper Madre de Dios River since 2011 has exposed them to a variety of outsiders, leading to various acts of hostility, including the deaths of two members of neighboring communities. The State has reportedly still not cleared up these cases.<sup>650</sup>

404. In the case of Venezuela, the Commission was told that there are no public policies to ensure that vaccination plans are in place to control vaccine-preventable diseases and malaria, and to enable the timely provision of antiretrovirals for HIV patients. The IACHR observes that in 2018, 541 cases of measles were confirmed among indigenous populations primarily located in the states of Amazonas (162 cases) and Delta Amacuro (332 cases). In addition, during this same period there were 62 measles-related deaths, 35 in Delta Amacuro (all in the Warao ethnic group) and 27 in Amazonas (26 in the Sanema ethnic group and 1 in the Yanomami).<sup>651</sup> The spread of this outbreak of measles through the region was reportedly associated with contact with illegal miners, especially in Roraima (Brazil),<sup>652</sup> where 145 cases were officially confirmed in 2018.<sup>653</sup>

## 5. Direct Attacks

405. There is great concern over acts of unpunished violence toward indigenous peoples in isolation in the Amazon region. The IACHR has been informed about deaths of indigenous persons in clashes with illegal loggers or others who have encroached upon their territories; these are not reported by the State, as that would amount to evidence of entry into a restricted protection area. The violence against indigenous peoples in isolation is said to be systematic and intentional, employed for the purpose of killing or displacing these groups that may be found living on top of oil, around timber of high market value, or in areas where hydroelectric dams or extractive projects are going to be built. This violence involves acts of harassment,

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<sup>649</sup> Ministry of Health, National Center for Epidemiology, Prevention, and Control of Diseases, [Análisis de Situación de Salud del pueblo Nahua de Santa Rosa de Serjali en la Reserva Territorial Kugapakori, Nahua, Nanti y Otros](#), January 2017, p. 16.

<sup>650</sup> IDEHPUCP, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, November 16, 2018, p. 43.

<sup>651</sup> Pan American Health Organization, World Health Organization, [Epidemiological Update: Measles](#), August 7, 2019, p. 8.

<sup>652</sup> UCAB, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 10, 2018, p. 69.

<sup>653</sup> Pan American Health Organization, World Health Organization, [Epidemiological Update: Measles](#), August 7, 2019, p. 8.

such as using flyovers or satellite photos to look for dwellings so that members of the community can be tracked down and killed.<sup>654</sup>

406. In information it received concerning Brazil, the Commission was told about the alleged murder, in August 2017, of members of the indigenous people known as the Flecheiros, on the Jandiatuba River, Javari Valley Indigenous Land—an incident that has not yet been confirmed by the State. The deaths are presumed to have occurred at the hands of illegal miners. The Office of the Federal Prosecutor of Tabatinga reportedly investigated the complaint but closed the investigation for lack of evidence.<sup>655</sup>
407. As previously indicated, the members of the Yanomami indigenous people living in the jungles and mountains of northern Brazil and southern Venezuela are under constant threat from illegal gold miners and other outsiders who encroach on their lands. Despite some efforts by the Brazilian authorities to dismantle certain illegal operations, neither of the two States has apparently implemented adequate safeguards to eliminate the problem. Since July 2018, a Yanomami organization in Brazil called Hutukara has been reporting that two Moxateteu persons were killed by illegal miners in the Serra da Estrutura region. Despite official complaints and public communiqués, the authorities in Brazil reportedly have not investigated what happened. The FUNAI Ethno-environmental Protection Front in Boa Vista is said to lack the resources for an investigative flight. The protection outpost closest to Moxateteu lands reportedly was closed in 2015 due to budget cuts, which has left the Yanomami people in a highly vulnerable situation. It is likely that conflicts such as this one will continue to occur unless the miners are expelled from the area and the protection outpost is restored.<sup>656</sup>
408. This shows that these indigenous peoples, even those living in demarcated lands with the presence of Ethno-environmental Protection Fronts, are exposed to invaders who find it enormously easy to enter indigenous territories. The IACHR therefore stresses the importance of the FUNAI outposts and the presence of field workers and technical staff to monitor this territory, one of the largest in Brazil.
409. It has been reported that in 2011, in Manu National Park, in Peru, indigenous peoples in voluntary isolation and initial contact were appearing near the shores of the rivers, due to the pressures caused by timber activities in their territories. This reportedly led tourists to try to draw members of these communities down to the

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<sup>654</sup> IACHR, *Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco*, 141<sup>st</sup> session, Friday, March 25, 2011; IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, 146<sup>th</sup> session, November 4, 2012.

<sup>655</sup> CIMI, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, December 4, 2018, p. 7; Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, p. 6.

<sup>656</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, October 28, 2018, p. 2.

river by placing objects in tree branches. The tourists would then film from a boat while the indigenous people chased them with arrows.<sup>657</sup>

## 6. Drug Trafficking

410. Drug trafficking is often carried out in remote, hard-to-access tropical zones, precisely where indigenous peoples in isolation live and move about. The Commission therefore considers that these activities pose a two-fold risk to peoples in voluntary isolation: First, the presence of drug traffickers presupposes a risk of contact with and aggression against the isolated indigenous peoples. And second, efforts to combat these activities tend to increase the presence of State agents, which in turn further increases the risk of contact.<sup>658</sup>
411. In this context, with respect to Colombia, the IACHR received information on the violence being experienced by the Nükak Makú people as a result of battles over cocaine and the armed conflict among guerrillas, paramilitary forces, and the Colombian army. This situation has reportedly forced the Nükak Makú to abandon their homes and seek refuge in San José del Guaviare, in improvised camps near the Guaviare River and in the vicinity of the Nükak Makú reserve. Even though the State had encouraged the return of the displaced Nükak Makú to the jungle, the place that was chosen was reportedly not suitable. On top of that, there was a flu epidemic and the tragic suicide of one of their spokesmen, Mao-be; this triggered the decision by the Nükak Makú to leave that place behind and return to San José. The peace Accord signed in 2016 between the government of Colombia and the FARC included a chapter on ethnic groups, which mentions the Nükak Makú and establishes their return and the demining and restitution of their reserve. However, that return has reportedly still not been carried out, partly because of the existence of dissident armed groups and because of the presence of landmines in their territories.<sup>659</sup>
412. Likewise, according to information received on Peru, news reports from recent months indicate that there are clandestine runways for drug shipments in the area of Manu National Park (Madre de Dios) and generally in the Valley of the Apurímac, Ene, and Mantaro Rivers and adjacent areas. These areas also make up the ancestral territory of indigenous peoples in isolation and initial contact, as well as of indigenous peoples such as the Machiguenga, the Harambut, the Mashco Piro, and others.<sup>660</sup>

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<sup>657</sup> IACHR, *Indigenous Peoples in Voluntary Isolation in South America*, 146<sup>th</sup> session, Sunday, November 4, 2012.

<sup>658</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, paras. 133-135.

<sup>659</sup> Survival International, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 4.

<sup>660</sup> DAR, Response to the Questionnaire on Rights of Indigenous Peoples of the Pan-Amazon Region, received by the IACHR on October 28, 2018, p. 8.

413. The IACHR reiterates that drug trafficking-related activities pose a particular threat to the life and integrity of indigenous peoples, particularly communities living in voluntary isolation and initial contact. The Commission therefore urges the States to take all necessary measures to ensure that illegal activities such as drug trafficking do not take place in the territories where such peoples live or move about, and to respect the principle of no contact in the control of those illegal activities.<sup>661</sup>
414. Finally, as this chapter reflects, there are obligations established at the international and domestic level within the States to protect the lands, territories, and natural resources of indigenous peoples in voluntary isolation or in initial contact in the pan-Amazon region. In this regard, it is essential to continue implementing them and to identify and address the various factors that constitute a threat to the right of these indigenous peoples to physical and cultural survival.

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<sup>661</sup> IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, recommendation 20.



CHAPTER 5  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

415. The pan-Amazon region is a territory historically occupied by indigenous peoples and communities that have lived in harmony with nature. The arrival and expansion of economic activities foreign to the region brought a series of changes to the way of life of these populations, including serious violations of their human rights. Their priorities for development were not respected, nor was their worldview, and they were enslaved and forced to extract the territory's natural resources.
416. In this report, the IACHR established how the increase of extractive activities in the Amazon region has caused deforestation and created tensions over the use of the land and its resources. In some countries, illicit activities have gained strength, facilitating drug trafficking routes, sexual exploitation, and killings. The situation has become even more tense with the development demands associated with infrastructure megaprojects; exploitation of oil, gas, and minerals; exploitation of forests; use of genetic resources; construction of dams; and industrial-level fishing and agriculture, among other activities. The impacts on the environment and on local communities are irreversible, and in general have been imposed on indigenous peoples without respect for their right to consultation and to free, prior, and informed consent.
417. The situation was different for some indigenous peoples that decided and were able to flee to remote, hard-to-access forests and kept themselves in isolation from outsiders. For many years, these communities have preserved their ways of life; however, today they are in an especially vulnerable situation, as the pressure on their lands has intensified and they lack sufficient resources to defend themselves.
418. The Commission notes the development in the international arena of legal frameworks to recognize the rights of indigenous peoples, and it welcomes the efforts States have made through the crafting of new domestic laws and public policies geared toward these communities.
419. However, in recent years the Commission has seen new problems emerge that threaten the survival of these peoples—particularly alterations of the environment and climate change—and that make it increasingly difficult for them to maintain their ways of life and their interaction with the environment. In this sense, with a view to expanding the scope of recognition, consolidation, and protection of the rights of indigenous and tribal peoples, in keeping with the region's sustainable development, the IACHR proposes the following recommendations to the States that make up the pan-Amazon region:
1. For most indigenous and tribal peoples of the pan-Amazon region, the notion of territory tends to be based on natural boundaries, such as rivers or

mountains, and not on political boundaries between countries or subnational divisions. That is why it is urgent for the States to cooperate in coordination with each other, bilaterally or regionally as appropriate, to achieve a greater and more effective respect for the rights of these indigenous communities in the Americas. In this regard, the IACHR urges the States concerned to adopt joint bilateral or regional measures for protection. These measures should be based on respect for and guarantee of the right of the affected indigenous peoples to self-determination; their right to their lands, territories, and resources; their right to health; and their right to participation and to prior, free, and informed consultation and consent.

2. Design, implement, and effectively enforce an appropriate, comprehensive framework to protect the human rights of the indigenous and tribal peoples in the pan-Amazon region, so that the human rights violations laid out in this report can be addressed from the standpoint of territory and the environment, with respect for the ecological, social, and cultural spaces where these communities live and flourish.
3. Take decisive steps to strengthen the presence of the State in the pan-Amazon region, without interfering in the lives, uses, and customs of the indigenous peoples who live there, but in a way that prevents the arrival and encroachment of illegal activity and operators who threaten, harass, and jeopardize the physical integrity of members of indigenous peoples. The State's presence is essential to safeguard the life and the peace of indigenous peoples living in the territory and to prevent illegal activities that go unpunished.
4. Carry out the measures necessary to implement or strengthen systems designed to provide oversight and monitoring of extraction, exploitation, or development activities important to the pan-Amazon region, in a way that is consistent with the human rights obligations described in this report.
5. Adopt reasonable measures to prevent human rights violations in cases in which it is known that a particular individual or group of individuals faces a real and immediate risk associated with extraction, exploitation, or development activities in the pan-Amazon region.
6. Prevent, mitigate, and suspend any negative impacts on the human rights of the indigenous and tribal peoples that are negatively affected by extraction, exploitation, or development activities in the pan-Amazon region.
7. Refrain from attacking or harassing leaders or other individuals involved in defending the rights of indigenous and tribal communities, populations, or peoples in the pan-Amazon region, and where applicable, prevent such attacks or acts of harassment. Specifically, when aware of a real and immediate risk, adopt reasonable measures to prevent it from materializing; conduct serious investigations into incidents brought to the State's attention; and, where applicable, punish those responsible and offer appropriate

redress to the victims, whether the acts were committed by State agents or by private individuals.

8. Undertake decisive actions to combat impunity for human rights violations committed in the context of business-related or illegal activities in the pan-Amazon region, by means of thorough and independent investigations that result in the punishment of the perpetrators and masterminds, and individual and collective redress for the victims.
9. Adopt measures to demarcate and title the ancestral lands and territories of indigenous peoples.
10. Adopt measures to guarantee that the indigenous peoples of the pan-Amazon region have access to health and to differentiated and intercultural education, in consultation with the peoples themselves.
11. Support environmental conservation projects and initiatives that originate with indigenous and tribal peoples in the pan-Amazon region, taking into account and highlighting their ancestral knowledge.
12. Adopt any legislative, administrative, or other measures that may be necessary to fully implement and carry out, within a reasonable time frame, the right to consultation and, where applicable, to the prior, free, and informed consent of the indigenous and tribal peoples, in keeping with international human rights standards and with the full participation of the peoples and communities.
13. Amend any legislative, administrative, or other measures that may hamper the free exercise of the right to consultation and consent, where applicable, ensuring the full participation of the indigenous and tribal peoples.
14. Consult with the indigenous peoples and communities by implementing adequate and effective prior consultations that are fully in line with applicable international standards, in the case of efforts to implement any activity, development plan, or project for natural resource extraction or any other type of production in their lands or territories.
15. With regard to concessions that have already been granted or are being implemented, establish a mechanism to evaluate the need for modifying the terms to protect the physical and cultural survival of indigenous and tribal communities and peoples.
16. Ensure that public policies on development incorporate an intercultural focus that recognizes and incorporates economic and social development plans adopted by the indigenous peoples in their respective ancestral territories.
17. With respect to indigenous peoples in isolation and initial contact, the States should establish legal frameworks for the protection of these communities, taking a position of caution to ensure their physical and cultural survival.

Through this principle of caution, the States should commit to develop preventive and precautionary public policies to ensure at all times the survival of these indigenous peoples.

18. The IACHR reiterates the recommendations it made in its report *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights* and calls on the States of the region to act decisively to implement them.

# ANNEXES



## APPENDIX 1 – AMAZONIAN COUNTRIES AND PEOPLES

State	Area covered	Peoples	Relevant constitutional provisions
<b>Bolivia</b>	<p><b>Amazonian area:</b> Covers 724,000 km<sup>2</sup>, or 65.9% of the territory.<sup>662</sup></p> <p><b>Departments:</b> Beni and Pando, as well as the northern part of La Paz, Cochabamba, and Santa Cruz.<sup>663</sup></p>	According to the 2012 Census, there are 30 indigenous peoples in the Amazon region. <sup>664</sup>	<p><b>Political Constitution of the Plurinational State of Bolivia (2009)</b></p> <ul style="list-style-type: none"> <li>- Acknowledges the pre-colonial existence of indigenous and aboriginal farming (<i>campesino</i>) peoples and nations and their ancestral domain claims to their territories. Guarantees their self-determination within the framework of the unity of the State.<sup>665</sup></li> <li>- Contains several other Articles applicable to indigenous peoples, including communities in voluntary isolation and initial contact.</li> <li>- Contains a chapter expressly devoted to the Bolivian Amazonia.<sup>666</sup></li> </ul>

<sup>662</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. [Possible and sustainable Amazonia] Bogotá: ECLAC and Patrimonio Natural, 2013, p.17.

<sup>663</sup> Reyes, Juan Fernando and Herbas, Mónica Amparo. *La Amazonía boliviana y los objetivos del desarrollo sostenible*. [The Bolivian Amazon region and the sustainable development objectives] Pando Articulación Regional Amazónica y Herencia, 2012, p. 4.

<sup>664</sup> National Institute of Statistics *Principales resultados del Censo Nacional de Población y Vivienda 2012 (CNPV 2012)*. Plurinational State of Bolivia La Paz, 2013, p. 50.

<sup>665</sup> Political Constitution of Bolivia, Chapter 8 "Amazonia," Article 2.

<sup>666</sup> Political Constitution of Bolivia, Chapter 8 "Amazonia," Articles 390-392.

<p><b>Brazil</b></p>	<p><b>Amazonian area:</b> Covers 5,034,740 km<sup>2</sup>, or 59.1% of the territory.<sup>667</sup></p> <p><b>States:</b> Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Tocantins, Mato Grosso, and part of Maranhão. This area constitutes an administrative unit called "Legal Amazonia."<sup>668</sup></p>	<p>There are some 170 ethnic groups in the Amazon region. There are approximately 422 indigenous lands (<i>tierras indígenas</i> - TIs) covering 23% of the total Amazonian territory and accounting for 98.25% of all indigenous lands in Brazil as a whole.<sup>669</sup> The Quilombola peoples are likewise recognized as tribal peoples (See Introduction).<sup>670</sup></p>	<p><b>Constitution of the Federative Republic of Brazil (1988).</b></p> <ul style="list-style-type: none"> <li>- Devotes Chapter VIII to protection of indigenous rights. Recognizes indigenous peoples' traditional social organization, customs, languages and beliefs; and their ancestral rights to the land they have traditionally occupied.<sup>671</sup></li> <li>- Recognizes the ongoing possession of the lands traditionally occupied by indigenous peoples and their right to exclusive beneficial use (usufruct) of the soil, rivers, and lakes they harbor.<sup>672</sup> Their lands are inalienable and cannot be seized and their rights do not prescribe by virtue of any statute of limitations.<sup>673</sup></li> <li>- Recognizes the Brazilian Amazonia as part of the national heritage.<sup>674</sup></li> </ul>
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<sup>667</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.17.

<sup>668</sup> Instituto Socioambiental (Socio-environmental Institute) - ISA. *Las diferentes amazonías*. 2010.

<sup>669</sup> ISA. *Povos indígenas no Brasil*. [Indigenous peoples in Brazil] Location and extension of the TIs. 2018.

<sup>670</sup> Article 68 of the Record (*Acta*) of Transitory Constitutional Provisions of 1988 establishes that "the remaining Quilombo communities that are occupying their lands shall be recognized as the definitive owners of those lands and the State must issue their respective title deeds." Human Rights and Environmental Law Clinic at the University of the State of Amazonas. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on October 28, 2018, p. 13.

<sup>671</sup> Constitution of the Federative Republic of Brazil (1988), Article 231.2.

<sup>672</sup> Constitution of the Federative Republic of Brazil (1988), Article 231.2.

<sup>673</sup> Constitution of the Federative Republic of Brazil (1988), Article 231.2.

<sup>674</sup> Constitution of the Federative Republic of Brazil (1988), Article 225.7.

			<ul style="list-style-type: none"> <li>- Prohibits the displacement of indigenous groups from their lands, except ad referendum of the National Congress under exceptional circumstances.<sup>675</sup></li> <li>- Acknowledges that indigenous persons, communities, and organizations are legitimate parties to litigation in defense of their rights and interests.<sup>676</sup></li> </ul>
<b>Colombia</b>	<p><b>Amazonian area:</b> Covers 476,000 km<sup>2</sup>, or 41.8% of the territory.<sup>677</sup></p> <p><b>Departments:</b> Amazonas, Caquetá, Guainía, Guaviare, Putumayo, and Vaupés.</p>	<p>According to the 2005 National Administrative Department of Statistics (DANE) Census, there are 62 indigenous people living in the Colombian Amazonia.<sup>678</sup> That region contains 146 indigenous reservations covering 23 million hectares.<sup>679</sup></p>	<p><b>Political Constitution of Colombia (1991)</b></p> <ul style="list-style-type: none"> <li>- Upholds the right to self-determination as one of the core principles underlying Colombia's foreign relations.<sup>680</sup></li> <li>- Establishes an extra 2 Senators elected in a special national constituency for indigenous communities.<sup>681</sup></li> </ul>

<sup>675</sup> Constitution of the Federative Republic of Brazil (1988), Article 231.5.

<sup>676</sup> Constitution of the Federative Republic of Brazil (1988), Article 232.

<sup>677</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>678</sup> The indigenous peoples are the: Achagua, Andoke, Awa, Banano, Bara, Barasana, Bora, Caravana, Cocama, Coconuco, Coreguaje, Coyaima, Desano, Embera Katio, Embera, Eperara Siapidara, Guambiano, Guanaca, Guayabero, Inga, Kamentsa, Karijona, Kawiyari, Kofán, Kubeo, Kurripaco, Letuama, Makaguaje, Makuna, Matapí, Miraña, Nasa, Nonuya, Nukak, Ocaina, Piapoco, Piaroa, Piratapuyo, Pisamira, Puinave, Sáliba, Sikuani, Siona, Siriano, Taiwano, Tanimuka, Tariano, Tatuyo, Tikuna, Totoró, Tucano, Tuyuka, Uitoto, Yagua, Yanacona, Yauna, Yeral, Yukuna, Yuri, and Yurutí.

Instituto Amazónico de Investigaciones Científicas "SINCHI". *Balance anual sobre el estado de los ecosistemas y el ambiente de la Amazonas colombiana 2006*. Bogotá: Instituto Amazónico de Investigaciones Científicas "SINCHI", 2006, p. 38.

<sup>679</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.21.

<sup>680</sup> State of Colombia. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region. MPC/OEA No. 445/2019. April 12, 2019.

<sup>681</sup> Political Constitution of Colombia, 1991, promulgated in issue No. 114 of the Constitutional Gazette, Articles 171 and 176.

			<ul style="list-style-type: none"> <li>- Assigns jurisdictional functions to the authorities of indigenous communities.<sup>682</sup></li> <li>- In Title XI, Chapter 4 establishes a special indigenous territories regime.<sup>683</sup></li> </ul>
<b>Ecuador</b>	<p><b>Amazonian area:</b> Covers 115,613 km<sup>2</sup>, or 40.8% of the territory.<sup>684</sup></p> <p><b>Provinces:</b> Sucumbíos, Napo, Orellana, Pastaza, Morona Santiago and Zamora Chinchipe<sup>685</sup></p>	<p>According to the Integrated System of Indicators of the Nationalities and Peoples of Ecuador (SIDENPE), there are nine indigenous peoples in the Ecuadorian Amazon region.<sup>686</sup> Information provided by the State points out that persons identifying themselves as indigenous account for 30% of the population in the Amazon region.<sup>687</sup></p>	<p><b>Constitution of the Republic of Ecuador (2008)</b></p> <ul style="list-style-type: none"> <li>- Recognizes the co-existence of various indigenous nationalities within its territories.<sup>688</sup></li> <li>- Recognizes a list of those peoples' collective rights: the right to freely maintain, develop, and strengthen their identity, sense of belonging, ancestral traditions, and forms of social organization; the right of possession of their ancestral lands and territories; the right to prior consultation [Tr. regarding measures that might affect them]; and so on.<sup>689</sup></li> </ul>

<sup>682</sup> Pontificia Universidad Javeriana de Bogotá. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 11.

<sup>683</sup> IACHR. *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights*. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 63.

<sup>684</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>685</sup> State of Ecuador Reply to the Questionnaire in preparation for a report on the Rights of Indigenous Peoples of the pan-Amazon region. Note No. 4-2-044/2019.

<sup>686</sup> The specific indigenous peoples referred to are the: A'í Cofán, Secoya, Siona, Huaorani, Shiwiari, Zápara, Achuar, Shuar, and Kichwa in Amazonia. Sistema Integrado de Indicadores Sociales del Ecuador [Integrated Social Indicators for Ecuador System – SIISE.] “*Definiciones del SIDENPE. Listado de nacionalidades y pueblos indígenas del Ecuador*”.

<sup>687</sup> State of Ecuador Reply to the Questionnaire in preparation for a report on the Rights of Indigenous Peoples of the pan-Amazon region. Note No. 4-2-044/2019.

<sup>688</sup> Constitution of the Republic of Ecuador, published in Official Gazette 449, on October 20, 2008, second paragraph of Article 6.

<sup>689</sup> Constitution of the Republic of Ecuador, published in Official Gazette 449, on October 20, 2008, Article 57.

			<ul style="list-style-type: none"> <li>- Establishes specific constitutional rights of peoples living in voluntary isolation.</li> <li>- Recognizes the rights of nature, which are especially pertinent in an Amazon region context.<sup>690</sup></li> <li>- Recognizes that the territory of the Amazonian provinces constitutes an ecosystem that is crucial for the environmental balance of the planet.<sup>691</sup></li> </ul>
<b>Guyana</b>	<p><b>Amazonian area:</b> Covers 219,960 km<sup>2</sup>,<sup>692</sup> or 99% of the territory.<sup>693</sup></p> <p><b>Regions:</b> Barima-Waini, Pomeroon-Supenaam, Islas Esequibo-Demerara Occidental, Demerara-Mahaica, Mahaica-Berbice, Berbice Oriental-Corentyne, Cuyuni-Mazaruni, Potaro-Siparuni, Alto Tacutu-Alto Esequibo, and Alto Demerara-Berbice.</p>	<p>According to the 2012 Census, the indigenous population account for 10% of the national population and comprises the following peoples: the Warau, Wapishana, Arawak (Lokono), Kari'ña, Patamona, Makusi, Arekuna, Waiwai, and Akawayo<sup>694</sup>.</p>	<p><b>Constitution of the Cooperative Republic of Guyana (1980).</b></p> <ul style="list-style-type: none"> <li>- The Constitution originally contained no provision regarding the rights of indigenous peoples.</li> <li>- Article 149.g was inserted in 2003, stating that "indigenous peoples shall have the right to protection, preservation, and promulgation of their languages, cultural heritage, and way of life."<sup>695</sup></li> </ul>

<sup>690</sup> Constitution of the Republic of Ecuador, published in Official Gazette 449, on October 20, 2008, Articles 71, 72, 73, and 74.

<sup>691</sup> Constitution of the Republic of Ecuador, published in Official Gazette 449, on October 20, 2008, Articles 250-259.

<sup>692</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>693</sup> WWF (World Wide Fund For Nature) *Living Amazon Report 2016*. A regional approach to conservation in the Amazon. 2016, p. 8.

<sup>694</sup> Guyana Human Rights Association (GHRA). Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on November 16, 2018, p. 19.

<sup>695</sup> IACHR. *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights*. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 63.

<b>French Guyana</b>	<b>Amazonian area:</b> Covers 84,000 km <sup>2</sup> , or 97% of the territory. <sup>696</sup> <b>Districts:</b> Cayenne and Saint-Laurent-du-Maroni	Six indigenous peoples reportedly live in the Amazonian area: The Arawak, Kari'ña, Palikur, Teko, Wayampi, and Wayana <sup>697</sup> .	<b>French Constitution of 1791</b> - <b>French Guyana is part (an overseas region) of France.</b> Thus it is governed by the French Constitution, which contains no provision relating to indigenous peoples.
<b>Peru</b>	<b>Amazonian area:</b> Covers 782,826 km <sup>2</sup> , or 60.9% of the territory. <sup>698</sup> <b>Departments:</b> Loreto, Ucayali, and Madre de Dios, and parts of the departments of Amazonas, Cajamarca, Huancavelica, La Libertad, Pasco, Piura, Puno, Ayacucho, Junín, Cusco, San Martín, and Huánuco. <sup>699</sup>	According to the latest updated version of the Official Database of Indigenous or Aboriginal Peoples, there are 51 indigenous peoples in the Amazon region. <sup>700</sup> According to information provided by the State, there are 2,851 localities identified as pertaining to an indigenous people in the Amazon, and 2,158 recognized native communities. <sup>701</sup>	<b>Political Constitution of Peru (1993)</b> - The Constitution does not mention the term "indigenous peoples", but does establish rules for the protection of the rights of "small-farmer ( <i>campesino</i> ) <sup>702</sup> and native communities." <sup>703</sup> The latter are associated with indigenous peoples of the Amazon region.  - Recognizes the rights to cultural identity, legal standing, and organizational, territorial,

<sup>696</sup> WWF. *Living Amazon Report 2016*. A regional approach to conservation in the Amazon. 2016, p. 14.

<sup>697</sup> UNICEF. "French Guyana". *Atlas sociolingüístico de pueblos indígenas en América Latina*. 2010.

<sup>698</sup> Benavides, Margarita. "*Amazonía Peruana*". Lima: Instituto del Bien Común, 2009, p. 1. According to other sources, however, the Peruvian Amazon region covers 651440 km<sup>2</sup>, or 50.7% of the national territory.

ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>699</sup> Ministry of the Environment of Peru. *Mapa de Deforestación de la Amazonía peruana 2000*. Lima: Ministry of the Environment, 2009, p.14.

<sup>700</sup> Ministry of Culture of Peru. *Resolución Ministerial N° 208-2016-MC*. Lima, June 10, 2016

<sup>701</sup> Peruvian State. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region. Note No. 7-5-M /053 March 15, 2019.

<sup>702</sup> Article 2 of Law No. 24656, General Law of Campesino Communities, defines these collective bodies as "organizations of public interest, that exist legally and enjoy legal status (*personería jurídica*), made up of families that inhabit and control certain territories and are joined by ancestral, social, economic, and cultural ties, expressed in common ownership of the land, communal work, mutual assistance, democratic governance, and the practice of multisectoral activities, carried on with a view to achieving fulfillment for the benefit of their members and the country."

Congress of the Republic, *Law No. 24656*, General Law of Campesino Communities. Lima, December 9, 1992.

<sup>703</sup> Native communities are defined as "tribal groups in and alongside the jungle, made up of sets of families joined, above all, by: language or dialect, cultural and social characteristics, possession and joint and permanent use of one and the same territory, with nuclear or dispersed settlement patterns." IACHR *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights*. OEA/Ser.L/V/II. Doc. 47/13. 2013, par. 63.

			economic, and administrative autonomy; special jurisdiction based on their customary law; political participation, <sup>704</sup> and other rights.
<b>Suriname</b>	<b>Amazonian area:</b> Covers 142,800 km <sup>2</sup> , <sup>705</sup> or 99% of the territory. <sup>706</sup> <b>Districts:</b> Brokopondo, Commewijne, Marowijne, Nickerie, Para, Paramaribo, Saramacca, Sipaliwini, and Wanica.	Peoples found there: the Kaliña, Lokono, Trio, and Wayana. <sup>707</sup> There are also small settlements of other indigenous peoples in the Amazon region in the south of Suriname, including the Akurio, Apalai, Wai-wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu, and Saketa <sup>708</sup>	<b>Constitution of Suriname (1987)</b> - Does not directly address the rights of indigenous peoples. <sup>709</sup>
<b>Venezuela</b>	<b>Amazonian area:</b> Covers 53,000 km <sup>2</sup> , or 5.8% of the territory. <sup>710</sup> <b>States:</b> Amazonas, Bolívar, and Delta Amacuro.	According to the State's 2011 Indigenous Census data, 23 indigenous peoples inhabit the Venezuelan Amazon region, accounting for 22.86% of Venezuela's indigenous population. <sup>711</sup>	<b>Constitution of the Bolivarian Republic of Venezuela (1999).</b> - Devotes Chapter VIII to protection of the rights of indigenous rights..  - Recognizes the existence of indigenous peoples and communities, and their social, political, and economic organization, their cultures, practices and customs, languages, and religions; as well

<sup>704</sup> Following a constitutional amendment, the last paragraph of Article 191 of the Constitution establishes the requirement for "the minimum percentages to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils."

Congress of the Republic *Law No. 27680*. Constitutional Reform Law amending Chapter XIV of Title IX on Decentralization. Lima, March 7, 2002.

<sup>705</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>706</sup> WWF. *Living Amazon Report 2016*. A regional approach to conservation in the Amazon. 2016, p. 8.

<sup>707</sup> The first two live in the north and are known as the "lowlands" peoples, which the next two live in the south and are referred to as the "highlands" peoples. IWGIA. *El Mundo Indígena 2018* Copenhagen, 2018, p. 144.

<sup>708</sup> IWGIA. *The Indigenous World 2018* Copenhagen, 2018, p. 144.

<sup>709</sup> 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, par. 106.

<sup>710</sup> ECLAC and Patrimonio Natural. *Amazonia posible y sostenible*. Bogotá: ECLAC and Patrimonio Natural, 2013, p.15.

<sup>711</sup> UCAB. Reply to the Questionnaire regarding the Rights of Indigenous Peoples of the pan-Amazon region, received by the IACHR on December 10, 2018, p. 2.

			<p>as their habitat and original rights over the lands they and their ancestors have traditionally occupied and which they need for development and to safeguard their ways of life.</p> <ul style="list-style-type: none"><li>- Recognizes their right to cultural identity, good health, and traditional medicine, and their own economic practices, inter alia.<sup>712</sup></li></ul>
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<sup>712</sup> Constitution of the Bolivarian Republic of Venezuela (1999), Articles 121 and 122.

## Appendix 2: Pronouncements by the Organs of the Inter-American System with regard to the Peoples of the Amazon Region

### Inter-American Commission on Human Rights

System of petitions and cases	<p>IACHR. Admissibility Report No. 80/06, Petition 62/02 - Members of the Indigenous Community of Ananas et al. (Brazil), October 21, 2006.</p> <p>IACHR. Admissibility Report No. 96/14, Petition 422-06, Tagaeri and Taromenane indigenous peoples living in voluntary isolation (Ecuador). November 6, 2014.</p> <p>IACHR. Case No. 7.615 - Yanomami People (Brazil), Resolution No. 12/85, March 5, 1985.</p> <p>IACHR. Case 12.465. Report No. 138/09. Ecuador, Kichwa People of the Sarayaku Community and its Members. 26 April 2010</p>
Precautionary measures	<p>IACHR. "<a href="#">Ecuador (2003)</a>", May 5, 2003; "<a href="#">MC-91-06</a>. The Tagaeri and Taromenane indigenous peoples (Ecuador)." May 10, 2006; IACHR. "<a href="#">Bolivia (2005)</a>". March 11, 2005, par. 12; IACHR. "<a href="#">Bolivia (2006)</a>". <i>Central de Pueblos Nativos Guarayos (COPNAG)</i>". November 27, 2006; IACHR. <a href="#">Brazil (2004)</a>. December 6, 2004, par. 13; IACHR. "<a href="#">MC 382/10</a>" - Indigenous Communities of the Xingu River basin, Pará, Brazil", April 1, 2011; IACHR. <a href="#">PM 262-05</a>". Indigenous Peoples living in voluntary isolation in Mashco Piro, Yora, and Amahuaca (Peru)", March 22, 2007; IACHR Resolution 52/17. "<a href="#">MC 120/16</a>. Cunitimico and one other Community, Peru," December 2, 2017; IACHR. <a href="#">Resolution 53/18</a>. "MC 395/18 - Autoridades y miembros de los Resguardos Gonzaya (Buenavista) y Po Piyuya (Santa Cruz de Piñuña Blanco) del Pueblo Indígena Siona (ZioBain), Colombia". [Authorities and members of the Gonzaya (Buenavista) and Po Piyuya (Santa Cruz de Piñuña Blanco) reservations of the Siona Indigenous People, (ZioBain), Colombia."] July 14, 2018.</p>
Thematic reports	<p>IACHR. <a href="#">Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights</a>. OEA/Ser.L/V/II. Doc. 47/13, 2013.</p>
Country reports	<p>IACHR. Bolivia, 2007 <a href="#">IACHR, Access to Justice and Social Inclusion: The Path to Strengthening Democracy in Bolivia</a>. OEA/Ser.L/V/II. Doc. 34. June 28, 2007, footnote 211; IACHR. Bolivia, 2009 <a href="#">Follow-up to the Report on Access to Justice and Social Inclusion: The Path to Strengthening Democracy in Bolivia</a>. OEA/Ser.L/V/II.135. Doc. 40. August 7, 2009.</p>
Press Releases	<p>IACHR. <a href="#">Press release 105 / 17</a> - IACHR Carries Out Visit to Peruvian Amazon Region. Washington, D.C., July 25, 2017; IACHR <a href="#">Press release 144/17</a> - IACHR and UNHCR Express Concern over Reports of a Massacre against Indigenous Peoples in Voluntary Isolation and Initial Contact in the Brazilian</p>

	Amazon Region.. Washington, D.C. / Santiago, Chile, September 21, 2017; IACHR. <a href="#">Press release 26/18</a> – “Experts on the Rights of Indigenous Peoples of the IACHR and the United Nations express their concern at the adoption of a law that declares the construction of highways in the Peruvian Amazon as a priority and a national interest.” Washington, D.C., February 13, 2018.
Thematic hearings	Major hearings included the following: "Human Rights Situation in the Peruvian Amazon," held in November 2009; "Right to Consultation of the Indigenous Peoples of the Amazon Region and Implementation of Projects of the Initiative for the Integration of Regional Infrastructure in South America (IIRSA)," held in March 2010; "Situation of Peoples in Voluntary Isolation in the Amazon Region and the Gran Chaco," held in March 2011; "Situation of the Rights to Territory and Self-Government of Indigenous Peoples in the Amazon Region," held in October 2011; "Indigenous Peoples in Voluntary Isolation in South America," held in November 2012; " Human Rights Situation of Indigenous Peoples in Voluntary Isolation in Peru," held in November 2013; "Human Rights and Extractive Industries in Latin America," held in March 2015; "Right to Territory of Amazonian Indigenous Peoples and Communities," held in March 2017; "Human Rights Situation of Peoples in Voluntary Isolation and Initial Contact in Amazonia and Gran Chaco," held in October 2017; and "Situation of indigenous people in the Peruvian Amazon, land and environment," held in December 2018.

### Inter-American Court of Human Rights

Contentious jurisdiction	I/A Court HR. <i>Kichwa Peoples of the Sarayaku community v. Ecuador. Merits and Reparations.</i> Judgment of June 27, 2012. Series C No. 245. I/A Court HR. <a href="#">Kichwa People of the Sarayaku community v. Ecuador</a> . Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of June 22, 2016.  I/A Court HR. <a href="#">Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations, and Costs.</a> Judgment of November 25, 2015. Series C No. 309.
Jurisdiction to issue advisory opinions	I/A Court HR. <a href="#">Environment and human rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights).</a> Advisory Opinion OC-23/17 of November 15, 2017. Series A, No. 23.
Provisional measures	I/A Court HR. <a href="#">Matter of the Sarayaku indigenous people, regarding Ecuador.</a> Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2004.  I/A Court HR. <a href="#">Matter of the Sarayaku indigenous people, with regard to Ecuador.</a> Provisional Measures. Order of the Inter-American Court of Human Rights of June 17, 2005.  I/A Court HR. <a href="#">Matter of the Kichwa indigenous people of Sarayaku, with regard to Ecuador.</a> Provisional Measures. Order of the Inter-American Court of Human Rights of February 4, 2010.  I/A Court HR. <a href="#">Matter regarding two girls of the Taromenane indigenous people living in voluntary isolation.</a> Provisional Measures regarding Ecuador. Judgment of March 31, 2014, par. 18.