



**General Assembly**

Distr.  
GENERAL

A/HRC/EMRIP/2009/6  
30 June 2009

ENGLISH  
Original: SPANISH

---

HUMAN RIGHTS COUNCIL  
Expert Mechanism on the Rights of Indigenous Peoples  
Second session  
10-14 August 2009

**DRAFT GUIDELINES ON THE PROTECTION OF INDIGENOUS  
PEOPLES IN VOLUNTARY ISOLATION AND IN INITIAL  
CONTACT OF THE AMAZON BASIN AND EL CHACO**

**Report prepared by the secretariat\***

---

\* Late submission.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 6	4
II. INDIGENOUS PEOPLES IN ISOLATION AND IN INITIAL CONTACT .....	7 - 19	5
A. What are indigenous peoples in isolation? .....	7 - 8	5
B. What evidence is there of such peoples' existence? .....	9 - 10	5
C. What are indigenous peoples in initial contact? .....	11 - 12	6
D. What are the characteristics of these peoples? .....	13	6
E. Why should Governments adopt special protective measures for these peoples? .....	14 - 15	7
F. Why is it incumbent on the international community to establish protective measures for these peoples? .....	16 - 18	7
G. How can these peoples be identified in each country? .....	19	7
III. THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN ISOLATION AND IN INITIAL CONTACT: LEGAL FRAMEWORK .....	20 - 45	8
A. What human rights should be taken into account for the protection of these peoples? .....	20 - 24	8
B. What general legal frameworks in international law recognize the rights of indigenous peoples? .....	25 - 28	9
C. What specific frameworks in international law should be considered in establishing the rights of indigenous peoples? .....	29 - 33	9
D. Is there a relevant regional system for the protection of human rights? .....	34 - 38	11
E. Should attention be paid to any other areas of law? .....	39 - 40	12
F. How do these rights apply to indigenous peoples in isolation and in initial contact? .....	41 - 42	12
G. How should these rights be respected when they are not compatible with the interests of other actors or with economic interests? .....	43 - 45	12

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
IV. PRINCIPLES FOR THE DEVELOPMENT OF POLICIES AND PROGRAMMES OF ACTION .....	46 - 75	13
A. Self-determination .....	48 - 54	13
B. Protection and respect for their lands, territories and resources .....	55 - 64	14
C. Protection and safeguarding of health .....	65 - 67	16
D. Participation, consultation and free, prior and informed consent of the peoples affected .....	68 - 75	17
V. DEVELOPMENT OF PUBLIC POLICIES AND PROGRAMMES OF ACTION: PROPOSALS .....	76 - 89	18
A. Core principle .....	78	18
B. Legal framework .....	79	18
C. Lands, territories and contingency plans .....	80	18
D. Public institutions .....	81	19
E. Awareness-raising and monitoring .....	82 - 84	19
F. Establishment of national committees .....	85	19
G. Role of other actors .....	86	19
H. Development of protection protocols and contact protocols .....	87 - 89	20

## I. INTRODUCTION

1. On 16 December 2005 the General Assembly adopted the Programme of Action for the Second International Decade of the World's Indigenous People, in which two specific recommendations are made on indigenous peoples in isolation and in initial contact. At the international level it is recommended that "a global mechanism should be established to monitor the situation of indigenous peoples in voluntary isolation and in danger of extinction".<sup>1</sup> At the national level it is recommended "that a special protection framework for indigenous peoples in voluntary isolation should be adopted and that Governments should establish special policies for ensuring the protection and rights of indigenous peoples with small populations and at risk of extinction".<sup>2</sup>
2. Pursuant to the General Assembly's recommendations, in November 2006 the Office of the United Nations High Commissioner for Human Rights organized, together with the Government of Bolivia, the Confederation of Indigenous Peoples of Bolivia (CIDOB) and the International Work Group for Indigenous Affairs, a regional seminar on indigenous peoples in voluntary isolation and in initial contact of the Amazon Basin and El Chaco, held in Santa Cruz de la Sierra, Bolivia. The seminar culminated in the adoption of the Santa Cruz de la Sierra Appeal.
3. In 2007 the Permanent Forum on Indigenous Issues, recognizing the value of the Santa Cruz de la Sierra Appeal, made a number of recommendations in that regard. First, it recommended that the Office of the High Commissioner, "other international agencies and States, in partnership with indigenous peoples' organizations and non-governmental organizations, further replicate and follow up similar initiatives in order to achieve and consolidate sustained long-term policies, mechanisms and procedures that can assure the security and self-determined livelihoods of these peoples, including the guarantee of the inviolability of their territories and natural resources";<sup>3</sup> second, it recommended that the Office of the High Commissioner "conduct in 2007, in consultation with indigenous peoples' organizations, non-governmental organizations, experts, States and multilateral and bilateral agencies, the formulation of guidelines directed to all actors, both governmental and non-governmental, dealing with the respect and protection of the rights of indigenous peoples in voluntary isolation and initial contact".<sup>4</sup>
4. In 2007 the Office of the High Commissioner began work on the formulation of these protection guidelines. In order to determine what their content should be, information was collected from the seven countries of the Amazon Basin and El Chaco by means of a

---

<sup>1</sup> A/60/270, para. 45.

<sup>2</sup> *Ibid.*, para. 51.

<sup>3</sup> *Official Records of the Economic and Social Council, 2007, Supplement No. 23* (E/2007/43-E/C.19/2007/12), para. 39.

<sup>4</sup> *Ibid.*, para. 40.

consultation process and, in collaboration with the International Indigenous Committee for the Protection of Peoples in Voluntary Isolation and in Initial Contact of the Amazon, El Chaco and the Eastern Region of Paraguay (CIPIACI), a second regional seminar was held in Quito in October 2007, focusing on the design of the necessary public policies and plans of action to guarantee the right to health of indigenous peoples in voluntary isolation and in initial contact. A first draft of the guidelines was revised at a consultation meeting convened by the Office of the High Commissioner in Geneva in March 2009, with the participation of the seven Governments of the region, indigenous peoples' organizations, non-governmental organizations, bilateral and multilateral agencies and experts. The present document is thus the outcome of joint efforts by the various stakeholders.

5. The aim of these guidelines is to serve as a frame of reference for the different actors working with indigenous peoples in isolation and in initial contact in South America. The guidelines are meant to be used as an instrument for better contextualizing international law with a view to protecting these peoples, given their extreme vulnerability and high risk of extinction.

6. The Office of the High Commissioner submitted the guidelines to the Expert Mechanism on the Rights of Indigenous Peoples as an example of how the United Nations Declaration on the Rights of Indigenous Peoples can be applied to the protection of the rights of indigenous peoples in isolation and in initial contact.

## **II. INDIGENOUS PEOPLES IN ISOLATION AND IN INITIAL CONTACT**

### **A. What are indigenous peoples in isolation?**

7. Peoples in isolation are indigenous peoples or subgroups thereof that do not maintain regular contact with the majority population and tend to shun any type of contact with outsiders. Most isolated peoples live in tropical forests and/or in remote, untravelled areas, which in many cases are rich in natural resources. For these peoples, isolation is not a voluntary choice but a survival strategy.

8. While there is no consensus on what term should be used to denote these peoples, the concept most frequently used in the international sphere is "peoples in isolation". In some countries they are known as free, uncontacted, hidden or invisible peoples, peoples in voluntary isolation, etc. The formulations used may vary, but all of them refer to the same concept.<sup>5</sup>

### **B. What evidence is there of such peoples' existence?**

9. In situations in which the existence of these peoples must be determined, such as land demarcation or the delimitation of buffer zones, they should be identified only through indirect means such as aerial photography of their camps, visits to abandoned camps, footprint analysis,

---

<sup>5</sup> In some cases, the countries of the Amazon region and El Chaco use terms that differ from the ones used in these guidelines; however, in essence the various terms refer to the same phenomenon.

abandoned implements, contacts reported by nearby peoples and/or testimony from indigenous persons who, for one reason or another, have left their isolation. The no-contact principle must always be taken as a basic requirement in the performance of such actions.

10. In no case should lack of contact be regarded as proof that such peoples are not present in a given area.

### **C. What are indigenous peoples in initial contact?**

11. Peoples in initial contact are peoples that have recently initiated contact with the majority population; they may also be peoples that have been in contact for some time but have never become fully familiar with the patterns and codes of relationships in the majority population. The reason for this may be that the peoples in question choose to remain in semi-isolation or that their relations with the majority population are intermittent rather than ongoing. Peoples “in initial contact” are peoples that had previously been “in isolation” and that have, whether by reason of coercion by outsiders, a decision by the group or other factors, initiated contact with the majority population. A people is considered to be “in initial contact” so long as it remains vulnerable (to disease, loss of territory, etc.) as a result of its situation with regard to contact or so long as it remains at risk of extinction owing to problems generated by mainstream society and the consequences arising at the moment of contact, regardless of how long this situation lasts.

12. The moment of initial contact is especially critical for these peoples, as it largely determines their subsequent interaction with the majority population. The initial contact also determines the chances of survival of a recently contacted people, as mortality and morbidity levels upon initial contact tend to be very high unless special protective measures are taken before and during such contact.

### **D. What are the characteristics of these peoples?**

13. Despite their great diversity, these peoples share some general features that are common to all of them:

(a) They are highly integrated into the ecosystems which they inhabit and of which they are a part, maintaining a closely interdependent relationship with the environment in which they live their lives and develop their culture. Their intimate knowledge of their environment enables them to maintain a self-sufficient lifestyle generation after generation, meaning that the retention of their territories is vitally important for all of them;

(b) They are unfamiliar with the ways in which mainstream society functions, and are thus defenceless and extremely vulnerable in relation to the various actors that attempt to approach them or to observe their process of developing relations with the rest of society, as in the case of peoples in initial contact;

(c) They are highly vulnerable and, in most cases, at high risk of extinction. Their extreme vulnerability is worsened by threats and encroachments on their territories, which directly jeopardize the preservation of their cultures and ways of life. The situation of peoples in initial contact is still worse because processes of establishing contact generally involve drastic

changes in their territories that irrevocably alter their relationship with the environment and modify, often radically, the ways of life and cultural practices of these peoples. Their vulnerability is even further aggravated by the human rights violations which they often suffer at the hands of those who seek to exploit the natural resources in their territories and by the fact that aggression against these peoples and their ecosystems generally goes unpunished.

**E. Why should Governments adopt special protective measures for these peoples?**

14. Governments, as guarantors of the human rights of all people living within their territories, also have an obligation to guarantee the individual and collective rights of all indigenous peoples. These principles are set out in International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted in 1989 and ratified by the seven States of the Amazon region and El Chaco, and also in the United Nations Declaration on the Rights of Indigenous Peoples.

15. Governments need to pay special attention to peoples in isolation and in initial contact because such peoples are extremely vulnerable; in some cases they are even on the verge of extinction. This situation requires that Governments take concrete action to strengthen mechanisms for the protection of their human rights. In many cases these peoples are at high risk of becoming victims of large-scale aggression that ultimately amounts to genocide.

**F. Why is it incumbent on the international community to establish protective measures for these peoples?**

16. The international community, like individual States, must guarantee the protection of human rights and of the world's cultural diversity.

17. The international community must ensure that these peoples' human rights are guaranteed and protected, given their situation of extreme vulnerability.

18. The international community must also fulfil its role and responsibility of guaranteeing that the planet's cultural diversity is protected, as this diversity represents a valuable public good for humanity.

**G. How can these peoples be identified in each country?**

19. In the particular case of peoples in initial contact, one way to identify them is to analyse their circumstances in terms of the characteristics described above. The identification of peoples in isolation must be based on respect for the no-contact principle, also bearing in mind the characteristics mentioned and other factors making it possible to establish their presence and the territory they inhabit. In order to do this, it is very important to collaborate with other indigenous peoples that have already been contacted and with any local, regional or national organizations they may have established. Also important is the collaboration of universities, institutes and non-governmental organizations working in areas directly related to the protection of peoples in isolation.

### **III. THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN ISOLATION AND IN INITIAL CONTACT: LEGAL FRAMEWORK**

#### **A. What human rights should be taken into account for the protection of these peoples?**

20. In considering the human rights of peoples in isolation and in initial contact, one essential factor to bear in mind is that these are individuals who are entitled to enjoy the full range of internationally recognized human rights.

21. Once this initial premise has been recognized, human rights should be interpreted in light of the fact that these peoples have been out of contact or only recently in contact, and the dangers or problems they face in terms of the exercise of human rights should not be overlooked. This interpretation could give priority to certain rights such as the right to life, to physical, moral and spiritual integrity, to self-determination, to land, territory and resources, to culture, to the preservation of their traditional and ancestral practices, to the definition of their own development models, to free, prior and informed consent and, especially, to an interpretation that favours the rights of these peoples, such as self-determination, the right to territory and the right to preserve their own cultures.

22. The *right to self-determination* means that their decision to remain isolated must be respected. This decision can be understood as the highest expression of the exercise of the right to self-determination, since it guarantees respect for their traditional ways of life and forms of political and social organization. Thus, respect for the right to self-determination guarantees respect for other human rights. Respecting their right to remain in isolation (an expression of the right to self-determination) and safeguarding this right through public policies and laws aimed at achieving this end are ways of protecting these peoples from any contact and, therefore, from possible violations of their human rights.

23. The *right to territory* is essential, as indigenous peoples in isolation and in initial contact are totally dependent on their environment and their lives revolve around a near-perfect symbiosis with that environment, which enables them to sustain their lives and cultures through the profound knowledge they have of the uses, applications and care of their surroundings. This means that it is impossible to respect their decision to remain in isolation without guaranteeing and respecting the exercise of their territorial rights, as any attack on their environment would amount to an attack on their culture and would jeopardize the maintenance of their isolation.

24. In relation to the *right to culture*, the exercise of their cultural rights requires first of all that their cultures' survival be guaranteed. These are very vulnerable peoples whose cultures are at permanent risk of disappearing. Thus, the most important aspect of protecting culture is protecting the preservation of these cultures, thereby protecting the existence of indigenous peoples in isolation and in initial contact.

**B. What general legal frameworks in international law recognize the rights of indigenous peoples?**

25. Like all other human beings, indigenous peoples in isolation and in initial contact are protected under general human rights instruments. There is thus an initial general human rights framework based on the international treaties adopted by the United Nations. In this context, article 27 of the International Covenant on Civil and Political Rights has always been of special significance to indigenous peoples.

26. In addition to the rights established in article 27 of the Covenant, other rights that have been recognized in the general sphere of human rights protection are very important for the protection of indigenous peoples in isolation and in initial contact. The rights to life, health and self-determination are vital to these peoples and are widely recognized at the international level. The right to life is recognized in the Universal Declaration of Human Rights (art. 3) and the International Covenant on Civil and Political Rights (art. 6). The right to health is laid down in the Universal Declaration of Human Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (art. 12). The right to maintain their ways of life is recognized in a number of international instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (art. 27). The right to self-determination is set out in article 1 of both International Covenants on human rights.

27. In addition to the rights established in international human rights treaties, it is important to bear in mind the accumulated jurisprudence of the various treaty monitoring bodies, primarily the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. The Human Rights Committee, on the basis of article 27 of the International Covenant on Civil and Political Rights, has developed an interesting body of opinion on the interdependence between the cultural rights of indigenous peoples and other rights such as the rights to self-determination, territory and natural resources, culture and religious practices.

28. Lastly, special attention should be paid to the recommendations of these Committees with a view to properly implementing the rights established by these instruments and to guaranteeing the recognition of a number of rights that are important to peoples in isolation and in initial contact, such as territorial and cultural rights and the right to health. Of particular importance in this regard are the Human Rights Committee's general comment No. 23 on the rights of minorities (article 27 of the Covenant) and general comment No. 27 on freedom of movement (article 12 of the Covenant). Also important is general recommendation No. XXIII of the Committee on the Elimination of Racial Discrimination, which concerns the rights of indigenous peoples, and general comment No. 14 of the Committee on Economic, Social and Cultural Rights, which concerns the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights).

**C. What specific frameworks in international law should be considered in establishing the rights of indigenous peoples?**

29. Of the international instruments concerning the rights of indigenous peoples, two that stand out are ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

30. ILO Convention No. 169 is applicable, and relevant to the present report, because it has been signed and ratified by all the countries in the region for which these guidelines have been prepared. Brazil, Colombia, Peru, Ecuador, the Bolivarian Republic of Venezuela, the Plurinational State of Bolivia and Paraguay have ratified the Convention and incorporated it into their legal frameworks. The Convention is particularly important because it recognizes specific rights in the areas of consultation (art. 6), participation (art. 7), lands and territories (arts 13-19) and health care (art. 25). It also specifies States' obligations in terms of guaranteeing the rights recognized in the Convention (art. 2), respecting the cultures and ways of life of indigenous peoples (art. 5) and adopting appropriate special measures for safeguarding indigenous people and institutions.

31. The Declaration is an important policy touchstone, as virtually all the rights it enumerates are important for the peoples to whom these guidelines refer: the right to self-determination (art. 3), the right to autonomy and self-government (art. 4), the right to maintain their own institutions (art. 5), the right to life, physical integrity, liberty and security of person and the collective right to live in freedom, peace and security (art. 7), the right not to be subjected to forced assimilation or destruction of their culture (art. 8), the right to preserve their traditions and customs (art. 11), the right to practise, develop and teach their traditions and customs (art. 12), the right to transmit their cultures and beliefs to future generations (art. 13), the right to participation (arts. 18, 27, 30 and 31), the right to consultation and to free, prior and informed consent (art. 19), the right to maintain their traditional medicines and health practices (art. 24) and rights over their lands, territories and resources (arts. 25-32). Also relevant are the obligations it establishes for States and for United Nations bodies and specialized agencies (arts. 38 and 42) to facilitate the exercise of the rights set out in the Declaration. Of all these rights, perhaps the most important from the standpoint of peoples in voluntary isolation and in initial contact are those referred to in articles 3, 7 and 8 of the Declaration, since without them it would be impossible to exercise the other rights. While the Declaration is not legally binding, its content represents an international consensus on the rights ascribed to indigenous peoples. As such, the Declaration should guide and inform all actors, especially States, on the policies needed in order to guarantee these peoples' survival.

32. Together with these international instruments, some of the treaty bodies of the United Nations human rights system (especially the Human Rights Committee and the Committee on the Elimination of Racial Discrimination) have accumulated an extensive body of jurisprudence concerning indigenous peoples, particularly in relation to their lands and territories.

33. Apart from these sources of law, the international system has established a series of specialized mechanisms. Of particular relevance are the Permanent Forum on Indigenous Issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Expert Mechanism on the Rights of Indigenous Peoples and the now-defunct Working Group on Indigenous Populations. These mechanisms have issued a number of documents, studies and reports that are highly significant for indigenous peoples and that have become authoritative texts on specific issues and rights relating to indigenous peoples.

**D. Is there a relevant regional system for the protection of human rights?**

34. In view of the area of application of the present guidelines, mention should be made of the Inter-American Human Rights System, a regional system for the protection of human rights established within the Organization of American States (OAS) on the basis of a regional body of legal texts that recognize and protect human rights.

35. With respect to the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights and its application to peoples in isolation and in initial contact, it is particularly interesting to note the precautionary measures granted by the Inter-American Commission for the protection of peoples in isolation in Peru and Ecuador. Specifically, precautionary measures were granted on 22 March 2007 in favour of the indigenous peoples of Mashco Piro, Yora and Amahuaca living in voluntary isolation in the area of the Las Piedras River, Department of Madre de Dios, in Peru; and on 10 May 2006 in favour of the Tagaeri and Taromenani indigenous peoples who inhabit the Ecuadorian Amazon jungle in the area bordering Peru and who are currently voluntarily isolated or “hidden”.

36. It is also important to recall the principles of international law concerning indigenous peoples as defined by the Inter-American Commission on Human Rights, including the right of indigenous peoples to own, control and manage their territories.

37. Moreover, it is interesting to bear in mind the case law of the Inter-American Court of Human Rights in relation to the recognition of the territorial rights of indigenous peoples. The most significant judgements in this regard have been those in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *Yakye Axa Indigenous Community v. Paraguay*, *Sawhoyamaxa Indigenous Community v. Paraguay*, *Moiwana Community v. Suriname* and *Saramaka People v. Suriname*.

38. The Court’s jurisprudence is doubly relevant in cases in which its judgements concern the application or interpretation of the American Convention on Human Rights (all the judgements listed in the preceding paragraph). This is so because, first, their contents are applicable in all OAS member States that have ratified the rules of procedure of the Court and have expressly recognized the Court’s binding jurisdiction in all matters relating to the interpretation or application of the Convention. Second, in relation to the preceding paragraph, the Court’s line of reasoning in *Saramaka People v. Suriname* is very important because it uses the Declaration, along with ILO Convention No. 169, as the framework for establishing the legal grounds for the judgement. This amounts to a recognition of the Declaration’s value as a source of law in the inter-American system, particularly in relation to the issue of free, prior and informed consent, which is of great importance to peoples in voluntary isolation and in initial contact.<sup>6</sup>

---

<sup>6</sup> In this case the Inter-American Court cites the United Nations Declaration on the Rights of Indigenous Peoples as a basis for the right to participate and the right to free, prior and informed consent. Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgement of 28 November 2007, para. 132.

**E. Should attention be paid to any other areas of law?**

39. In recent years new problems have arisen that are seriously threatening these peoples' survival, such as the threat to their ecosystems and, accordingly, to their ways of life as a result of environmental alterations caused by the impact of climate change, particularly on their natural habitats. This phenomenon is severely hampering their ability to preserve their ways of life and ways of interacting with their environment.

40. Thus, it is essential to take the existence of indigenous peoples in isolation and in initial contact and the problems they face into account in developing and implementing international legal frameworks concerning the environment, primarily the Convention on Biological Diversity.

**F. How do these rights apply to indigenous peoples in isolation and in initial contact?**

41. These peoples' situation of special vulnerability requires that specific mechanisms and actions be developed to enable them to enjoy their rights. In this regard, their contact (or lack thereof) with the majority population should be seen as the clearest and most unequivocal form in which they exercise their right to self-determination. Accordingly, the mechanisms established in the Declaration, including free, prior and informed consent, participation and consultation, are exercised through their decision not to maintain contact.

42. The right of peoples in initial contact to preserve their cultures should include a gradual process of contact in which their rights to participation, consultation and free, prior and informed consent are exercised in ways that are acceptable, comprehensible and adapted to their ways of life, with a view to avoiding their disintegration and disappearance as peoples and their impoverishment as individuals.

**G. How should these rights be respected when they are not compatible with the interests of other actors or with economic interests?**

43. There is considerable debate on cases in which the rights of different subjects come into conflict. This debate has been analysed on various occasions, including by the Inter-American Court of Human Rights. An international consensus seems to have emerged to the effect that it is necessary, first, to determine who the rights-holders are and what implications the different options may have; and second, to guarantee the exercise of the right in question for whichever actor would be more adversely affected by the inability to exercise it and for whom compensatory measures would not fully redress the right not exercised.

44. In the case of indigenous peoples, one of the most common situations in which this conflict of rights takes place is in relation to the exercise of territorial rights by indigenous peoples and of natural resource exploitation rights by non-indigenous actors. Today this is the major conflict faced by indigenous peoples in isolation, causing many of the problems and attacks they suffer from members of the surrounding society. Peoples in initial contact face a similar situation, as one of their main problems is always the delimitation and titling of their lands and the need to ensure that other actors respect these territorial rights. The lands of indigenous peoples in isolation and in initial contact tend to be rich in natural resources, and this can aggravate the conflict of rights.

45. In these cases it is necessary to adhere to the international and regional obligations undertaken by the region's Governments and to apply, as a dispute settlement mechanism, the parameters established by the Inter-American Court of Human Rights in judgements such as *Yakye Axa Indigenous Community v. Paraguay* or *Sawhoyamaxa Indigenous Community v. Paraguay*, according to which the relationship that indigenous peoples in isolation and in initial contact maintain with their land and territories, and their situation of vulnerability, mean that their territorial rights can take precedence over economic interests and interests defined by the State.

#### **IV. PRINCIPLES FOR THE DEVELOPMENT OF POLICIES AND PROGRAMMES OF ACTION**

46. Bearing in mind the ultimate aim of safeguarding the lives of individuals and peoples, as well as their cultures, a general principle of guaranteeing human rights could be established, together with some specific principles for achieving the general principle, taking into account the different circumstances of indigenous peoples in isolation and in initial contact. These specific principles are:

- (a) The guarantee of self-determination;
- (b) The guarantee of protection and respect for their lands, territories and resources;
- (c) The protection and safeguarding of health;
- (d) Participation, consultation and free, prior and informed consent of the peoples affected.

47. These principles represent a necessary minimum, not a maximum. They have been endorsed at international expert meetings, the most important of which took place in 2006 and 2007.

##### **A. Self-determination**

48. The guarantee of self-determination does not mean the same thing for indigenous peoples in isolation or in initial contact as it does for indigenous peoples in general. For indigenous peoples in isolation, the guarantee of self-determination means absolute respect for their decision to remain isolated. It would thus be appropriate to refer to it as the guarantee of respect for the no-contact principle. For indigenous peoples in isolation, this principle is key to the subsequent implementation of other principles and rights, as it represents the highest expression of their will.

49. Respect for the no-contact principle entails the implementation of effective measures to prevent outsiders or their actions from entering into situations that could affect or influence, either accidentally or intentionally, persons belonging to indigenous groups in isolation.

50. The no-contact principle does not mean that mechanisms cannot be established for indirectly monitoring the situation of these peoples. Such monitoring should be done on a permanent basis using methodologies that do not involve contact, which some States of the region have already used (such as aerial or satellite photography, among others). In any event, contact should always be avoided.

51. Respect for this principle means that any contact with indigenous peoples in isolation that is not initiated by those peoples themselves must be regarded as a violation of their human rights. In the context of the Declaration, such contact would be viewed as a manifestation of the assimilation programmes and policies that are expressly condemned in article 8. Forced or unwanted contact should be subject to prosecution under the criminal laws of each State as a way of protecting the rights of indigenous peoples in isolation. In this connection, bearing in mind the knowledge accumulated thus far on the effects of forced contact, in certain circumstances such contact could be considered a form of the international crime of genocide.

52. For indigenous peoples in initial contact, this principle should be understood in light of the provisions of articles 3-5 of the Declaration; i.e., as the principle guaranteeing their right to preserve their political and institutional structures, their forms of organization and their cultures and customs. This principle outlaws assimilation processes, which clearly violate the human rights of these peoples. Assimilation is prohibited under article 8 of the Declaration.

53. Initial contact is a key moment that is especially difficult for indigenous peoples in isolation. The way in which such contact is established and the gradualness of such peoples' interaction with the surrounding society have a decisive impact on their future, as individuals and as communities.

54. The guarantee of self-determination requires States to adopt preventive policies for safeguarding this principle and all the human rights arising from it. Such preventive policies, which are common in the context of environmental law under the precautionary principle, represent an important paradigm shift in actions to guarantee and protect human rights. They require that all actions in relation to indigenous peoples in isolation and in initial contact take a preventive approach, in view of the catastrophic consequences of delaying action until after their human rights have already been violated. It is important to understand that restorative justice should likewise be preventive, in order to guarantee the application of the principle of self-determination.

## **B. Protection and respect for their lands, territories and resources**

55. The guarantee of protection and respect for the lands, territories and natural resources of indigenous peoples in isolation and in initial contact basically means respecting the territorial rights ascribed to indigenous peoples under international human rights law. This principle requires the fullest possible protection of such territories in order to prevent any action that could alter or modify the characteristics of the lands inhabited by such peoples.

56. One of the most controversial issues in this regard is that of legally defining and delimiting the lands and territories of indigenous peoples in isolation and in initial contact. In some cases, when States have lacked information on the names of indigenous peoples in isolation and on the number of individuals or groups belonging to them and living on the same lands, they have declared such lands to be public property and have not recognized the full extent of the lands used by these peoples. In accordance with international instruments, delimitation should be based on the use made of the land, a much broader concept than that of ownership.

57. In view of this situation, two types of land should be given special protection for the benefit of indigenous peoples in isolation and in initial contact:

(a) Lands and territories of indigenous peoples in isolation and in initial contact: those that enable such peoples to maintain their ways of life and in which they have historically lived or travelled. Outsiders should be strictly forbidden to enter or to carry out any type of activity in these lands;

(b) Buffer zones: lands surrounding the lands of indigenous peoples in isolation and in initial contact. In order to prevent accidental contacts, specific protective measures should be taken to reduce their likelihood. Access to these zones should be restricted, economic activities should provide for mechanisms and physical barriers to avoid contact and activities within such zones should be monitored.

58. The guarantee of the protection of these peoples' lands, territories and resources has a number of basic components:

(a) Delimitation of the lands necessary for the survival of indigenous peoples in isolation and in initial contact and establishment of the boundaries of buffer zones;

(b) Prohibition of any type of economic or other activity in such lands, with special emphasis on extractive and missionary activities;

(c) Prohibition of access by outsiders to the lands and territories of indigenous peoples in isolation and in initial contact. In the case of indigenous peoples in initial contact, they alone should have the authority to decide who should be allowed to enter their lands and territories;

(d) Restricted access and special protection for buffer zones in order to avoid direct contact with indigenous peoples in isolation or interference with the processes whereby indigenous peoples in initial contact begin to approach the majority population;

(e) Establishment of effective mechanisms for enforcing the above-mentioned prohibitions; such mechanisms should define and criminalize the offence of forced contact with indigenous peoples in isolation.

59. The establishment of parks or special nature reserves in some parts of the territories inhabited by indigenous peoples in isolation should in no way affect the above-mentioned prohibitions or infringe these peoples' land ownership rights.

60. It should be noted that, in some cases, indigenous peoples in isolation have traditionally shared their land with other indigenous peoples. In these cases, the no-contact principle should not result in the expulsion of such other indigenous peoples from their land; instead, measures should be taken to encourage such peoples to maintain peaceful relations with peoples living in isolation and to respect their rights.

61. In cases in which commercial interests and settlers use or inhabit lands that are considered vital for indigenous peoples in isolation or in initial contact, such outsiders should be resettled in areas that do not affect indigenous peoples in isolation.

62. With respect to indigenous peoples in initial contact, it should be clearly understood that contact processes do not cause these peoples to lose their rights to lands and territories.

63. At times, various actors (companies, missionaries or stockbreeders) have used these initial contacts to obtain agreements with indigenous peoples that have sometimes gone so far as to limit their rights to their lands. In order for such agreements to be considered valid, especially when they affect indigenous lands and territories, the indigenous peoples concerned must have access to all the information they need to take an informed decision. In the case of indigenous peoples in initial contact, it is incumbent on the State to guarantee that they retain their rights to their lands and territories over time and that they cannot be deprived of them as a result of an initial contact. In short, these peoples' survival hinges on the protection of their lands and territories.

64. Unlike indigenous peoples in isolation, indigenous peoples in initial contact have the additional right to participate in any decisions that may affect them, and such decisions cannot be taken without their free, prior and informed consent, as reflected in the preceding principle.

### **C. Protection and safeguarding of health**

65. The right to health is recognized in a number of international instruments.<sup>7</sup> The principle that the health of individuals and peoples should be protected and safeguarded is hardest to implement in the case of indigenous peoples in initial contact, since, in the case of indigenous peoples in isolation, their decision to remain isolated must take precedence over any State attempt to protect their health.

66. In the case of indigenous peoples in initial contact, the principle that the health of their members should be safeguarded requires both the guarantee of their right to life and the establishment of measures for enabling them to attain the highest possible standard of health. To this end, two separate areas of action can be identified:

(a) Preventing the transmission of disease to persons belonging to indigenous peoples in initial contact;

(b) Guaranteeing their access to and use of both their traditional medicines and the biomedical system.

67. For the correct application of the principle of safeguarding health, it is important that all health care be provided by personnel specializing in both health and indigenous issues and that such personnel establish culturally appropriate relationships. Only personnel with specialized knowledge of health care for indigenous peoples in initial contact and of how to establish intercultural relations with indigenous peoples can safeguard the health of such peoples while at the same time ensuring respect for their other rights. Such personnel require special, rigorous training in a number of areas related to intercultural relations, traditional medicine and the cultural practices of the peoples with whom they will be working.

---

<sup>7</sup> A complete listing of these instruments can be found in general comment No. 14 of the Committee on Economic, Social and Cultural Rights.

#### **D. Participation, consultation and free, prior and informed consent of the peoples affected**

68. Both indigenous peoples in isolation and indigenous peoples in initial contact exercise their right to self-determination through the instruments of participation, consultation and free, prior and informed consent. Indigenous peoples in isolation use these mechanisms by not participating, not taking part in any consultations and not giving their consent to any intrusion into their lands and territories. Indigenous peoples in initial contact use them as part of their right to self-determination and as the only way to legitimize processes of interaction in relation to the fundamental guarantee of human rights.

69. Participation, consultation and free, prior and informed consent are all instruments that have become rights guaranteeing respect for the human rights of indigenous peoples. These rights are laid down in a number of international treaties, but for indigenous peoples the relevant standards are established in ILO Convention No. 169 and in the United Nations Declaration on the Rights of Indigenous Peoples.

70. According to this principle, peoples in initial contact are entitled to participate in all phases of actions that affect them directly or indirectly, from identification and planning to evaluation. Such participation should be effective and central to the action concerned, meaning that these peoples should also participate in decision-making processes.

71. The principle of consultation includes the right to be asked permission, with all relevant information provided in terms that can be understood by the members of such peoples, so that they can give a free and informed answer to the request.

72. The principle of free, prior and informed consent provides a mechanism for ensuring that the indigenous peoples concerned can decide<sup>8</sup> on the future of actions affecting them. Consent must be given by the community through representatives of its own choosing. Consent given by only part of the community or by a single member who does not represent the entire community would not be in compliance with this principle. The most complex component, for indigenous peoples in initial contact, is that of freedom. The rapid changes they experience can lead to a situation in which they have neither the freedom nor the information they need in order to give consent.

73. The participation or consultation of indigenous people regarding such actions does not in itself demonstrate that indigenous peoples' right to participation or consultation has been respected, as the persons consulted must have been designated as representatives by the community and participation must have been agreed and decided upon by the members of the community.

74. In the case of indigenous peoples in initial contact, participation refers in particular to the need to regard them as active subjects in all actions that take place in their relations with the surrounding society. As active subjects and rights-holders, and as peoples entitled to decide their

---

<sup>8</sup> See the report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (E/C.19/2005/3).

present and future for themselves, they should have the capacity to decide on what actions should be implemented and how they wish to participate. Otherwise, there is a risk that the activities implemented will be paternalistic and will not respect their rights.

75. The importance of free, prior and informed consent is particularly evident in relation to the situation of indigenous peoples vis-à-vis the international community and its desire to exploit their territories. In the case of peoples in isolation and in initial contact, consent is even more important in that it fulfils the dual functions of limitation and protection. The limitation function means that the requirement to implement this principle prevents and fully limits the possibility of taking action in territories belonging to uncontacted peoples, as no activities can be carried out in their territories without their consent, and seeking such consent by force or coercion would lead to serious violations of their human rights, including the crime of genocide.

## **V. DEVELOPMENT OF PUBLIC POLICIES AND PROGRAMMES OF ACTION: PROPOSALS**

76. It is vital for the region's Governments to adopt public policies and programmes of action to guarantee the protection of these peoples. The most important of these is unquestionably a policy of recognizing the existence of indigenous peoples in isolation and creating a willingness on the part of all actors to take steps to protect their rights.

77. Below are some proposals on the areas which public policies and programmes of action should encompass.

### **A. Core principle**

78. The "core principle" for the protection of indigenous peoples in isolation and in initial contact is that countries should recognize the right of indigenous peoples to remain isolated as an expression of their right to self-determination.

### **B. Legal framework**

79. A regulatory and legal framework should be formulated for implementing the right of these peoples to remain isolated and for ensuring that outsiders do not encroach on their territories. It is also important to establish enforcement mechanisms to end impunity in cases of aggression against these peoples. Such mechanisms should include the criminalization of forced contact with any of these groups and legal protection of the indigenous heritage.

### **C. Lands, territories and contingency plans**

80. Policies should provide for the recognition of the right of peoples in isolation and in initial contact to their lands and territories, and for the design of contingency plans that promote development and economic activities outside these peoples' territories, and even outside buffer zones. There should also be contingency plans to monitor any extractive activities taking place near territories belonging to indigenous peoples in isolation and in initial contact.

#### **D. Public institutions**

81. Appropriate institutions should be established to implement the legislative framework, and/or existing institutions should be adapted to the needs and characteristics of these peoples, with funding allocated for such institutional reforms. It is also necessary to develop programmes to train professionals to work in the various protection programmes for peoples in voluntary isolation or in initial contact. Such training programmes should include a substantive module on disease prevention and health.

#### **E. Awareness-raising and monitoring**

82. More Government involvement is needed in protecting and guaranteeing the human rights of indigenous peoples in isolation and in initial contact, as is a more proactive attitude and greater commitment to the future of these peoples in terms of their territorial sovereignty.

83. A running dialogue among local, municipal, regional and national Governments, indigenous peoples' organizations and non-governmental organizations on these peoples' situations, problems and needs would be an excellent management tool for implementing specific protective measures and actions, through permanent mechanisms for dialogue that would enable all actors to participate.

84. It is essential to establish a mechanism or system for constant monitoring of the situation and living conditions of indigenous peoples in isolation and in initial contact. Such monitoring could be based on the preparation and updating of studies and reports on the situation of indigenous peoples in isolation and in initial contact in relation to the exercise of human rights and to threats and aggression against them, as well as ongoing monitoring of advances or retreats in the contact processes of peoples in initial contact.

#### **F. Establishment of national committees**

85. The formation of national coordinating committees for the protection of indigenous peoples in isolation and in initial contact could be promoted as a means of fostering coordination among the various public and private actors. Such committees should be action-oriented, efficient and flexible in their work methods and should have the capacity for in-depth discussion and analysis of the protective measures and actions to be implemented.

#### **G. Role of other actors**

86. It is important to consider the responsibilities of the various non-State actors that affect or protect indigenous peoples in isolation and in initial contact, such as indigenous peoples' organizations, international cooperation agencies and companies that extract natural resources. For the proper protection of indigenous peoples' rights, it is essential to involve the various private actors, particularly indigenous peoples' organizations and indigenous peoples that are already in contact, as they live in the adjacent territories and in many cases have kinship relations with groups that are isolated or in initial contact. International cooperation agencies should also share in the responsibility of designing and financing protection and monitoring programmes. Lastly, extractive industries that affect the territories of indigenous peoples in isolation and in

initial contact and that in many cases form relationships with these peoples should live up to their responsibilities and obligations under international human rights law, and should also be involved in the design of programmes of action.

#### **H. Development of protection protocols and contact protocols**

87. The aim of such protocols is to provide the various actors involved in the protection of indigenous peoples with clear rules of conduct and steps to be followed. All such protocols should revolve around the protection of the lands and territories of indigenous peoples in isolation and in initial contact.

88. These protocols should reflect the need to generate preventive policies to guarantee the protection of indigenous peoples' human rights, particularly their right to self-determination.

89. Contact protocols are useful in situations in which, for reasons of force majeure, contact becomes necessary. These protocols should serve as a safeguard to minimize the consequences of initial contact by ensuring that the relevant procedures protect the lives and cultures of these peoples. They should always reflect the principle that assimilation or forced assimilation processes are prohibited, as established in article 8 of the Declaration.

-----