

Amicus Curiae Brief of Just Access e.V.

In the case of the Mashco Piro, Yora and Amahuaca Indigenous Peoples (Peoples in Voluntary Isolation and Initial Contact) v. Peru (Case No. 13.572) before the Inter-American Court of Human Rights

Submitted by: *Just Access e.V.*



I. Introduction and interest of the amicus

1. The German non-governmental organisation Just Access e.V. respectfully submits this *amicus curiae* brief to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) in the case of the *Mashco Piro, Yora and Amahuaca Indigenous Peoples v. Peru*, pursuant to Article 44 of the Rules of Procedure of the Court. Just Access is dedicated to improving access to justice and to the development of international human rights law, with particular expertise in the justiciability of economic, social, cultural and environmental rights (ESCR) and in cross-regional comparative human rights analysis. Just Access has previously assisted this Court as *amicus curiae* on the application of Article 26 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), and is developing the rights of indigenous and tribal peoples as a standing area of its work.
2. This brief does not seek to resolve disputed questions of fact. Its purpose is to assist the Court on questions of law, taking as its starting point the factual account presented by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) in its submission note of 1 November 2024.¹ According to that submission, the Mashco Piro, in voluntary isolation, and the Yora and Amahuaca populations identified in the submission as being in initial contact, inhabit the Madre de Dios region of the Peruvian Amazon, including the Madre de Dios Territorial Reserve. Although Peru formally recognised their presence, the administrative process begun in 2014 to convert that Territorial Reserve into an Indigenous Reserve (which would render the territory intangible) remains unfinished, notwithstanding a 2016 categorisation study recommending the reserve’s expansion. In the meantime, logging, mining, illegal deforestation and hydrocarbon activities have continued to affect the peoples’ territory, the legal recognition and protection of their collective territorial rights remain incomplete, buffer (*amortiguamiento*) zones have not been delimited, and a domestic *amparo* action

¹ IACHR, Submission Note (*Nota de remisión*), Case No. 13.572, *Mashco Piro, Yora and Amahuaca Indigenous Peoples v. Peru*, submitted 1 November 2024, summarising Admissibility and Merits Report No. 397/22. Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_NdeREs.PDF

was rendered ineffective by excessive delay attributable to the judicial authorities. The Commission concluded that Peru is responsible for violating the rights recognised in Articles 8(1), 13, 21, 23, 25 and 26 of the Convention, in relation to Article 1(1), to the detriment of the three peoples, and for gravely affecting their right to self-determination.²

3. On these facts, the Commission has already placed before the Court the collective property, self-determination and cultural rights of these peoples under Articles 21 and 26 of the Convention.³ Just Access therefore does not need to invite the Court, through the principle *iura novit curia*, to introduce these rights into a case where they were omitted. Rather, this brief seeks to assist the Court in developing the content and reach of the protection owed to indigenous peoples in voluntary isolation and initial contact (hereinafter “PIACI”), and it advances five arguments that, in the respectful submission of Just Access, would allow this case to make an original contribution to Inter-American and general international law:
 - a. that this is only the second case concerning peoples in voluntary isolation to reach the Court, following *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, and that the Court should consolidate that framework (self-determination, protection against forced contact, and territorial intangibility) into a set of concrete State obligations (Sections II and III);
 - b. that respect for these peoples’ culture requires the Court to treat environmental protection and human rights as inseparable. Where ecological relationships form part of a people’s cultural identity, territorial protection should safeguard both ecological integrity and the people’s survival (Section IV);
 - c. that the precautionary principle operates, in the PIACI context, as an autonomous and justiciable obligation of protection under Article 26 read together with Articles 4 and 5 of the Convention (Section III);

² IACHR, Press Release No. 305/24, 4 December 2024. Available at <https://www.oas.org/es/CIDH/jsForm/?File=%2Fes%2Fcidh%2Fprensa%2Fcomunicados%2F2024%2F305.asp>

³ American Convention on Human Rights (“Pact of San José”), Articles 1(1), 21, 25 and 26. Official text: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

- d. that the protection owed to these peoples is protection against forced contact and against the extractive pressures that drive unwanted contact (not the enforced isolation of peoples, who may themselves seek limited contact) and that the Court should articulate a legal framework capable of protecting them without severing the contacts they choose while also protecting the lives of those exposed to violent encounters (Sections II and IV); and
 - e. that the standards the Court applies should be read in the light of a remarkable convergence across the universal and African human rights systems (Section V).
4. Just Access submits this brief in the hope that it will be of use beyond the present case, by helping to consolidate a coherent and enforceable body of standards for the protection of peoples in voluntary isolation and initial contact throughout the region.

II. Peoples in voluntary isolation, self-determination and protection against forced contact

II.A The Court's framework in *Tagaeri and Taromenane*

5. On 4 September 2024, in *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, the Court decided for the first time in its history a case concerning the rights of indigenous peoples in voluntary isolation.⁴ That judgment established several foundational propositions. First, peoples in isolation are holders of rights in a situation of extreme vulnerability, among the few who are unable to advocate for their own rights, and their decision to remain without contact with the majority society is a manifestation of their right to self-determination that must be respected. Second, respect for self-determination does not relieve the State of its obligations. On the contrary, the State's duties of protection remain in full force. Third, because a *stricto sensu* process of free, prior and informed consultation cannot be conducted with peoples who have chosen isolation, the duty to

⁴ IACtHR, *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 4 September 2024, Series C No. 537. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_537_esp.pdf

consult is transformed, for peoples maintaining voluntary isolation, into an obligation of the State to take their decision to remain in isolation into account in any project or decision that may affect them, applying the precautionary principle and ensuring that any measures are proportionate to their unique way of life. This adaptation does not dispense with obligations related to culturally appropriate consultation and participation for peoples in initial contact. Their circumstances and representative institutions must be assessed separately. Fourth, the right of these peoples to territorial ownership requires the State formally to delimit and declare their territories as intangible.⁵

6. The present case provides an opportunity to apply and develop the *Tagaeri and Taromenane* framework in light of the circumstances of the Mashco Piro, Yora and Amahuaca peoples and the alleged deficiencies in Peru's territorial protection. The Court's task is therefore not to restate the principles of that judgment but to give them concrete, operational content and, as Sections II.B and IV of this *amicus curiae* explain, to refine two matters that the present facts bring into focus: the relationship between the protection of the territory and the protection of the people, and the difference between shielding these peoples from *forced* contact and confining them to an isolation they may not choose.

II.B Self-determination and protection against forced contact as the organising principle

7. The organising principle is the peoples' right to self-determination in relation to contact. This includes the right to decide whether, when and on what terms they engage with the surrounding society. It is grounded in the right to self-determination, recognised for all peoples in common Article 1 of the two International Covenants and, for indigenous peoples specifically, in Article 3 of the United Nations Declaration on the Rights of

⁵ *ibid.* (self-determination and the decision to remain in isolation; the transformation of the duty to consult; the application of the precautionary principle; and the obligation to delimit and declare the territory intangible). For commentary, see "From the Right to be Consulted to the Right to No Contact," *EJIL: Talk!*, 20 March 2025. Available at <https://www.ejiltalk.org/from-the-right-to-be-consulted-to-the-right-to-no-contact-the-inter-american-court-faces-its-first-case-on-indigenous-peoples-in-voluntary-isolation/>

Indigenous Peoples (UNDRIP).⁶ In the Inter-American system it is reinforced by Article XXVI of the American Declaration on the Rights of Indigenous Peoples, which provides expressly that indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely in accordance with their cultures, and requires States to adopt adequate policies to safeguard that choice.⁷ The principle the Court protects is therefore properly understood as protection against *forced* contact (contact imposed by third parties, or compelled by the destruction of the peoples' territory) rather than the enforced isolation of the peoples themselves.

8. Published reporting describes repeated, limited interactions between some Mashco Piro groups and neighbouring communities or protection-post personnel, including requests for food. Such interactions do not, without further evidence, establish a collective decision to abandon isolation or accept wider contact. Their significance must be assessed in context, including possible pressure from territorial intrusion and resource loss.⁸ Two conclusions follow. First, the State must protect the territory and address coercive pressures that may drive unwanted contact. Second, the applicable framework must be able to protect these peoples without severing the limited and self-directed contact they may choose. This is consistent with the Court's understanding of the indigenous relationship to land as a *sui generis* communal one, not reducible to the categories of ordinary private property.⁹ Just

⁶ United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 (2007), Articles 3, 8, 26 and 32; and International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, common Article 1. Available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

⁷ American Declaration on the Rights of Indigenous Peoples, AG/RES. 2888 (XLVI-O/16), 15 June 2016, Art. XXVI. Official text: <https://www.oas.org/en/sare/documents/decamind.pdf>

⁸ Stephanie Hegarty, “‘Brothers in the forest’ - the fight to protect an isolated Amazon tribe,” *BBC News*, 25 October 2025, available at <https://www.bbc.com/news/articles/cjw92x915xlo>

⁹ IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, Series C No. 79. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_esp.pdf; IACtHR, *Saramaka People v. Suriname*, Judgment of 28 November 2007, Series C No. 172 (extending the

Access respectfully submits that the Court should frame the protection of PIACI in these terms.

9. Just Access respectfully proposes that the Court require a differentiated protocol for responding to encounters initiated by members of these peoples. The protocol should distinguish voluntary interaction from approaches prompted by displacement, deprivation, intimidation or inducement, using culturally informed assessment that does not itself require intrusive contact. An individual approach should not be treated as consent to contact an entire group, expand the encounter or enter its territory. Any response should be limited to the interaction sought and preserve the possibility of withdrawal. Limited encounters should not, by themselves, trigger reclassification or the withdrawal of territorial safeguards. The competent cultural and health authorities should maintain trained multidisciplinary teams, working with neighbouring Indigenous communities and organisations familiar with the peoples concerned, to implement health precautions and emergency responses. Such collaboration must not be treated as authorising those organisations to consent on behalf of peoples whose representative arrangements cannot be established without contact.¹⁰

II.C Violent encounters: the rights of victims and the limits of the State's response

10. The protection framework should also address the safety of neighbouring communities and other persons exposed to violent encounters. The Commission's submission records an encounter resulting in the death of a member of another native community.¹¹ It is not an isolated incident: members of neighbouring communities were killed by Mashco Piro

indigenous-property regime to tribal peoples whose relationship to their territory is analogous to that of indigenous peoples). Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_esp.pdf

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 13 September 2007, Articles 3, 18, 24 and 26; American Declaration on the Rights of Indigenous Peoples, AG/RES. 2888 (XLVI-O/16), 15 June 2016, Articles XXV and XXVI.

¹¹ IACHR, Submission Note, Case No. 13.572, Pueblos Indígenas Mashco Piro, Yora y Amahuaca v. Peru,

1 November 2024, pp. 1-4. Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_NdeREs.PDF.

arrows in 2011 and 2015, and logging workers in the Pariamanu basin in 2022 and 2024.¹² The victims and their families are rights-holders under the Convention, and Just Access respectfully submits that the Court should say so expressly. Just Access also respectfully submits that preventive measures should include locally appropriate warning arrangements and emergency care. Where deaths or serious injuries occur, the State should discharge its applicable duties of investigation and ensure access to justice and any remedies warranted for victims and their families, through culturally appropriate procedures that respect due process. These duties do not justify collective blame, punitive incursions or the extinguishment of Indigenous territorial rights.¹³

11. The State's responsibility towards these victims arises, in the first place, from its own duty of prevention. Under the Court's settled case law, the State is responsible for harm caused by private persons where it knew or ought to have known of a real and immediate risk to identified individuals or groups and failed to take reasonable measures within its powers to avoid it.¹⁴ In *Tagaeri and Taromenane*, the violent deaths of members of isolated peoples were likewise examined through the State's failure to prevent them and to investigate them with due diligence, and Ecuador acknowledged partial international responsibility on the

¹² G. Shepard, "Close Encounters of the Mashco Kind: Fatal attack by an isolated indigenous group in Peru", *Notes from the Ethnoground*, 26 January 2012, available at <https://ethnoground.blogspot.com/2012/01/close-encounters-of-mashco-kind-fatal.html>; "Murder Raises Concerns of Protecting Nomadic and Settled Indigenous in Peru", *ICT News*, 12 May 2015, available at <https://ictnews.org/archive/murder-raises-concerns-of-protecting-nomadic-and-settled-indigenous-in-peru/>; "Reclusive tribe armed with bows and arrows kills loggers allegedly encroaching on their land in Peru, group says", *CBS News*, 2024, available at <https://www.cbsnews.com/amp/news/mashco-piro-tribe-kills-loggers-allegedly-encroaching-peru-amazon/>; on the 2022 death, see "World's largest isolated tribe kills two loggers with arrows in Amazon forest", *New York Post*, available at <https://www.aol.com/news/world-largest-isolated-tribe-kills-163943509.html>

¹³ American Convention on Human Rights, 22 November 1969, Articles 1(1), 2, 4, 5, 8 and 25; see also Articles 21 and 26 concerning territorial and related substantive protection.

¹⁴ IACtHR, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Series C No. 140, para. 123. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_140_ing.pdf

latter ground.¹⁵ The same reasoning applies where the victims are members of neighbouring communities or workers. The risk in Madre de Dios has been known for years: after the 2024 deaths, FENAMAD stated that the State had taken no preventive or protective measures for the workers concerned.¹⁶ By contrast, at the Nomole control post, established in 2013 after lethal incidents and run jointly by the Ministry of Culture and FENAMAD, a permanent protection presence has been accompanied by a marked reduction in conflict.¹⁷

12. Just Access respectfully submits that the State's response to such deaths should rest on three elements, which together form a distinctive part of the PIACI framework. First, reparation for victims should not depend on identifying and punishing individual perpetrators. Where the person who caused the harm cannot be held liable, international standards on reparation envisage that States establish national programmes of reparation and assistance for victims,¹⁸ and the families of persons killed in encounters with peoples in isolation should have access to such a programme. Second, accountability must be approached interculturally. Prosecuting members of a people in isolation would require forced contact, the very harm the Convention prohibits, and would ordinarily fail for lack of culpability: Peru's own Criminal Code exempts from liability a person who, by reason

¹⁵ IACtHR, *Tagaeri and Taromenane*, supra note 4; Government of Ecuador, Secretaría General de Comunicación, "El Estado ecuatoriano presentó en la Corte IDH el reconocimiento de responsabilidad internacional parcial en el caso Tagaeri Taromenane", 23 August 2022, available at <https://www.comunicacion.gob.ec/el-estado-ecuatoriano-presento-en-la-corte-idh-el-reconocimiento-de-responsabilidad-internacional-parcial-en-el-caso-tagaeri-taromenane/>

¹⁶ CBS News, supra note 12.

¹⁷ "La lucha para proteger a los mashco piro, la tribu aislada en la Amazonía de Perú", *La Nación* (BBC Mundo), 3 November 2025, available at <https://www.lanacion.com.ar/el-mundo/la-lucha-para-proteger-a-los-mashco-piro-la-tribu-aislada-en-la-amazonia-de-peru-nid03112025/>

¹⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, 16 December 2005, para. 16. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

of culture or custom, cannot understand the unlawful character of the act, and its courts require anthropological expert evidence on this point, while ILO Convention No. 169 requires account to be taken of indigenous peoples' customs in penal matters and a preference for penalties other than imprisonment.¹⁹ Third, the State must prevent cycles of reprisal. The events examined in *Tagaeri and Taromenane* show the danger. In 2013 the killing of an elderly Waorani couple by members of an isolated group was followed by a retaliatory killing of members of that group, after which Ecuador's Constitutional Court required intercultural dialogue and coordination between State and indigenous authorities to prevent further conflict.²⁰ In this light, conveying to peoples in isolation that violence is unacceptable cannot be achieved through coercion, and no such message can substitute for protection of the territory. To the extent that anything can be communicated, it should be done through the intermediaries and protocols proposed in Section II.B, with the aim of reducing the risk of lethal confrontation for all concerned.

III. Operationalising territorial intangibility and the precautionary principle

III.A Reinforced duties of protection and effective access to justice

¹⁹ Peru, Criminal Code, Article 15 (error de comprensión culturalmente condicionado), as amended by Law No. 30838, El Peruano, 4 August 2018, available at <https://busquedas.elperuano.pe/dispositivo/NL/1677448-1>; Supreme Court of Peru, Acuerdo Plenario No. 1-2015/CIJ-116 (anthropological expert evidence mandatory), summarised at <https://lpderecho.pe/articulo-15-codigo-penal-error-comprension-culturalmente-condicionado/>; ILO Convention No. 169, Articles 9(2) and 10. Available at https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

²⁰ Constitutional Court of Ecuador, Judgment No. 112-14-JH/21, section IV.5 (“criterios sobre interculturalidad, prevención de la conflictividad y coordinación entre autoridades estatales e indígenas”), summary available at <https://www.corteconstitucional.gob.ec/sentencia-112-14-jh-21/>; for the sequence of events, see the analysis available at <https://repositorio.uti.edu.ec/items/cda34db6-1e8d-4f64-ba94-d357e1859300>

13. Peoples maintaining voluntary isolation face exceptional practical barriers to using ordinary judicial and administrative procedures without exposing themselves to unwanted contact. Just Access respectfully submits that Articles 1(1), 8 and 25 require protective and procedural arrangements that make such peoples' rights effective without conditioning protection on direct participation. For peoples in initial contact, those arrangements should facilitate participation through culturally appropriate procedures and their own representative institutions. In both situations, protective action should respond to the particular risks established while respecting the peoples' agency and self-determination.²¹
14. The territorial rights of indigenous peoples under Article 21 of the Convention are, by now, among the most developed in the Court's jurisprudence, from *Awas Tingni v. Nicaragua* onwards.²² The Court has recognised that traditional possession may establish Indigenous property rights despite the absence of formal title. Involuntary loss of possession does not necessarily extinguish those rights: depending on the circumstances, the people concerned may retain their property rights or a claim to restitution or alternative lands. The existence and scope of such rights must be determined by reference to traditional occupation or use and any competing rights recognised under the applicable standards.²³ In *Saramaka People v. Suriname* the Court confirmed that these protections extend to tribal peoples who are not aboriginal to the region but whose relationship to their territory is analogous to that of indigenous peoples: a functional test of who benefits from the regime.²⁴

III.B Intangibility as a concrete obligation

15. For peoples maintaining voluntary isolation, territorial protection must take a form compatible with non-contact. In *Tagaeri and Taromenane*, the Court recognised that

²¹ *ibid.*

²² IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, Series C No. 79. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_esp.pdf

²³ *Sawhoyamaxa v. Paraguay*, Series C No. 146. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf

²⁴ IACtHR, *Saramaka People v. Suriname*, Judgment of 28 November 2007, Series C No. 172. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_esp.pdf

conventional registration of a full-dominion title could create difficulties concerning representation and protection, and accepted territorial intangibility as an appropriate mechanism in the circumstances.²⁵ Just Access respectfully submits that, drawing on *Tagaeri and Taromenane* and on the facts of the present case, the Court can and should specify what effective intangibility requires. In particular:

- a. the completion, without unjustified delay, of territorial identification and delimitation, including the outstanding recategorisation of the Madre de Dios Territorial Reserve, through a legal arrangement securing effective collective territorial rights and intangibility without requiring contact or imposing unverified representative structures; for peoples in initial contact, the appropriate arrangements should be determined through culturally appropriate participation;
 - b. the delimitation of buffer (*amortiguamiento*) zones around the core territory, so that activities at the perimeter cannot produce contact or environmental harm within it;
 - c. the review, suspension and, where necessary, revocation of logging, mining and hydrocarbon concessions that overlap or border the peoples' territory, together with effective control of illegal extraction; and
 - d. the establishment of an independent monitoring and control mechanism capable of enforcing intangibility on the ground.
16. These are components without which the rights recognised in Article 21, and protection against forced contact, would be, for peoples in isolation, illusory. Effective intangibility is, moreover, the primary means by which the State prevents the very displacement that forces these peoples into dangerous and unwanted contact. The unfinished character of the domestic process is relevant here. A State that has formally recognised the presence of peoples in isolation, and has even begun the administrative steps to protect their territory, does not discharge its Convention obligations by leaving that process incomplete for a decade. Just Access respectfully submits that the outstanding administrative process cannot

²⁵ IACtHR, *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 4 September 2024, Series C No. 537, paras. 217-219. Compare IACHR, Submission Note, Case No. 13.572, 1 November 2024, p. 4, recommendation 1(a).

justify postponing measures necessary to protect rights against identified threats. Pending its completion, the State should adopt effective interim safeguards against intrusion and serious harm. The 2016 study is relevant to assessing the authorities' knowledge and the justification for subsequent delay; it does not, by itself, determine the legal character or deadline of every recommended measure. The Court should distinguish protective action required immediately from administrative steps requiring a specified and justified timetable, and assess delay against the applicable territorial, procedural and substantive Convention obligations.²⁶

III.C Precaution as an enforceable duty within the Convention framework

17. Just Access respectfully submits that precaution should guide the assessment of compliance with the State's duties to protect collective property, life, personal integrity and the applicable Article 26 rights. Where available evidence indicates a risk of serious or irreversible harm, scientific uncertainty should not justify postponing effective protective action.²⁷ In the present context, the Court should examine whether the authorities identified credible indications of risk, assessed direct and indirect impacts, and adopted timely measures capable of preventing forced contact and territorial intrusion. A failure to take such measures should be assessed as a possible breach of the Convention rights engaged, rather than as a violation of a freestanding right to precaution. The measures required should reflect the gravity and potential irreversibility of the harm, without demanding proof that the harm will certainly occur.

²⁶ IACHR, Submission Note, Case No. 13.572, *Pueblos Indígenas Mashco Piro, Yora y Amahuaca v. Peru*, 1 November 2024, pp. 1-4. Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_NdeREs.PDF; American Convention on Human Rights, 22 November 1969, Articles 1(1), 2, 4, 5, 8 and 25; see also Articles 21 and 26 concerning territorial and related substantive protection.

²⁷ IACtHR, *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, Judgment of 4 September 2024, Series C No. 537, paras. 225-227; IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17 of 15 November 2017, Series A No. 23, section VII.B.2; Rio Declaration on Environment and Development, 1992, Principle 15.

IV. Article 26 and the inseparability of territory, environment and people

IV.A Environmental protection and human rights are inseparable

18. Respect for Indigenous cultures requires attention to each people's particular relationship with its territory and the living world. Where the evidence establishes that ecological relationships form part of a people's cultural identity, protective measures should reflect that understanding.²⁸ Just Access therefore submits that territorial and environmental protection should be designed together with measures protecting the peoples' survival and cultural integrity. This approach does not depend on attributing an identical worldview to the Mashco Piro, Yora and Amahuaca. It is now firmly anchored in the Court's own jurisprudence: in Advisory Opinion OC-23/17 the Court recognised the right to a healthy environment as an autonomous right, protected in part for its own sake²⁹; in *Lhaka Honhat* it held the rights to a healthy environment, food, water and cultural identity to be autonomous and interdependent³⁰; and in Advisory Opinion OC-32/25 it took the further step of recognising Nature as a subject of rights and describing that recognition as "a contemporary expression of the principle of the interdependence between human rights and the environment".³¹ The same logic underlies the regional concept of biocultural rights (most prominently the Atrato River decision, which held the life, health and cultural

²⁸ United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 13 September 2007, Articles 25, 26(3) and 29(1); American Declaration on the Rights of Indigenous Peoples, AG/RES. 2888 (XLVI-O/16), 15 June 2016, Articles XXV and XXVI.

²⁹ IACtHR, Advisory Opinion OC-23/17 of 15 November 2017, *The Environment and Human Rights*, Series A No. 23. Official text: https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

³⁰ IACtHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of 6 February 2020, Series C No. 400. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_esp.pdf

³¹ IACtHR, Advisory Opinion OC-32/25, *Climate Emergency and Human Rights*, 29 May 2025, Series A No. 32, paras. 279-286. Official text: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf

integrity of the communities to be inseparable from the well-being of the ecosystem³²) and the wider recognition, in scholarship on the rights of nature and the convergence of human and animal rights, that human beings are one element of a web of life on which they depend.³³ Inseparability in the design of protective measures does not eliminate the distinct legal content of the rights engaged or the need to establish the elements of each alleged violation.

19. The Commission's precautionary measures of 22 March 2007 already linked protection of life and personal integrity to preventing irreparable harm caused by third-party activities in the peoples' territory.³⁴ The present case offers an opportunity to make that connection operational across the measures ordered on the merits. Just Access respectfully submits that territorial safeguards, health protocols, ecological restoration and monitoring should form a coordinated protective framework. The Court should assess environmental degradation together with its effects on subsistence, health and cultural continuity, and identify the particular rights and State obligations engaged by the facts established.

IV.B Health and the epidemiological imperative

20. The right to health, recognised as an autonomous and directly enforceable right under Article 26 of the Convention,³⁵ carries for peoples in voluntary isolation a content unlike

³² Constitutional Court of Colombia, Judgment T-622/16 (*Atrato River*). Summary and text: <https://elaw.org/resource/colombia-constitutional-court-judgment-t-622-2016>

³³ Anne Peters, "Rights of Nature and Animal Rights: The Beginning of a Beautiful Friendship," *American Journal of International Law* (2026). <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/rights-of-nature-and-animal-rights-the-beginning-of-a-beautiful-friendship/F42C22AB30AEA2C4100A0B0089E4FE81>

³⁴ IACHR, "Pueblos Indígenas en aislamiento voluntario de Mashco Piro, Yora y Amahuaca (Perú)," published summary of precautionary measures granted on 22 March 2007, available at <https://www.oas.org/es/cidh/indigenas/proteccion/cautelares.asp>

³⁵ IACtHR, *Poblete Vilches and others v. Chile*, Judgment of 8 March 2018, Series C No. 349; *Cuscul Pivaral and others v. Guatemala*, Judgment of 23 August 2018, Series C No. 359; and *Hernández v. Argentina*, Judgment of 22 November 2019, Series C No. 395. Official text:

that in any other context. Because these peoples have lived without sustained contact with the majority society, they lack immunological defences against common communicable diseases; forced or inadvertent contact can therefore produce catastrophic mortality and, in the most serious cases, the disappearance of an entire people.³⁶ For peoples maintaining voluntary isolation, the right to health is therefore primarily preventive and collective. The State's principal obligation is not to provide clinical services within their territory, as doing so could itself violate the principle of no contact, but to remove the external drivers of dangerous contact and to manage health risk in a way that respects the peoples' own choices. This requires screening and controlling third-party access to the territory, preparing contingency and vaccination-ready protocols for the contact that the peoples themselves initiate as well as for accidental encounters and emergencies, and ensuring that any authorised presence at the perimeter does not become a vector of disease. The aim is to protect these peoples from the epidemiological consequences of *imposed* contact, not to penalise or forcibly prevent the limited contact they may seek. The availability, accessibility, acceptability and quality framework that the Court has drawn from General Comment No. 14 must, in this context, be read through the lens of the peoples' right to remain in isolation.³⁷ Respecting these peoples' choices also means enabling them to make those choices knowingly. Where members of a people initiate encounters, as the Mashco Piro do, the information accessibility that forms part of the right to health requires the State

https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_esp.pdf;

https://www.corteidh.or.cr/docs/casos/articulos/seriec_359_ing.pdf;

https://www.corteidh.or.cr/docs/casos/articulos/seriec_395_ing.pdf

³⁶ OHCHR, Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Region, the Gran Chaco and Eastern Paraguay (2012); and OHCHR materials noting that, owing to their isolation, these peoples lack the immunological defences to combat common diseases, so that forced contact can destroy entire societies. Available at <https://www.ohchr.org/en/indigenous-peoples/indigenous-peoples-voluntary-isolation-and-initial-contact>

³⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The right to the highest attainable standard of health (Art. 12 ICESCR), UN Doc. E/C.12/2000/4. Available at <https://www.refworld.org/legal/general/cescr/2000/36991>

to convey the essential risks of disease transmission in a form they can understand.³⁸ Peru's Ministry of Culture already communicates with Mashco Piro groups through Yine protection agents whose language is mutually intelligible with theirs, and its protocol on encounters already regulates State agents' relationship with peoples in initial contact, including in response to their expressed wish to engage in contact.³⁹ Such communication should be limited to the encounter the people themselves initiate, conveyed through trained intermediaries in accordance with the applicable health norms,⁴⁰ and must not become a means of inducing wider contact. Leaving peoples who seek contact exposed to potentially lethal risks they do not understand, without explanation, would be incompatible with the State's reinforced position of guarantor.

IV.C Healthy environment, food and water as autonomous Article 26 rights

21. In *Lhaka Honhat v. Argentina* the Court held, for the first time in a contentious case, that the rights to a healthy environment, adequate food, water and cultural identity are autonomous, directly justiciable rights under Article 26,⁴¹ having already recognised the right to a healthy environment as an autonomous Article 26 right in Advisory Opinion OC-

³⁸ *ibid*, paras. 11, 12(b) and 27.

³⁹ Ministry of Culture of Peru, "Ministerio de Cultura implementará plan de atención especial para grupo mashco piro en el Alto Madre de Dios", available at <https://www.gob.pe/institucion/cultura/noticias/47914-ministerio-de-cultura-implementara-plan-de-atencion-especial-para-grupo-mashco-piro-en-el-alto-madre-de-dios>; Ministerial Resolution No. 240-2015-MC, Protocolo de actuación ante el hallazgo, avistamiento o contacto con pueblos indígenas en aislamiento y para el relacionamiento con pueblos indígenas en situación de contacto inicial, as described in Ministerial Resolution No. 133-2025-MC, Annex, n. 22, available at <https://transparencia.cultura.gob.pe/sites/default/files/transparencia/2025/05/resoluciones-ministeriales/rm000133-2025-mc-anexo.pdf>

⁴⁰ Ministry of Health of Peru, Ministerial Resolution No. 487-2026-MINSA, approving NTS No. 245-MINSA/DGIESP-2026, Norma Técnica de Salud: Prevención, contingencia ante el contacto y mitigación de riesgos para la salud en escenarios con presencia de indígenas en aislamiento, en contacto inicial y en contacto reciente, available at <https://www.gob.pe/institucion/minsa/normas-legales/8139393-487-2026-minsa>; OHCHR Guidelines, *supra* note 36.

⁴¹ *Lhaka Honhat*, *supra* note 30.

23/17.⁴² As Section IV.A of this *amicus curiae* explains, these rights should be assessed in an integrated manner where the same interference affects the territory, subsistence and cultural life. They nevertheless retain their distinct legal content. Just Access respectfully submits that the Court should identify the consequences of territorial degradation for each right engaged and order coordinated measures addressing their interdependence. A single course of conduct may therefore give rise to several violations, where the relevant factual and legal requirements are established.

IV.D Cultural survival and integrity

22. For peoples in isolation, the rights to cultural identity (Article 26 of the Convention) and to personal integrity (Article 5 of the Convention) converge on the single imperative of preventing unwanted contact. Forced contact is an assault on the physical and cultural integrity of the people, capable of destroying its social organisation and its knowledge. The Court has recognised that the survival of indigenous and tribal peoples as such depends on the protection of their territory and culture.⁴³ The Court has explained that the culture of indigenous peoples corresponds to a particular way of being, seeing and acting in the world, constituted by their close relationship with their traditional territories and resources, which are both their principal means of subsistence and an integral element of their worldview, religiosity and cultural identity.⁴⁴ For peoples in isolation this relationship is total. Their language, subsistence, mobility, kinship and knowledge exist only in and through the forest, and they have no other means of sustaining their identity. The destruction of the territory or the imposition of contact therefore cannot be divided into a physical harm and a cultural one. What is threatened is the continued existence of the people as a distinct people, and not only the survival of its members.⁴⁵

⁴² Advisory Opinion OC-23/17, *supra* note 29.

⁴³ Saramaka, *supra* note 24.

⁴⁴ IACtHR, *Yakye Axa Indigenous Community v. Paraguay*, Judgment of 17 June 2005, Series C No. 125, para. 135. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf (quoted at <https://www.tierraviva.org.py/comunidad-indigena-yakye-axa-del-pueblo-enxet-vs-paraguay/>)

⁴⁵ UNDRIP, *supra* note 6, Articles 7(2) and 8(1); American Declaration on the Rights of Indigenous Peoples, *supra* note 7, Article XXVI.

V. Cross-regional support for the interpretation of Convention obligations

23. The universal instruments and African jurisprudence discussed below provide comparative support for interpreting Indigenous territorial, cultural and participation rights under the Convention. Their relevance lies in the principles they illuminate.

V.A The universal system

24. At the universal level, UNDRIP affirms the right of indigenous peoples to self-determination (Article 3), prohibits the destruction of their culture and forced assimilation (Article 8), guarantees their rights to their lands, territories and resources (Article 26), and requires free, prior and informed consent before the approval of any project affecting their territories (Article 32).⁴⁶ ILO Convention No. 169 requires States to identify and protect indigenous and tribal peoples' lands and to safeguard their institutions, and treats indigenous and tribal peoples as a single protected category.⁴⁷ The OHCHR Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact (2012), the product of consultations across the Amazon Basin, the Gran Chaco and Eastern Paraguay, articulate the principles of no contact, self-determination and territorial intangibility, and record the specific epidemiological vulnerability of peoples in isolation.⁴⁸ The Commission's own 2013 thematic report is to the same effect.⁴⁹ The Committee on

⁴⁶ UNDRIP, *supra* note 6, Articles 3, 8, 26 and 32.

⁴⁷ ILO Convention No. 169 concerning Indigenous and Tribal Peoples (1989), Articles 1 and 13-19. Available at https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

⁴⁸ OHCHR, Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Region, the Gran Chaco and Eastern Paraguay (2012); and OHCHR materials noting that, owing to their isolation, these peoples lack the immunological defences to combat common diseases, so that forced contact can destroy entire societies. Available at <https://www.ohchr.org/en/indigenous-peoples/indigenous-peoples-voluntary-isolation-and-initial-contact>

⁴⁹ IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas* (2013). Available at <http://www.oas.org/en/iachr/indigenous/docs/pdf/report-indigenous-peoples-voluntary-isolation.pdf>

the Elimination of Racial Discrimination, in General Recommendation XXIII, calls for effective participation and informed consent concerning decisions directly affecting Indigenous peoples' rights and interests, and for recognition and protection of their communal lands, territories and resources.⁵⁰

V.B The African system

25. The African human rights system has developed a body of jurisprudence on indigenous peoples that converges with the Inter-American standards. In the *Endorois* case, the African Commission on Human and Peoples' Rights recognised the collective right of an indigenous people to its ancestral lands, its natural resources and its self-determined development under the African Charter.⁵¹ In the *Ogiek* case, the African Court on Human and Peoples' Rights confirmed those protections for a hunter-gatherer forest people, emphasising indigenous peoples' role as guardians of their ecosystems.⁵² Notably, the African Commission has articulated a functional concept of indigeneity. Indigenous peoples are identified by their distinct culture and identity, their particular relationship with their lands and territories, and their experience of marginalisation. These relational criteria

⁵⁰ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. XXIII (1997) on the rights of indigenous peoples. Available at https://www.eods.eu/library/UN_International%20Convention%20on%20the%20Elimination%20of%20Racial%20Discrimination_General%20recommendation%2023_1997_EN.pdf

⁵¹ African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/2003 (2010). Available at <https://www.escri-net.org/caselaw/2010/centre-minority-rights-development-kenya-and-minority-rights-group-international-behalf/>

⁵² African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya* (Ogiek), Application No. 006/2012, Judgment of 26 May 2017 (merits) and Judgment of 23 June 2022 (reparations). Available at <https://www.escri-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no/>

also underpin the Inter-American Court's understanding of indigenous and tribal peoples in *Saramaka*.⁵³

V.C An emerging customary norm

26. Both constituent elements of a customary rule (general practice and *opinio juris*) are, in the submission of Just Access, emerging in respect of the protection of peoples in voluntary isolation.⁵⁴ The practice is found above all among the States in whose territories such peoples live. Ecuador's Constitution declares the territories of peoples in voluntary isolation to be of irreducible and intangible ancestral possession, prohibits all extractive activity within them and provides that violation of their rights constitutes ethnocide;⁵⁵ Peru's Law No. 28736 establishes a special regime for peoples in isolation and initial contact,⁵⁶ complemented by protocols for encounters and technical health norms (see Section IV.B). The same practice is reflected in the OHCHR Guidelines, in Article XXVI of the American Declaration and in the concordant jurisprudence of the Inter-American and African systems. The *opinio juris* is evidenced by States' support for those instruments and by their statements in the Universal Periodic Review, which leading scholarship treats as a principal source of evidence for emerging customary rules on Indigenous peoples' lands, traditional economies and cultural survival. The same scholarship concludes that the right of peoples, including Indigenous peoples, to self-determination, from which the

⁵³ On the African Commission's functional concept of indigeneity, see *Endorois*, *supra* note 51, and the African Commission's Working Group on Indigenous Populations/Communities. Available at <https://achpr.au.int/en/special-mechanisms-reports/manual-promotion-and-protection-rights-indigenous-popul>

⁵⁴ International Law Commission, Draft conclusions on identification of customary international law, with commentaries (2018), UN Doc. A/73/10. Available at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf

⁵⁵ Constitution of the Republic of Ecuador (2008), Article 57, penultimate paragraph. Available at https://www.ecuadorenlinea.gob.ec/LOTAIP/2017/DIJU/octubre/LA2_OCT_DIJU_Constitucion.pdf

⁵⁶ Peru, Law No. 28736 for the Protection of Indigenous or Native Peoples in Isolation and Initial Contact, Diario Oficial El Peruano, 18 May 2006. Discussed in the OHCHR and IACHR sources cited *supra*, notes 48 and 49.

principle of protection against forced contact derives (Section II.B), is customary.⁵⁷ Where practice is concentrated among States sharing a particular situation, international law also recognises that a rule of particular, including regional, customary international law may arise among them.⁵⁸ Just Access respectfully submits that the Court may draw on this convergence both to confirm the content of the Article 21 and 26 obligations and, if it sees fit, to recognise the protection of peoples in voluntary isolation, and the principle of protection against forced contact, as a norm of customary international law, at least among the States of the region, binding independently of any particular treaty.

VI. Reparations

27. Should the Court find Peru responsible, Just Access respectfully submits that the reparations ordered should reflect the structural and preventive character of the violation, and in particular should include, as guarantees of non-repetition and developing and supplementing the measures requested by the Commission:

- a. the completion, within a specified and justified timetable, of territorial identification and delimitation, the outstanding recategorisation of the Madre de Dios Territorial Reserve and the establishment of protective buffer zones, together with legal recognition and protection of collective territorial rights through arrangements compatible with each people's circumstances, self-determination and, where applicable, non-contact;
- b. the review, suspension or revocation of extractive concessions overlapping or bordering the territory, and effective measures against illegal logging and mining, in accordance with the precautionary principle;

⁵⁷ W. A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021); see A. do Vale Alves, "The Customary International Status of Indigenous Peoples' Rights", *International Law Agendas* (ILA Brasil), 22 March 2022, available at <http://ila-brasil.org.br/blog/the-customary-international-status-of-indigenous-peoples-rights/>; International Law Commission, *supra* note 54, Conclusions 6, 10 and 12.

⁵⁸ International Law Commission, *supra* note 54, Conclusion 16.

- c. the effective implementation and, where necessary, revision of specialised health and encounter protocols, with adequate resources and trained personnel, distinguishing peoples maintaining isolation from those in initial contact and providing for prevention, culturally appropriate care, accidental encounters, self-initiated interactions and emergencies;
- d. the creation of an independent mechanism to monitor and enforce the intangibility of the territory, with the participation of the indigenous organisations that represent the peoples' interests;
- e. the strengthening of the domestic legal framework (including Law No. 28736) to guarantee the intangibility of PIACI territories and to prevent the recurrence of the delays that rendered domestic protection ineffective in this case;
- f. the coordination of territorial protection, health measures, ecological restoration and monitoring, building on the protective purpose of the Commission's precautionary measures of 22 March 2007 and adapting implementation to the circumstances established in these proceedings;⁵⁹ and
- g. the adoption of an encounter-response protocol incorporating the safeguards proposed in Section II.B above, together with preventive arrangements for neighbouring communities and the investigation of deaths and injuries resulting from such encounters and reparation for victims and their families through State programmes, conducted with an intercultural approach and without punitive incursions into the territory.

28. Just Access further respectfully draws the Court's attention to the protection of those who defend the rights of peoples in isolation. By its Order of 2 July 2025, applying Article 53 of its Rules of Procedure, the Court required Peru to ensure that FENAMAD and EarthRights International could freely represent the alleged victims throughout the international proceedings without reprisals, including those potentially arising from the

⁵⁹ IACHR, Precautionary Measure No. 262-05, granted 22 March 2007 in favour of the Mashco Piro, Yora and Amahuaca peoples in voluntary isolation (Las Piedras river, Madre de Dios). <https://www.oas.org/es/cidh/indigenas/proteccion/cautelares.asp>

application of the APCI legislation as amended by Law No. 32301.⁶⁰ Guarantees of non-repetition should ensure that the defence of peoples who cannot defend themselves is not itself exposed to sanction.

VII. Conclusion

29. For the reasons set out above, Just Access e.V. respectfully invites the Court:

- a. to consolidate the framework established in *Tagaeri and Taromenane* by defining the specific content of the State's obligations towards peoples in voluntary isolation, including the completion of territorial delimitation and legal recognition of territorial intangibility, the establishment of buffer zones, the review of extractive concessions, and independent monitoring;
- b. to hold that, for peoples who understand themselves as part of nature, the protection of the territory's ecological integrity and the protection of the people are inseparable, so that the environmental destruction of the territory constitutes a violation of the peoples' rights;
- c. to articulate a framework that protects these peoples against forced contact and extractive intrusion without confining them to an isolation they do not choose, while protecting the lives of, and securing reparation for, those harmed in violent encounters with them;
- d. to affirm that the precautionary principle operates, in the PIACI context, as an enforceable component of the State's protective obligations under Article 26 read with Articles 4 and 5 of the Convention;
- e. to recognise the specific content of the Article 26 rights of peoples in isolation, including the epidemiological protection of the peoples against imposed contact and the interdependence of the rights to a healthy environment, food, water, health and cultural survival;

⁶⁰ IACtHR, *Pueblos Indígenas Mashco Piro, Yora y Amahuaca v. Peru*, Order of 2 July 2025, Solicitud respecto del Perú: Aplicación artículo 53 del Reglamento de la Corte, consideration 21 and operative paragraph 1. Available at <https://earthrights.org/wp-content/uploads/2025/07/Resolucion-articulo-53-Pueblo-Indigena-Mashco.pdf>

- f. to read these standards in the light of the convergence between the Inter-American, universal and African systems and, if it sees fit, to recognise the protection of peoples in voluntary isolation and the principle of protection against forced contact as a norm of customary international law; and
- g. to order reparations that address the structural and preventive dimensions of the violation, including the guarantees of non-repetition set out above.

Respectfully submitted,

Just Access e.V.

Luca Brocca

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Luca Brocca
Head of Legal Research
Just Access e.V.

Prof. Dr. Dr. Mark Somos

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Mark Somos
Founder and Special Counsel
Just Access e.V.