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Indigenous Agency in Absence: Representation and Non-Contact in *Tagaeri and Taromenane v. Ecuador*

Agencia Indígena en Ausencia: Representación y No Contacto en el Caso *Tagaeri y Taromenane vs. Ecuador*

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Abstract

The Tagaeri and Taromenane are among the last Indigenous peoples living in voluntary isolation in the Ecuadorian Amazon. Three massacres and the Ecuadorian State's failure to protect them led to the case *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador* (2024) before the Inter-American Court of Human Rights. Because the victims remained in isolation, those bringing the case faced the challenge of representing them and producing evidence in their absence. This article examines how representation and agency were framed in the case. It analyzes how international law conceptualizes Indigenous peoples in isolation and mobilizes the right to self-determination to address the specific condition of "no contact". It argues that while this framework enables protection, it also creates limitations when indirect communication occurs, raising questions about how the voices and agency of isolated peoples can be acknowledged within international legal forums.

KEYWORDS: Indigenous Peoples in Voluntary Isolation; Representation and Indigenous Agency; Evidence and Testimony in Human Rights Law; Inter-American Court of Human Rights; Tagaeri and Taromenane (Ecuadorian Amazon).

Resumen

Los pueblos Tagaeri y Taromenane son algunos de los últimos pueblos indígenas que viven en aislamiento voluntario en la Amazonía ecuatoriana. Tres masacres y la falta de protección del Estado ecuatoriano hacia estos pueblos dieron lugar al caso *Pueblos Indígenas*

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Tagaeri y Taromenane vs. Ecuador (2024) ante la Corte Interamericana de Derechos Humanos. Mientras las víctimas permanecían en aislamiento, quienes llevaron el caso ante la Corte enfrentaron la tarea de representarlas y de producir pruebas en su ausencia. Este artículo examina cómo se enmarcaron la representación y la agencia en el caso. Analiza cómo el derecho internacional conceptualiza a los pueblos indígenas en aislamiento y moviliza el derecho a la autodeterminación para abordar la condición específica de "no contacto". El artículo sostiene que, si bien este marco permite establecer mecanismos de protección, también introduce limitaciones cuando ocurren formas de comunicación indirecta, planteando interrogantes sobre cómo pueden ser reconocidas las voces y la agencia de los pueblos en aislamiento dentro de los foros jurídicos internacionales.

PALABRAS CLAVE: Pueblos indígenas en aislamiento voluntario; Representación y agencia indígena; Prueba y testimonio en el derecho internacional de los derechos humanos; Corte Interamericana de Derechos Humanos; Tagaeri y Taromenane (Amazonía ecuatoriana).

INTRODUCTION

The *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador* case, adjudicated by the Inter-American Court of Human Rights in September 2024, marks the first time the Court has issued a judgment explicitly concerning the rights of Indigenous peoples in voluntary isolation. Yet the case is structured around a profound paradox: the very condition that defines the alleged victims —their isolation from majority society— renders their participation in legal proceedings impossible. The Tagaeri and Taromenane are thus represented without presence, absent not only in a physical or procedural sense but also from the juridical space where their interests are articulated and decided. They are spoken for within a forum they have not entered and most likely do not even know exists. This tension invites deeper reflection on the limits of legal representation and on the forms of agency recognized by human rights law. Who can legitimately speak on behalf of those who refuse contact? How can their silences, gestures, or absences be translated into juridical terms? And does the emerging legal framework for peoples in isolation, premised on the principle of non-contact, create any meaningful possibility for them to be heard, should they choose to speak?

The case before the Court centered on questions of state responsibility for a series of violent incidents —including killings in 2003, 2006, and 2013— and on the state's failure to protect two Tagaeri girls, then approximately two and six years old, who were left in the care of a Waorani community following the 2013 events. The petitioners argued that Ecuador failed to uphold its obligation to implement effective protective measures, allowing extractive industries to encroach on ancestral territories and thereby undermining the conditions necessary for these groups to remain in isolation.[1] They further contended that the intensification of resource exploitation in these areas was closely intertwined with the violent incidents. While the State

[1] IACHR (2014).

has designated a 700,000-hectare "restricted area" (*zona intangible*) for the Tagaeri and Taromenane, prohibiting extractive activities, the petitioners maintain that the area in which these peoples currently move extends far beyond those boundaries. This displacement, they argue, reflects the pressures caused by oil and logging operations, which have pushed them toward zones of still-intact forest that often overlap with territories of recently contacted Waorani communities.[2] For the petitioners' legal team, the case sought to establish a framework through which the Tagaeri and Taromenane themselves could determine whether to initiate contact, rather than being forced into it by the advance of extractive frontiers.[3]

In its 2024 judgment,[4] the Court held Ecuador internationally responsible, citing the state's lack of institutional coordination, preventive protocols, and territorial safeguards. It emphasized the heightened vulnerability of Indigenous peoples in isolation, while recognizing their isolation as an active expression of self-determination. The judgment called for structural reforms, including stronger regulatory frameworks and more effective mechanisms for territorial monitoring and control. At the same time, by framing isolation primarily as the absence of contact, the Court left partially unexamined the deeper challenge raised by the case: how the voices, demands, and political agency of peoples in isolation might be acknowledged within legal forums that rely on presence, representation, and speech.

The article is structured as follows. Section 1 (The Politics of Isolation: Produced Vulnerabilities and the Question of Voluntariness) examines how Indigenous peoples in isolation are conceptualized in international law, focusing on their legal characterization, the application of vulnerability, and the role of voluntariness. Section 2 (The Legal Framing of Isolation: Non-Contact and the Right to Self-Determination) traces the emergence of a new category of rights holders for these groups, with particular attention to how principles of self-determination and the doctrine of non-contact are deployed, highlighting the tensions and blind spots of this framing as evidenced in the *Tagaeri Taromenane* case. Section 3 (Legal Representation of the Tagaeri and Taromenane in Isolation) examines the specific challenges of legal representation for peoples in isolation as they unfolded in the proceedings, focusing on the Court's jurisprudential developments and their ethical implications. It analyzes how the Court reaffirmed and extended its jurisprudence by stretching the principle of third-party petition, allowing for representation in the absence of direct authorization, and by recognizing victimhood despite the impossibility of individual identification. This move exposes the tensions between juridical inclusion and Indigenous self-determination, highlighting the limits of legal categories in capturing forms of agency that refuse visibility. At the same time, the petitioners' own ethical stance revealed a self-conscious restraint: rather than speaking for the Tagaeri and Taromenane, they sought to preserve a juridical space in which silence is interpreted not as absence, but as a legitimate expression of autonomy. The section concludes by situating this ethical and procedural analysis within the broader territorial and relational context shared by the Tagaeri, Taromenane, and Waorani, emphasizing that their histories of mobility, kinship, and sporadic contact complicate legal framings of isolation as absolute separation. Section 4 (Conclusion: Silence, Autonomy, and the Limits of Representation) reflects on the broader implications of the analysis developed throughout the article for

[2] NARVÁEZ (2021).

[3] CORDERO-HEREDIA & KOEPPEN (2021).

[4] IACtHR (2024).

understanding representation and self-determination in contexts of Indigenous isolation. It argues that the prevailing legal framing —rooted in a rigid interpretation of non-contact as self-determination— risks obscuring the relational and situational dimensions through which peoples in isolation, such as the Tagaeri and Taromenane, actively negotiate their autonomy. Recognizing these dynamics, the conclusion suggests, is essential to advancing a more responsive and context-sensitive jurisprudence —one capable of acknowledging Indigenous agency as it is enacted through refusal, silence, and other non-verbal forms of political expression.

The article draws on doctoral research at Ghent University combining doctrinal and ethnographic methods. It reviews relevant jurisprudence, international instruments, and academic literature on the protection of Indigenous peoples in isolation, complemented by findings from legal ethnography of the *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador* case, including interviews with legal practitioners, NGO representatives, and Waorani witnesses conducted during fieldwork in Ecuador (2022–2023).

I. THE POLITICS OF ISOLATION: PRODUCED VULNERABILITIES AND THE QUESTION OF VOLUNTARINESS

Under international law, indigenous peoples in isolation[5] are entitled to the same rights as other indigenous peoples within majority societies, along with the fundamental human rights guaranteed to all individuals. However, the specific recognition of the rights of peoples in isolation is a relatively recent development, and emerged from the successful mobilization efforts by indigenous organizations and NGOs in Peru and Brazil[6] against multilateral development projects targeting certain indigenous groups.[7] This mobilization resulted in a series of meetings, funded by the Inter-American Development Bank and the United Nations, held between 2005 and 2010, to develop an effective international campaign that framed isolation as an exceptional collective right and a field of expert knowledge.[8] As a result, a new category of rights holders was established: peoples in isolation. Beginning with the identification and definition of the communities that fall within this category, this process has not only involved naming these groups but also recognizing their unique vulnerabilities and examining how these vulnerabilities can be linked to existing human rights frameworks.

In Latin America, peoples in isolation have been primarily identified in the Amazon and Gran Chaco regions, spanning the national territories of Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. There are also signs of their presence in Guyana and Suriname, close to their respective borders with Brazil. According to the latest comprehensive

[5] Within frameworks for the protection of rights, the rights of Indigenous peoples in isolation and those in recent contact are often grouped together and considered jointly. As the 2012 OHCHR recommendations explain, it is difficult to determine precisely when a situation of isolation transitions into one of initial contact, even after years of regular interaction with the majority society. The risk of extinction remains a persistent threat, compounded by the challenges that arise from contact. For clarity, however, I will henceforth refer only to peoples in isolation.

[6] HUERTAS (2002).

[7] The 2003 Camisea oil exploration project in the Peruvian Amazon was a major impetus for this legislation leading to protective measures for isolated peoples.

[8] PARELLADA (2007); BRACKELAIRE (2006).

regional report on Peoples in Isolation in these regions, published in 2019 by the NGO Land is Life, there are documented records of 185 indigenous groups in isolation, 66 of which have been confirmed.[9] In these regions, the survival of peoples in isolation is primarily threatened by state-driven development and resource extraction policies, often implemented in collaboration with private sector actors and facilitated by illegal groups.[10] These threats are amplified by a general lack of political will to protect the rights and territories of peoples in isolation and the absence of the state apparatus in regions where peoples in isolation are present.[11]

As defined in the 2012 recommendations of the United Nations Office of the High Commissioner for Human Rights (OHCHR), "Peoples in isolation are Indigenous groups or parts of Indigenous groups who do not maintain regular contact with the majority population, and who also tend to avoid any kind of contact with people outside their group".[12] While this definition provides an important basis for recognition, it may inadvertently convey a simplified and static notion of isolation as complete disconnection. This interpretation can obscure the more complex and often fluctuating relations that many of these groups sustain with neighboring Indigenous peoples. In the case of the Tagaeri and Taromenane, for example, their longstanding and dynamic—albeit cautious—interactions with the Waorani neighboring communities and kin challenge the idea that isolation is synonymous with total withdrawal from relational life. Representing these groups as entirely severed from external ties not only mischaracterizes the situated realities of contact and communication but also distorts legal and institutional responses, particularly in human rights frameworks that predicate protection on the presumed absence of any external connection.

The OHCHR further elaborates three principal criteria to define peoples in isolation:

> 1. They are peoples who are highly integrated into the ecosystems they inhabit and of which they are a part, maintaining a close relationship of interdependence with the environment in which they live and develop their culture. [...] [13]
>
> 2. They are peoples who are unaware of how the majority society functions, and therefore find themselves in a state of defenselessness and extreme vulnerability in the face of various actors who attempt to approach them or try to assist them in

[9] LAND IS LIFE (2019), p. 10. Due to the very nature of their isolation, accurately estimating the population of these groups remains challenging, with estimates varying significantly.

[10] LAND IS LIFE (2019), p. 35.

[11] According to LAND IS LIFE (2019), the principal dangers faced by groups in isolation in the Amazon and Gran Chaco region include: land and water contamination resulting from extractive activities; colonization and encroachment by both legal and illegal loggers; the influx of tourists and outsiders; infrastructure development; the introduction of foreign diseases; illegal hunting and fishing practices; oil exploration and hydrocarbon extraction; missionary activities; problematic institutional frameworks, including inadequate public policies and laws; mining operations; drug trafficking; and the challenges arising from the transnational nature of their territories, as well as armed conflicts such as guerrilla activities

[12] OHCHR (2012), p. 5.

[13] In 2020, also the Inter-American Commission on Human Rights expanded, in this respect, its previous definition of indigenous peoples, which had primarily focused on their refusal of contact with the outside world, by introducing the concept of "ecosystemic peoples. This addition underscores that these groups maintain a strict, interdependent relationship with their ecological environment, meaning that any significant disruption to their natural habitat must be seen as a direct threat to their survival. See IACHR (2019).

> their process of interaction with the rest of society, as is the case with peoples in initial contact.
>
> 3. They are highly vulnerable peoples, many of whom are at serious risk of extinction. Their extreme vulnerability is worsened by the threats and aggressions their territories face, which directly endanger the preservation of their cultures and ways of life [...]. [14]

The OHCHR's account importantly affirms Indigenous peoples in isolation as deeply interconnected with their surrounding ecosystems, emphasizing a relationship of environmental interdependence as central to their survival and cultural reproduction.[15] However, the recommendations also emphasize their unfamiliarity with the structures of majority society, framing this as a source of extreme vulnerability—one that allegedly leaves them defenseless in the face of external approaches. While this framing seeks to justify heightened protective measures, it also calls for critical scrutiny. The emphasis on "defenselessness" risks conflating non-engagement or communicative asymmetry with incapacity. In doing so, such portrayals may reproduce a paternalistic logic in which isolation becomes equated with a lack of agency. This framing tends to naturalize vulnerability as an intrinsic condition of isolation, rather than recognizing it as a consequence of historical and ongoing structural pressures—especially extractive encroachment and state neglect. It is important to note, however, that the OHCHR's third criterion explicitly states that the vulnerability of peoples in isolation is "worsened" by external threats, rather than caused by them—a subtle but significant distinction.

This conceptual slippage is precisely what the report of the NGO Land is Life seeks to challenge. The first step in incorporating Indigenous peoples in isolation into the human rights framework has often been to identify their vulnerabilities. But must vulnerability be understood as imminent, permanent, or intrinsic to isolation itself? The report further develops issues discussed at the 2017 working meeting in Lima, organized by the South America Regional Office of the United Nations High Commissioner for Human Rights, the International Work Group for Indigenous Affairs (IWGIA), the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, and the Inter-American Commission on Human Rights.[16] The report contends that vulnerability should be understood as a condition shaped by external forces–a context produced by the actions and encroachments of Western society. In this framework, the vulnerability of peoples in isolation is not a fixed attribute but a consequence of exposure to state violence, extractivism, and juridical misrecognition. Moreover, the report argues that the decision to remain isolated should be read not as

[14] OHCHR (2012), p. 7.

[15] Lucas Bessire warns that framing peoples in isolation as "living in complete interdependence with nature" risks objectifying them and reducing their existence to symbols of environmental purity. Recounting the controversy over a scientific expedition planned for November 2010 in the Gran Chaco region of Paraguay, he shows how isolated Ayoreo-speaking peoples were portrayed by NGOs and media as indistinguishable from untouched forest ecosystems. This perspective, he argues, erases the historical and political forces behind their isolation and reactivates primitivist tropes that naturalize dispossession and deny Indigenous agency. See BESSIRE (2012), pp. 467–469.

[16] UNHRC (2018).

voluntary withdrawal, but as a conscious and strategic form of resistance to dominant, Western models of development.[17]

This shift in framing invites a broader reconsideration of the legal logics through which isolation is currently interpreted. If isolation is approached not as a natural state of vulnerability, but as a deliberate stance against encroachment, it opens space for understanding these communities' positioning as one of resistance rather than passive victimhood. The Land is Life report, particularly through its local study in Brazil, reinforces this perspective by emphasizing that "isolation is not a condition of vulnerability in itself; on the contrary, it is a condition that seeks to reduce their own vulnerability in relation to the historical colonizing practices used against them".[18] From this view, it is not isolation that makes these communities vulnerable, but rather the systemic violence and historical dispossession enacted by majority society and the state. In other words, vulnerability is not an innate condition —it is imposed. Far from being uninformed or unaware, the decision of indigenous groups to isolate reflect a conscious refusal of imposed models of development.[19] The Land is Life report thus urges that isolation be understood not as a marker of incapacity but as a deliberate assertion of political agency —a historically grounded response to external pressures rather than a symptom of vulnerability.

The debate over how to name peoples in isolation reflects, and becomes part of, the broader question of how to politically and legally frame them, revolving around issues of voluntariness and state responsibility. International protection frameworks, including the United Nations and the Inter-American System, predominantly use the term "peoples in voluntary isolation". This term, however, is contested by Indigenous authorities, organizations, experts, and NGOs, who argue that isolation is often externally imposed rather than chosen. At the 2005 International Meeting in Belém do Pará, for instance, participants favored expressions such as "peoples in situations of isolation", explicitly rejecting "voluntary isolation".[20] Subsequent meetings in Bolivia and Ecuador produced recommendations that informed the OHCHR Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, which reiterated this rejection.

Despite this, the 2012 OHCHR guidelines used both terms interchangeably,[21] acknowledging the lack of consensus but without engaging the underlying disagreements. The position adopted by the OHCHR was likely influenced by Latin American governments, which have consistently used the term "peoples in voluntary isolation". While the OHCHR may have chosen to follow this usage to align with early national advances in recognizing the rights of peoples in isolation,[22] states may —among other reasons— have preferred it to deflect responsibility for their protection.[23] The Inter-American Commission on Human Rights (IACHR) formally adopted

[17] LAND IS LIFE (2019), p. 17.
[18] AMORIM (2019), as cited in LAND IS LIFE (2019), p. 18.
[19] LAND IS LIFE (2019), p.12.
[20] PICHILINGUE (2024). Conversation with the author, 18 November 2024.
[21] OHCHR (2012), p.6.
[22] Ecuador was the first country to recognize the rights of peoples in voluntary isolation in its constitution in 2008, followed by Bolivia in 2009, with both countries using the term "voluntary" and acting ahead of the OHCHR guidelines.
[23] PICHILINGUE (2024); Ecuadorian journalist Milagros Aguirre, who has reported extensively on the Tagaeri-Taromenane massacres, proposes the term *pueblos ocultados* ("hidden peoples") to highlight the deliberate concealment of these communities and argues that describing them as in "voluntary isolation" allows the state to evade its protective responsibilities. See MONTAÑO (2022).

"peoples in voluntary isolation" in its 2013 recommendations and in the Pueblos Indígenas Tagaeri y Taromenane v. Ecuador case before the Inter-American Court. Drawing on Beatriz Huertas Castillo's work,[24] the IACHR emphasized that even if isolation is a survival strategy in response to external pressures, it nonetheless expresses autonomy and must be respected as a human rights issue.

During the OHCHR consultations, Indigenous representatives proposed the term pueblos libres ("free peoples") to describe communities that refuse contact.[25] While this term remains common in Indigenous forums, it did not gain traction in international policy. Notably, pueblos libres is the only expression with a positive connotation, evoking Indigenous autonomy and a way of life predating colonization and external pressures.

II. The Legal Framing of Isolation: Non-Contact and the Right to Self-Determination

The Commission considers that the instruments for the protection of rights must be understood through two principles that are interrelated and reciprocally determined, and that are specifically applicable to indigenous peoples in voluntary isolation: the principle of self-determination and the principle of non-contact. For the IACHR, the principle of non-contact is the manifestation of the right of indigenous peoples in voluntary isolation to self-determination.[26]

As a newly established category of rights holders, peoples in isolation and their distinct characteristics required a search for applicable human rights instruments that could be applied for their protection. International human rights law had to identify which additional rights, beyond those of indigenous peoples in contact, are crucial for isolated groups. The two principles of self-determination and no-contact were finally determined as providing the appropriate lens for understanding and interpreting existing rights frameworks in a manner that is most applicable and effective for the protection of peoples in isolation. The decision of no-contact is thereby understood as the ultimate expression of agency, which translates into the right to self-determination.[27]

As found by international human rights law bodies, threats to the rights of isolated and newly contacted peoples stem from contact with outsiders, including violence, resource extraction, disease, food shortages, and cultural loss. Preventing unwanted contact thus eliminates most of these risks and protects their rights. Preventing contact, therefore, is understood as key to protecting their survival, territories, and cultural integrity. According to this premise, no-contact should urgently be respected and only allowed at the initiative of peoples in isolation.

In its 2013 recommendations the Inter-American Commission holds:

> "The different threats to the rights of peoples in voluntary isolation and initial contact share a common cause: contact, whether direct or indirect, with persons

[24] Huertas Castillo (2002), p. 22.
[25] Pichilingue (2024).
[26] IACHR (2019).
[27] UNHRC (2009), pp. 13–14; OHCHR (2012), p. 8; IACHR (2013), p. 10; IACtHR (2024), pp. 68-69, 79, 100.

> who are foreign to their people. Direct physical assaults, incursions into their territories for the purpose of extracting natural resources, epidemics, food scarcity, and the loss of their culture, all presuppose contact. If undesired contact is prevented, most of the threats are eliminated and respect for the rights of the peoples is guaranteed. Therefore, in the view of the Commission, it is fundamental that every effort be made to reinforce respect for the principle of no contact, and that contact should happen only at the initiative of the peoples in isolation".[28]

No-contact, while not inherently recognized as a right, is conceptualized within the human rights framework as an expression of self-determination. This understanding positions the right to self-determination as the central framework for defining and protecting the rights of peoples in isolation. The 2012 OHCHR recommendations further clarify:

> "The right to self-determination contained in Articles 1 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and in Articles 3, 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples means respect for their strategies of physical and cultural survival according to their uses and customs, which may include isolation, as well as selective forms of contact and forms of coexistence. The decision to maintain their isolation can be understood as one of the various forms of expressing the exercise of the right to self-determination that can contribute to the respect of other rights. By respecting the decision to remain in isolation and guaranteeing this option through the development of public policies and regulations aimed at achieving this end, these peoples are being protected from any contact".[29]

The pioneering legal instruments that explicitly recognize the rights of indigenous peoples in voluntary isolation, however, are not international rights bodies, but national laws. Ecuador's 2008 Constitution,[30] Bolivia's 2009 Constitution,[31] and Peru's 2012 Law on the Protection of Indigenous Peoples in Voluntary Isolation[32] represent the first binding legal frameworks designed to protect these groups. Further, since 2009, Ecuador's Penal Code[33] has been criminalizing activities that threaten territories of peoples in isolation, such as logging, mining, and oil exploration, and prohibits unauthorized contact. Deliberate and systematic contact is thereby regarded as ethnocide, as stipulated in the 2008 Constitution of Ecuador.[34]

Internationally, the OHCHR and the Inter-American Commission issued their first recommendations on protecting such groups in 2012 and 2013, and in 2016, the American

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[28] IACHR (2013), p. 10.

[29] OHCHR (2012), p. 8.

[30] *Constitution of the Republic of Ecuador*, Official Register No. 449, 20 October 2008, art. 57, "The territories of the peoples living in voluntary isolation are an irreducible and intangible ancestral possession and all forms of extractive activities shall be forbidden there. The State shall adopt measures to guarantee their lives, enforce respect for self-determination and the will to remain in isolation and to ensure observance of their rights. The violation of these rights shall constitute a crime of ethnocide, which shall be classified as such by law".

[31] *Constitución Política del Estado Plurinacional de Bolivia*, 7 February 2009, art. 31.

[32] Ley N.º 28736, Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial, 2006 (Peru).

[33] Código Orgánico Integral Penal (COIP), Registro Oficial Suplemento 417, 10 August 2014 (Ecuador).

[34] For a discussion on the difficulty of proving the act of ethnocide and resulting inefficiency of this law in Ecuador see interview with Ecuadorian human rights lawyer, POTES (2013).

Declaration on the Rights of Indigenous Peoples became the first international instrument to specifically address the rights of peoples in voluntary isolation.

The emerging legal category of "peoples in isolation" which couples no-contact with the language of self-determination raises several concerns. While this alignment is framed as an ethical recognition of Indigenous autonomy, it risks transforming isolation into a permanent legal condition, thereby foreclosing political agency under the guise of protection. The risk of conflating the principle of no-contact with the right to self-determination lies in the potential erosion of the latter: when isolation is positioned as the fullest expression of autonomy, it may paradoxically undermine the broader scope of self-determination. In contexts where the right to remain undisturbed is prioritized, other aspects of self-determination, such as mobility, access to resources, or as well communication, may be severely restricted. As a result, communities may be preserved biologically but constrained politically.

From a legal-anthropological perspective, this dynamic reflects what Didier Fassin refers to as "biolegitimacy" —a form of governance that defines some lives as worthy of protection based primarily on biological vulnerability, often prioritizing survival over meaningful political participation.[35] As Elizabeth Povinelli has shown, recognition regimes often define people either by their exposure to harm or by viewing their culture as fixed and unchanging, which limits more flexible and evolving expressions of Indigenous autonomy.[36] Further, the production of "isolated peoples" as juridically protected subjects often re-inscribes colonial hierarchies by elevating certain Indigenous groups as authentic and endangered, while rendering others invisible or politically illegible. Lucas Bessire's ethnographic analysis of the Ayoreo in Paraguay offers a sharp critique of this emergent formation, revealing how the politics of no-contact are appropriated by states, NGOs, and legal regimes to manage Indigenous life through isolation rather than relation.[37]

The political-legal category of isolation carries multiculturalist logics to such an extreme that they double back upon themselves. Isolation-as-right is premised on an appeal to a pluralist society built not around tolerance for diversity, but around a state that polices the boundaries of culture as permanent borders that must be defended.[38]

Over the past two decades, countries such as Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Paraguay, Peru, and Venezuela have adopted multiculturalism as an official policy. These reforms aim to reduce inequality by extending new rights and forms of citizenship to Indigenous populations. However, the legislation of isolation introduces tensions within these frameworks: while promising inclusion, it often produces exclusion. Isolation-as-right assumes a pluralist society in which the state enforces cultural boundaries, leading not to integration but to segregation—preserving cultural distinctiveness only through enforced stasis. The legal valorization of isolated cultures as pure and immutable thus runs counter to multiculturalism's professed goal of supporting dynamic participation.

[35] FASSSIN (2009).
[36] POVINELLI (2002).
[37] BESSIRE (2012).
[38] BESSIRE (2012), p. 479

Because it grants rights to a form of life it cannot locate, isolation presumes a subject that is intelligible only in its sovereign absence. Paradoxically, it presupposes a legal subject that must remain outside the law itself.[39]

Building on Povinelli's insights, one can see how, beneath the surface of multicultural recognition, juridical frameworks often reinforce exclusion. Legal regimes that elevate certain communities for their isolation simultaneously diminish those who adapt or seek contact. Those classified as "uncontacted" or "in isolation" receive heightened visibility, protection, and resource, while groups that have experienced contact or demonstrate adaptability are frequently perceived as less authentic and thus marginalized by both state institutions and humanitarian organizations. Bessire illustrates this dynamic among the Ayoreo, where recognition and resources disproportionately benefit those labeled as uncontacted, creating internal hierarchies within indigeneity itself.[40]

This logic constrains Indigenous communities' capacity for change or relational engagement by treating transformation as loss. Legal and NGO narratives often freeze isolated groups in a precontact state, denying their ability to evolve or engage with broader social and political worlds without forfeiting authenticity or protection. Within this imaginary, Indigenous subjects risk "ceasing to be themselves" if they change—making transformation a threat rather than an expression of agency. In this way, the right to remain undisturbed can inadvertently suppress fuller self-determination by rendering cultural evolution politically illegible.

These dynamics underscore the need to rethink legal categories through a more relational jurisprudence. Rather than codifying isolation as a static condition, legal frameworks should attend to the fluid, context-dependent practices through which Indigenous communities negotiate autonomy. Overemphasizing the decision to remain uncontacted as a definitive expression of self-determination risks creating rigid legal boundaries that obscure the nuanced, lived realities of isolation.

Addressing these contradictions requires reexamining the assumption that isolated peoples exist entirely outside communicative or political relations. A critical first step is recognizing that these groups do, in fact, communicate—often indirectly through neighboring communities—and that such exchanges often convey implicit demands to halt the encroachment and destruction of their ancestral territories. As Narváez observes:

> "[...] the family groups in isolation have a low level of exchange relations within their territory with Waorani members, as reported by several Waorani. [...] These low-intensity contacts are sporadic, manifested through the circulation of goods like axes, machetes, pots, and other items that Waorani have given to families in isolation, or that they have 'taken' from Waorani villages or settlers".[41]

While some of this communication involves direct physical interaction,[42] much of it occurs at spatial or temporal distance–performed without direct visibility. Signals such as crossed spears to indicate a desire not to cross paths. Vocalizations mimicking animals that only Waorani can

[39] BESSIRE (2012), p. 478.

[40] BESSIRE (2012).

[41] NARVÁEZ (2016), p. 105.

[42] ÁLVAREZ, WIRTH, VALDIVIA and LU (2023), pp. 36-45.

identify as human,[43] and dreams interpreted by Waorani shamans, believed to be mediated through a jaguar spirit,[44] and are among the communicative acts that facilitate indirect engagement.

Applying a jurisprudence attentive to relationality would require moving beyond static classifications to consider how these groups themselves navigate autonomy, contact, and survival in changing socio-political landscapes. In such cases, the Court must not only protect the territorial and cultural rights of isolated peoples, but also critically examine how legal recognition can unintentionally freeze their identity in place, restricting their ability to adapt and act politically in the future.

III. LEGAL REPRESENTATION AND THE TAGAERI AND TAROMENANE IN ISOLATION

One of the central procedural challenges in the Tagaeri and Taromenane v. Ecuador case concerned establishing legal grounds for representing Indigenous communities who, by definition, remain in isolation and cannot participate directly in legal proceedings. From the outset, the petitioners faced the problem of advocating for individuals who could not be contacted, authorized no representation, and had no relatives willing or able to serve as proxies.

The case was submitted to the Inter-American system in 2006 by four individual petitioners — three biologists and one environmental lawyer— following the State's failure to halt the Petrobras oil company's road expansion in the Yasuní region and the subsequent 2006 massacre of the Tagaeri and Taromenane. At the initial stage, the petition was presented independently, without the participation of representatives of the Tagaeri, Taromenane, Waorani, or any other Indigenous organizations in Ecuador.

A few years later, the petitioners sought to broaden the coalition, leading to the inclusion of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) and the environmental activist organization Yasunidos. Fifteen years after the case was first filed—following the Inter-American Commission's referral of the case to the Inter-American Court in 2021—a young Tagaeri woman named Conta, who had grown up in a Waorani community after a violent confrontation, joined the proceedings through the representation of American lawyer Judith Kimmerling.

Article 23 of the Inter-American Commission's Rules of Procedure stipulates that any person or organization can submit a petition to the Commission on behalf of themselves or another person.45 As explained by David Cordero, lawyer for the CONAIE and part of the legal team representing the petitioners in the Tagaeri-Taromenane case, this petition pushed the boundaries of the third-party submission principle.[46] From the outset, it was evident that, given the victims' situation of isolation, direct communication was impossible and no authorization could be obtained for their representation. There were also no relatives who could act as proxies or serve as petitioners themselves, and no prospect that the victims could ever actively

[43] CAHUIYA (2022). Interview by the author, Noñeno, Ecuadorian Amazon, 13 August 2022.

[44] KORAK (2024), pp. 184–190; RIVAL (1996), pp. 116-117; RIVAL (2016), p. 134.

[45] Inter-American Commission on Human Rights, *Rules of Procedure,* Art. 23.

[46] CORDERO (2022). Interview by the author via video call, 9 February 2022.

participate in the proceedings—much as in cases of forced disappearance, which are frequently brought through third-party petitions.

The peculiarity of the Tagaeri-Taromenane case was that, despite the Inter-American System's broad conception of victimhood,[47] which allows, for instance, family members to be recognized as indirect victims, there were no victims, direct or indirect, present in the proceedings. Nevertheless, the Commission accepted the petition and its petitioners, and by admitting CONAIE and the Yasunidos collective as co-petitioners, arguably made a strategic decision to strengthen the petition's legitimacy.

When the case advanced to the Court, the State of Ecuador objected to the Commission's 2019 Merits Report, contesting both the lack of identified victims and the legitimacy of their representation. This objection prompted the Court to address several fundamental questions regarding victim representation: the implications of isolation for legal standing, the uncertainty surrounding the victims' identity, and the Inter-American System's effort to preserve procedural flexibility as a means of ensuring access to justice.

Regarding the identification of victims, the State argued that the Commission's Merits Report suggested the possible inclusion of other Indigenous peoples in isolation from the western Ecuadorian Amazon, yet failed to clarify why no victims other than the Tagaeri and Taromenane had not been identified. It maintained that the Court's procedural rules do not permit cases involving "in abstracto" victims[48]—those who are unidentified or indeterminate—and claimed that this lack of precision violated regulatory standards, infringing on the State's right to defense and the principle of legal certainty.

This objection prompted the Court to address the issue of victim identification directly. It reaffirmed the Commission's position that the Tagaeri and Taromenane had been clearly identified as the core victims, while recognizing that other uncontacted groups in the region could fall within the same category given the fluid and exceptional dynamics that define such communities.[49] The Commission argued that this ambiguity stemmed not from procedural negligence but from the very nature of isolation itself.[50]

The common intervener, Mario Melo,[51] expanded on this position, emphasizing that confirmation of these groups' existence and presence must rely on the sum of all available sources. He noted that internal dynamics, such as group divisions, conflicts, or disease, make precise identification of individuals or even group composition impossible. Melo also invoked Article 35.2 of the Court's Rules of Procedure, which allows the inclusion of unidentified victims in exceptional cases involving collective harms, provided the reasons for such non-identification are justified.[52]

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[47] FRANCO & FAJARDO MORALES (2021); FERIA TINTA (2006).

[48] IACtHR (2024), p. 21, para. 51.

[49] IACtHR (2024), pp. 24-25, para. 60.

[50] IACtHR (2024), p. 22, para. 52.

[51] The common intervener serves as the spokesperson for various groups of victim representatives and point of contact for the other parties to the case, and is selected from the legal teams of the victims.

[52] IACtHR (2024), p. 22, para. 53.

In its final judgment, the Court accepted this reasoning. Applying Article 35.2, it held that the particular circumstances of the case, marked by geographic inaccessibility, scarce documentation, and voluntary isolation, rendered individual identification both impossible and legally unnecessary.[53]

The Court further affirmed that isolation must not become a barrier to access to justice, underscoring that "one of the fundamental premises for the preservation of the rights of these peoples is respect for non-contact and their choice to remain in isolation, as an expression of their right to self-determination".[54] Given the absence of direct contact, it acknowledged that there was no certainty about the groups' composition, number, or even self-denomination.

Nevertheless, the Court found that sufficient and credible evidence had been presented through "field research, accounts from travelers and missionaries, testimonies from neighboring communities, official reports, anthropological and ethnographic studies, satellite imagery, among others".[55] It concluded that "the difficulty in naming them does not prevent the possibility of grouping them together and considering them as alleged victims of the same violations [...]".[56]

This reasoning not only upheld the admissibility of the case but also marked a significant jurisprudential development: by recognizing that isolation, invisibility, and limited documentation do not negate legal personhood or group agency, the Court advanced a relational, context-sensitive standard for representation. In doing so, it pushed back against the State's invocation of formalistic procedural barriers to deny justice in structurally exceptional contexts.

Following its challenge to the identification of victims, the Ecuadorian State extended its procedural critique to the issue of representation, questioning whether anyone could legitimately speak for Indigenous peoples who, by principle and law, remain uncontacted.

Framed as a procedural objection, the State's claim strategically pressed on a legal threshold: how can representation be validated when consent cannot be obtained, and the "represented" cannot be consulted? In doing so, it forced the Court to confront the tension between formal legal requirements of representation and the radically distinct positionality of Indigenous

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[53] The Court reiterates in its judgement that, under Article 35.1 of its Rules of Procedure and established jurisprudence, alleged victims must be precisely identified in the Merits Report of the Commission. After the Merits Report new alleged victims cannot be added, unless exceptional circumstances outlined in Article 35.2 apply.

[54] IACtHR (2024), p. 24, para. 57.

[55] IACtHR (2024), p. 24, para. 57. In its judgment, the Court cites the *Land is Life* regional report (LAND IS LIFE (2019), p. 91), thereby acknowledging the credibility of the methodologies employed in the eleven national reports synthesized in the regional analysis. These methods, as listed in the report, include: "field research; accounts from travelers and missionaries; interviews with the population (Indigenous and non-Indigenous) who live in the surroundings or share territory inhabited by peoples in isolation (including testimonies from those engaged in illicit activities); official reports from public institutions; accounts from anthropologists and scientific publications; bibliographic sources; field expeditions organized specifically for this purpose; and extensive use of new technologies linked to remote sensing (such as high-resolution satellite imagery)". The citation thus affirms the legitimacy of diverse, locally adapted research approaches to documenting the presence and conditions of Indigenous peoples in isolation across South America.

[56] IACtHR (2024), p. 24, para. 58.

peoples in isolation —who, by the very legal frameworks intended to protect them, must remain beyond direct reach.

In response, the Court recognized the challenge, but used the moment to reaffirm and expand its jurisprudence. It reiterated the principle that, under the right to self-determination, Indigenous peoples are entitled to define their own forms of organization and representation. Yet it conceded that, in this case, such self-determined designation of representatives is impossible without violating the very principle of non-contact. As the judgment explains:

> [...] this Court has previously emphasized that, within the framework of the right to self-determination, indigenous peoples and communities have the authority to make decisions regarding the defense of their rights, through their own forms of organization and decision-making, in accordance with their cultural practices. However, this Court reiterates the particularities of the present case, where the alleged victims are peoples living in isolation and their members cannot be contacted (*infra*, para. 187). As such, it becomes impossible to determine how these peoples wish to be represented and to grant representation powers, as there is no way to do so without violating the principle of non-contact.[57]

Crucially, the Court accepted the petitioners' submission that their representation would be carried out by CONAIE, a recognized Indigenous organization in Ecuador, and the Yasunidos collective, that has also acted internally to defend the rights of indigenous peoples in isolation, and found this sufficient[58] under the circumstances:

> [...] in light of the impossibility of obtaining the express consent of the alleged victims, this Court considers the arguments presented by the petitioners to be sufficient to recognize them as legitimate representatives. In fact, the Court recalls that its purpose is not to hinder the development of the process through formalities, but rather to bring the decision made in the Judgment closer to the demand for justice.[59]

This statement is key: it shows how, when confronted with the State's procedural rigidity, the Court recalibrated its standards of representation to ensure that legal form would not eclipse substantive justice. The Court cautioned that "if a broader form of representation is not assumed, it could result in a denial of access to justice".[60] This was not merely a procedural ruling, but an affirmation that access to justice requires procedural adaptation—particularly when cultural difference or legal invisibility would otherwise exclude a group from a process designed to protect it.

The Commission had already acknowledged this tension, noting that while the Tagaeri and Taromenane hold the legal right to access national and international courts, their isolation

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[57] IACtHR (2024), p. 27, para. 68.

[58] Another reason the Court found the state's objection to be unfounded is the application of the principle of estoppel. In accordance with its established jurisprudence, the Court holds that a State which has adopted a particular position, producing legal effects, cannot later take a contradictory position that alters the status quo upon which the other party relied. Since the state did not raise this objection in a timely manner, the Court deemed its late assertion impermissible under the principle of estoppel. See IACtHR (2024), p. 26, para 66.

[59] IACtHR (2024), p. 27, para. 69.

[60] IACtHR (2024), p. 27, para. 69.

renders this right practically inaccessible.[61] The Court aligned with this assessment, confirming the need to interpret representation through a lens sensitive to structural and cultural context. In this dialogic exchange, the Inter-American System negotiated between formal legal categories and the lived realities of Indigenous peoples in isolation: The Court did not dismiss the procedural standards raised by the State; rather, it adapted them—expanding the jurisprudential space in which legal voice can be constructed even in the absence of conventional representation. Yet this flexibility remains constrained by the very framework the Court upholds: while it affirmed the legitimacy of broader representation, it did so without acknowledging the indirect forms of communication and self-articulation already practiced by the Tagaeri and Taromenane. The result is an openness that is both significant and limited—a response to the problem of representation that stops short of rethinking the conditions under which Indigenous agency might become legible.

The ethical stance adopted by the petitioners points toward a more reflexive form of legal advocacy. Rather than claiming to speak for the Tagaeri and Taromenane, they argue for the creation of conditions under which these peoples might one day choose—if they wish—to speak for themselves. Representation, in this view, is not about voicing demands on behalf of the uncontacted, but about removing the structural and environmental pressures that preclude their autonomous choice. As David Cordero, one member of the petitoners' legal team, explained, while lawyers usually speak for their clients, in this case "we cannot say that the Tagaeri and Taromenane want one thing or another because of these massacres. So for us, what we're trying to argue in Court is that it should be their choice to remain in isolation, if that is what they wish. And ensuring the conditions for them to do so is not optional—it is a duty of the State".[62] This reframing casts representation as protection without appropriation, as the assertion of rights without substituting voice. It demands ethical restraint: to defend the space in which these peoples may act or remain silent on their own terms. Instead of legal agency being spoken through a proxy, it is envisioned as something that must be withheld, deferred, and made possible—rather than performed. What is protected here is not only the right to speak, but also the right to make autonomous decisions about whether, when, and how to engage with the outside world.

This approach mirrors the broader structural tensions explored throughout this section: the stretching of the third-party petition principle; the Court's acknowledgment of victimhood in the absence of identification; and the legitimacy conferred to representatives without consent. Across these instances, the jurisprudence of the Court reveals an effort to accommodate extreme conditions of legal invisibility. Yet at its most promising, as articulated by the petitioners, legal representation becomes less about speaking for Indigenous peoples in isolation and more about holding open a juridical space in which the right to remain silent is recognized not as absence, but as a legitimate form of autonomy.[63]

This ethical framing is not merely a gesture of caution—it is politically significant. By refusing to substitute Indigenous voice with legal speech, the petitioners advance a model of advocacy grounded in restraint, responsibility, and structural awareness. Their approach challenges dominant legal logics that equate representation with speaking on behalf of others and instead

[61] IACHR (2019), para. 30.

[62] CORDERO (2022).

[63] On legal cases including intentional indigenous silences in the United States, see KOLOWRATNIK (2019).

insists on protecting the relational and material conditions in which autonomy might eventually be exercised. In the case of the Tagaeri and Taromenane, this means defending not only the right to remain uncontacted but also the right to withhold engagement on their own terms—resisting both extractive encroachment and representational overreach.

Yet the application of this principle becomes more complex when we consider that the Tagaeri and Taromenane are not entirely isolated in practice. Their withdrawal concerns the national society and external world, yet it coexists with indirect forms of communication: signs left on shared pathways, sporadic encounters with neighboring Waorani, and, as the author explores elsewhere, dreams. For the law, it is crucial to recognize that isolation and "no contact" are far more nuanced than their legal definitions suggest. Equally important is attention to those Indigenous actors who live at the thresholds of contact and isolation. The neighboring Waorani, while not formal co-petitioners, have played a decisive role in the case—as witnesses and intermediaries.[64]

Despite their legal designation as "peoples in isolation", the Tagaeri and Taromenane continue to share dynamic, historically embedded relations with neighboring Waorani family groups. These ties are grounded in patterns of territorial interdependence and mobility that reflect a relational understanding of land, kinship, and conflict. Both Waorani and isolated family groups move cyclically across shared forest territories—following seasonal rhythms of abundance to access game, palms, or cotton, and periodically returning, sometimes after generations, to ancestral sites associated with maternal lineage.[65] Such movements are anchored in a deep memory of place and a moral geography in which the forest itself bears the traces of past inhabitation, kinship, and subsistence. Within this landscape, coexistence has long involved tension and risk. Periodic encounters—sometimes peaceful, sometimes violent—form part of an enduring cycle through which identity, territorial rights, and survival are negotiated.[66] These dynamics have also been central to the case, where the State has frequently invoked intergroup violence to dilute its own responsibility for the underlying structural conditions that foster such conflict. Recognizing this complexity complicates legal framings that cast isolation as an absolute condition, overlooking the localized systems of recognition, memory, and territorial navigation through which intergroup relations are sustained. In this context, isolation appears not as separation but as a mode of spatial and ethical relation. While in other cases of peoples in isolation, neighboring groups may not share direct kinship, comparable forms of territorial interdependence often structure coexistence. Recognizing these continuities challenges legal definitions that equate isolation with disconnection, obscuring the fluid geographies and moral solidarities—human and more-than-human—through which Indigenous communities navigate coexistence, distance, and survival.

IV. CONCLUSION: SILENCE, AUTONOMY, AND THE LIMITS OF REPRESENTATION

[64] Both the communicative practices of the Tagaeri and Taromenane, including dreams, and the complex intermediary role of the neighboring Waorani are analyzed in greater detail in my doctoral dissertation; they cannot, however, be examined here in depth due to space limitations.

[65] NARVÁEZ (2019).

[66] NARVÁEZ (2021); RIVAL (2015).

This article has examined the emergence of a legal framework in which Indigenous peoples in voluntary isolation —such as the Tagaeri and Taromenane— are recognized as rights holders principally through the lens of non-contact. While this framing affirms their autonomy by codifying silence as a form of self-determination, it also introduces critical constraints. As the Tagaeri Taromenane case before the Inter-American Court demonstrates, the juridical valorization of silence is double-edged: it protects, but also regulates; it affirms Indigenous agency, yet simultaneously forecloses the possibility of expression, particularly when mediated through kin or intermediaries like the Waorani. This approach risks cutting off the very communicative gestures by which isolated peoples might engage the outside world, thereby paradoxically undermining the broader scope of self-determination it seeks to protect.

The Tagaeri Taromenane judgment nonetheless marks an important jurisprudential development within the Inter-American System. Faced with the procedural impossibility of obtaining consent or direct participation from the victims, the Court chose to stretch its existing standards to prevent formalism from becoming a barrier to justice. It expanded the principle of third-party petition, recognized victimhood in the absence of individual identification, and affirmed the legitimacy of representatives without direct authorization. These innovations reveal a willingness to adapt legal doctrine to the structural and cultural particularities of isolation, thereby strengthening the Court's capacity to protect highly vulnerable groups. Yet, even as these doctrinal advances respond to extreme conditions of invisibility, they continue to operate within a legal grammar that privileges presence, representation, and speech as the foundations of rights-bearing status.

Against this background, the ethical stance adopted by the petitioners stands out as a more radical intervention. Rather than claiming to speak for the Tagaeri and Taromenane, they sought to create conditions under which these peoples might one day choose, if they wish, to speak for themselves. Their approach reframed representation as protection without appropriation, and advocacy as an act of restraint rather than substitution. By defending the juridical space in which the right to remain silent is acknowledged as a legitimate form of autonomy, the petitioners advanced a model of legal practice grounded in responsibility, reflexivity, and structural awareness. This mode of advocacy does not attempt to translate Indigenous silence into legal speech but insists on the importance of preserving the material and relational conditions—territorial, ecological, and political—through which that silence acquires meaning.

Ultimately, this article argues for a more reflexive jurisprudence, one that does not simply protect Indigenous silence as an abstract principle, but remains attuned to the ways in which such silence is inhabited, negotiated, and sometimes strategically withheld. In contexts like that of the Tagaeri and Taromenane, this requires moving beyond formalist readings of non-contact and toward legal frameworks capable of accommodating layered forms of Indigenous presence, kinship, and voice—even when they do not speak.

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