Homeless for Generations: Land Rights for the Chocoe Indians from Mogue, Panama

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Abstract

Vaporiso knew that the lack of land ownership in his tribe was a great part of the Chocoes’ suffering, and he felt that violence was the only way to rectify the problem. Agenda 21 requires member State governments to strengthen national dispute-resolution arrangements in relation to the settlement of land and resource-management concerns. Convention No. 169, which became legally binding on member States in 1991, provides indigenous people with the right to decide how they wish to develop the lands they occupy and use, and set their own priorities for those lands. Convention No. 169 also provides protection from people or governments seeking to take advantage of indigenous people due to their lack of understanding of the laws. ILO Convention No. 169, a legally-binding convention which focuses on indigenous land rights concerns, continues as a very important legally binding tool that could help the Mogue Community achieve ownership over their lands. Hopefully, Panama will follow its neighbors and soon ratify Convention No. 169 creating legally-binding obligations on Panama which the Mogue Community could use to achieve land ownership.
NOTE

HOMELESS FOR GENERATIONS: LAND RIGHTS FOR THE CHOCOE INDIANS FROM MOGUE, PANAMA

David E. Cahn*

INTRODUCTION

"If [I] tell [you] what [has] been going on [I will] be killed."¹ Such a quote illustrates the desperation with which the Chocoe Indians of the Darien Jungle in Panama² from the Mogue Village live.³ This fear comes after the brutal murder of one Chocoe Indian who was found with his tongue cut out because he threatened to expose a suspected Chocoe guerrilla movement by members of his tribe from a neighboring village.⁴

Ansenio Vaporiso, the Chief of Chiefs for the Chocoe Indians in the late 1990s,⁵ became so frustrated after generations of

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1. James A. Brunton, Jr., Address at the University of Colorado Profiles in American Enterprise (Sept. 10, 2001) [hereinafter Brunton Colorado Address] (talking about what Chocoe Indians told him regarding murdered member of tribe).


4. See Chocoe Struggle for Land Rights, supra note 3 (discussing murder of Mogue Chocoe Indian); see also Interview with Rufino Gomez, Maestro de Trabajo, Pajaro Jai Foundation, in La Palma, Panama (Jan. 2004) [hereinafter Gomez Interview] (telling story about murdered Chocoe Indian from Mogue's neighboring village).

5. See Interview with James A. Brunton, Jr., Founder, The Pajaro Jai Foundation, in
enduring the tribe's second class status and poor treatment, that he formed a guerrilla movement out of desperation.\textsuperscript{6} Vaporiso knew that the lack of land ownership in his tribe was a great part of the Chocoes' suffering, and he felt that violence was the only way to rectify the problem.\textsuperscript{7} To this day, no one is certain how far Vaporiso went towards fulfilling his goal.\textsuperscript{8} Vaporiso was arrested for the aforementioned murder, along with several accomplices, and held in jail for about two years.\textsuperscript{9}

After a large group of Chocoe protested, however, the authorities released Vaporiso without a trial.\textsuperscript{10} While the murder remains unsolved,\textsuperscript{11} the Chocoe Indians from Mogue believe

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Belfast, Maine (Nov. 2003) [hereinafter Brunton Interview] (stating Vaporiso was Chief of Chiefs of Chocoe Indians from 1993 to 1998); see also CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (explaining that in mid-1990s Chief of Chiefs of Chocoe Indians was Vaporiso).

6. See Brunton Interview, supra note 5 (discussing poor treatment of Chocoe Indians); see also DAVID HOWARTH, PANAMA: FOUR HUNDRED YEARS OF DREAMS AND CRUELTY, 14-53 (1966) (describing brutality of Spanish explorers towards Natives from Darien, including: rape, stealing, and enslavement and murder of estimated 2,000,000 Darien Natives which resulted in lack of historical record of their existence for over 100 years); HOWARTH, supra at 19 (stating Chocoe Indians would hang themselves in order to relieve themselves from misery Spanish explorers imposed upon them); CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (describing that Conquistadors would hang Chocoe Indians in groups of twelve to commemorate Last Supper and would cut Chocoe men's hands off and send them back into jungle in order to strike fear into other indigenous peoples).

7. See Brunton Interview, supra note 5 (stating Vaporiso felt land ownership was key to achieving better quality of life, and violence was only way to achieve it); see also CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 5 (explaining Vaporiso considered guerrilla movement to fight back as only way to achieve land ownership which led to Chocoe Indian's suffering).

8. See CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (noting plan could have gone as far as actually receiving guns and using drug money to finance acquisitions); see also Interview with Leonardo Teocama, Chief of Chiefs of the Chocoe Indians (1998-2002), in Mogue Village, Panama (June 2004) [hereinafter Leonardo Teocama Interview] (explaining no Mogue Community members know how close Vaporiso came to completing his guerrilla movement); Rito Interview, supra note 2 (explaining Mogue Community did not know how close Vaporiso came to completing his goal).

9. See Gomez Interview, supra note 4 (discussing Conquistadors would hang themselves in order to relieve themselves from misery Spanish explorers imposed upon them); CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (explaining how Chocoe Indian protests got Arsenio Vaporiso released from jail after two years without trial).

10. See Gomez Interview, supra note 4 (noting Vaporiso spent about twenty-four months in jail for Indian's murder); see also CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (explaining Arsenio Vaporiso’s release from jail after incarceration for two years for murder of Chocoe Indian without ever having any trial proceedings take place).

11. See CHOCOE STRUGGLE FOR LAND RIGHTS, supra note 3 (stating Panamanian authorities never convicted anyone for murder of Chocoe Indian from village neighbor-
they know Vaporiso murdered the Indian in order to ensure the secrecy of his guerrilla movement. They know Vaporiso murdered the Indian in order to ensure the secrecy of his guerrilla movement.12 Vaporiso's guerrilla plan, however, never came to fruition.13

The Mogue Village's land ownership concerns and poor treatment have become no less desperate.14 Members of the Mogue Community have lived in the Mogue Village for generations without ever having legal title to the land.15 While the Mogue's land struggles continue, however, the Mogue Community has furthered its efforts to achieve land ownership through more diplomatic means, rather than violence.16

This Note discusses land rights issues involving the Chocoe Indians from the Village of Mogue.17 Part I of this Note will de-
scribe the plight of the Mogue Community with respect to land rights. Part I will also briefly outline the provisions of the Panamanian Constitution which are relevant to Panamanian indigenous group’s land rights. Lastly, Part I will look at the various international human rights laws dealing with the land rights of indigenous people. Part II will identify the merits of attempting to achieve land ownership using the laws identified in Part I. Finally, Part III of this Note will explain why the Inter-American Commission on Human Rights (“IACHR”) and the Inter-American Court of Human Rights (“Inter-American Court”) are the best arenas for the Mogue Community’s efforts to achieve land ownership. Part III also focuses on the recent Inter-American Court’s decision of The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua.18

I. LAYING THE FOUNDATION: PANAMANIAN AND INTERNATIONAL LAW REGARDING LAND RIGHTS

A. The Chocoe Indians: The People and Their History

From the 1930s to the 1950s, the Mogue Community peacefully shared the land they inhabited with the owners of a coconut plantation called Patinio.19 After the 1950s, however, cattle ranching replaced coconut farming as Patinio’s primary land use.20 Patinio’s owner used “slash and burn” agriculture as its method for cattle ranching.21 “Slash and burn” agriculture is a

comarca delineated in Panamanian Law 22 (1983) does not include Mogue Community).


19. See Chocoe Struggle for Land Rights, supra note 3 (stating Chocoe Indians of Mogue shared their land with owners of coconut plantation); see also Alvarado, supra note 15 (discussing cohabitation of Mogue Community and owners of coconut plantation); Gomez Interview, supra note 4 (explaining how Mogue Community peacefully shared land it lived on in 1930s and 1940s with coconut plantation’s owners).

20. See Chocoe Struggle for Land Rights, supra note 3 (describing business evolution of Patinio); see also Gomez Interview, supra note 4 (stating that in 1950s cattle ranchers used Patinio).

21. See Chocoe Struggle for Land Rights, supra note 3 (noting “slash and burn” farming remains fundamental threat to Mogue Community); see also Brunton Interview, supra note 5 (explaining type of agriculture Patinio’s owner used).
method of agriculture which strips the land of all its natural resources and nutrients, making the land unable to be cultivated for a century, while feeding cattle for only a few years. At that time, Bonga, the Chief of the Mogue Community, began to struggle with Patinio’s owner over claims that Patinio’s land consisted of all the land “as far as the eye can see,” including the land on the Mogue Village lies. Subsequently, Patinio’s owner harassed the Mogue Community and tried to limit its use of the natural resources on Patinio. Towards the end of the 1970s, the Panamanian Government seized Patinio due to failure to pay taxes. Patinio’s repossession by the Panamanian Government

22. See Keith Sealing, Indigenous Peoples, Indigenous Farmers: NAFTA’s Threat to Mexican Teosinte Farmers and What Can be Done About It, 18 Am. U. Int’l L. Rev. 1383, 1390 (2003) (noting that “slash and burn” agriculture destroys thin soil); see also Erin B. Newman, Earth’s Vanishing Medicine Cabinet: Rain Forest Destruction and Its Impact on the Pharmaceutical Industry, 20 Am. J. L. & Med. 479, 488 (1994) (explaining that “slash and burn” agriculture is process where farmers cut down masses of trees and burn them). The resulting ash from “slash and burn” agriculture contains nutrients once possessed by rich tropical trees and organisms, which can only sustain crops and cattle for few years. See Brunton Interview, supra note 5 (describing how “slash and burn” method provides proper nutrients for cultivation for limited period of two to three years); see also Newman, supra at 488 (reporting that “slash and burn” method provides initial fertility but then leaves soil unsuitable for cultivation after short period). Frequent and heavy rains leach nutrients from the soil leaving the land unusable, so that after only a few years of farming, the land becomes useless and must be abandoned, resulting in deforestation. See Brunton Interview, supra note 5 (noting once “slash and burn” method of agriculture is used on land it destroys nutrients and takes land approximately one hundred years to recover its fertility).

23. See Chocoe Struggle for Land Rights, supra note 3 (noting Torrijos, then President of Panama, knew Bonga and recognized him as Chief of Mogue Community); see also Brunton Interview, supra note 5 (recognizing Bonga Chief of Chiefs of Chocoe Indians from 1972 through 1987).

24. See Chocoe Struggle for Land Rights, supra note 3 (stating Patinio’s owner claimed ownership over land Mogue Community lives on); see also Leonardo Teocama Interview, supra note 8 (explaining how Patinio’s owner believed he owned Village of Mogue); Rito Interview, supra note 2 (explaining beginning of Mogue Community’s land struggles); Aladino Teocama Interview, supra note 13 (stating what Patinio’s owner thought he owned); Gomez Interview, supra note 4 (discussing how Patinio’s owner believed he owned Village of Mogue as part of Patinio); Brunton Interview, supra note 5 (explaining when Mogue Community’s property ownership became problematic).

25. See Chocoe Struggle for Land Rights, supra note 3 (noting also that Torrijos, who knew Bonga, did little to stop Patinio’s owners treatment of Mogue Community); Brunton Interview, supra note 5 (explaining how Patinio’s owner tried to impose rules and regulations on Mogue Village which Patinio’s owner thought he owned).

26. See Chocoe Struggle for Land Rights, supra note 3 (explaining how Panamanian government seized Patinio); see also Brunton Interview, supra note 5 (discussing government seizure of Patinio in 1970s).
brought no relief for the Mogue Village as pioneers continued to encroach upon it. Among the pioneers were cattle ranchers who continued to use the "slash and burn" agricultural method. Finally in the 1990s, Ancon, a conservation non-profit organization (headed at the time by Juan Carlos Navarro, Mayor of Panama City), bought Patinio.

The Mogue Community hoped Ancon would provide relief from the destruction of land resources that the "slash and burn" agricultural practices had caused. Mayor Navarro encouraged this hope by promising the Mogue Community control over some of the Patinio land. The Mogue Community worked with Ancon for the next ten years trying to negotiate a deal to define its claim and title, if any, to the land, but the two parties never

27. See Chocoe Struggle for Land Rights, supra note 3 (explaining how once Panamanian Government seized Patinio, cattle ranchers, who continued to use "slash and burn" agriculture, began to encroach upon land Mogue Community used); see also Alvarado, supra note 15 (describing what happened to land owned by Patinio once government seized it).

28. See Chocoe Struggle for Land Rights, supra note 3 (explaining that pioneers used "slash and burn" agriculture on land that government now owned which once comprised Patinio); see also Leonardo Teocama Interview, supra note 8 (discussing what became of Patinio once government seized it); Gomez Interview, supra note 4 (stating pioneers used "slash and burn" agriculture on Patinio's seized government land).

29. See Si Se Puede, Señor Torrijos, Caribbean & Central America Report, May 24, 2004 (explaining re-election of Juan Carlos Navarro as mayor of Panama City); see also Rafael Candanedo, Torrijos, Panama's New President, United Press Int'l, May 14, 2004 (reporting that after elections, Juan Carlos Navarro remained in office as mayor of Panama City); Chocoe Struggle for Land Rights, supra note 3 (noting Navarro as currently Mayor of Panama City and many people speculate he plans to run for Presidency of Panama in next election).

30. See Leonardo Teocama Interview, supra note 8 (explaining how Mogue Community thought Ancon would quash "slash and burn" cattle ranching on its land); see also Chocoe Struggle for Land Rights, supra note 3 (stating how once Ancon owned Patinio, Mogue Community thought Ancon would put stop to "slash and burn" cattle ranching on land).

31. See Leonardo Teocama Interview, supra note 8 (describing how during communications with Juan Carlos Navarro, he told Mogue Community it would control some of Patinio land); see also Chocoe Struggle for Land Rights, supra note 3 (explaining Mogue Community's hopes of controlling land it traditionally used once Ancon purchased Patinio).

32. See Rito Interview, supra note 2 (recalling conversations between Ancon's owners and Mogue Community since 1994); see also Leonardo Teocama Interview, supra note 8 (discussing ongoing negotiations between Mogue Community and owners of Ancon for around 10 years); Chocoe Struggle for Land Rights, supra note 3 (noting about 10 years worth of meetings between Mogue Community and Ancon's owners to give Mogue control over its historically used territory).
reached an agreement.\textsuperscript{33}

Further, Ancon told the Mogue Community it could not farm, fish, hunt or otherwise use the land as it had since settling there generations ago.\textsuperscript{34} Ancon has had no qualms enforcing this order by extraordinary means, including the alleged beating of a farmer who violated Ancon's rules.\textsuperscript{35} Mogue Community members also claim that Ancon personnel have fired shots over the heads of little boys while they fished in dugout canoes to discourage them from fishing on Ancon land.\textsuperscript{36}

Ancon has promised the Mogue Community it can have 1,482 of Patinio's 75,000 acres of Patinio land.\textsuperscript{37} The Mogue Community claims it needs more than 1,482 acres to sustain itself;\textsuperscript{38} it has traditionally used most of Patinio's 75,000 acres worth of resources to satisfy its basic needs.\textsuperscript{39} Though the

\textsuperscript{33} See Rito Interview, \textit{supra} note 2 (explaining stagnation of talks between Ancon's owners and Mogue Community over lands it had used); \textit{see also} Leonardo Teocama Interview, \textit{supra} note 8 (discussing current situation of negotiations); Chocoe Struggle for Land Rights, \textit{supra} note 3 (stating that despite 10 years of negotiations between Ancon and Mogue Community, agreement over control over Mogue lands has not been reached).

34. \textit{See} Aladino Teocama Interview, \textit{supra} note 13 (explaining rules and regulation Ancon imposed on Mogue Community); \textit{see also} Brunton Interview, \textit{supra} note 5 (stating that Ancon's owners told Mogue Community it could not farm, fish, hunt or use land as it had since originally settling on it); Gomez, \textit{supra} note 4 (explaining land use restrictions Ancon imposed on Mogue Community); Leonardo Teocama Interview, \textit{supra} note 8 (discussing how Ancon forbade Mogue Community from agriculture, farming, and fishing on land that it used to sustain itself); Rito Interview, \textit{supra} note 2 (explaining how Ancon's owners would not let Mogue Community use its lands in way they had traditionally in order to provide for themselves); Brunton Colorado Address, \textit{supra} note 1 (stating restrictions Ancon imposed on Mogue Community).

35. \textit{See} Leonardo Teocama Interview, \textit{supra} note 8 (recalling alleged beating of one Mogue Community farmer when he did not follow Ancon's rules and regulations); \textit{see also} Brunton Colorado Address, \textit{supra} note 1 (discussing beating of Mogue Community member, and leaving him for dead, when he refused to abide by Ancon's rules).

36. \textit{See} Leonardo Teocama Interview, \textit{supra} note 8 (discussing how when young boys fished in Mogue River despite Ancon's rules and regulation, people fired warning shots over their heads to scare them); \textit{see also} Brunton Colorado Address, \textit{supra} note 1 (explaining what Ancon thugs did to boys while they fished).

37. \textit{See} Leonardo Teocama Interview, \textit{supra} note 8 (stating Ancon's owners most recent offer of land to Mogue Community is 1,482 acres); \textit{see also} Chocoe Struggle for Land Rights, \textit{supra} note 3 (explaining Ancon's current offer to allow Mogue Community control over 1,482 acres of its 75,000 acres of land).

38. \textit{See} Chocoe Struggle for Land Rights, \textit{supra} note 3 (explaining how much of Mogue Community's traditionally used land it needs to provide for itself); \textit{see also} Leonardo Teocama Interview, \textit{supra} note 8 (discussing Mogue Community's need of Patinio's 75,000 acres in order to sustain itself traditionally).

39. \textit{See} Leonardo Teocama Interview, \textit{supra} note 8 (explain Mogue Community
Mogue Community’s predicament is bad, it is typical of indigenous peoples’ plights to reclaim their native lands. This Note will look at local and international law available to remedy the situation.

B. Panamanian Constitution

The Panamanian Constitution grants land concessions to its indigenous peoples by guaranteeing them collective properties sufficient to achieve economic and social well-being. The law regulates the procedures to be followed for indigenous peoples to obtain lands. The Constitution further prohibits privatization of indigenous land traditionally inhabited by indigenous people, demarcates native lands, and provides means to return private lands to indigenous people. Accordingly, the Panama-
nian government passed Panamanian Law 22 of 1983 ("Law 22"), granting territory to certain members of the Chocoe Peoples.\textsuperscript{46} Law 22 demarcated a comarca\textsuperscript{47} (an administrative district inhabited by Indians, much like a U.S. reservation) to many Chocoe Villages which granted them a level of autonomy and protection.\textsuperscript{48} While Panamanian law has not yet protected the Mogue Community, there is international law available to potentially help them achieve land rights.\textsuperscript{49}

C. International Human Rights Tools

There are two major international organizations which can help the Mogue Community achieve land rights.\textsuperscript{50} The first is the United Nations ("U.N.").\textsuperscript{51} The second is the Organization

and demarcate boundaries within which appropriation of land is prohibited); \textit{see also} Brunton Interview, supra note 5 (explaining Panamanian Constitution provides that Panamanian law regulates and establishes comarcas).

46. \textit{See} ROGER PLANT \& SOREN HVALKOF, LAND TITLING AND INDIGENOUS PEOPLES 36 (2001) (mentioning that PANAMANIAN LAW 22 established comarca, recognized territory, for Chocoe Indians in Darien province). \textit{See generally} PANAMANIAN LAW 22, supra note 17 (delineating lands for Chocoe Indians, not including Mogue Community).


48. \textit{See} PANAMANIAN LAW 22, supra note 17 (demarcating territory for Chocoe Indians); \textit{see also} PLANT \& HVALKOF, supra note 46 (stating PANAMANIAN LAW 22 established comarca recognizing territory for certain Chocoe Indian villages in Panama).


of American States ("OAS").

1. The United Nations

U.N. bodies, conventions, declarations, resolutions, and other tools exist that the Mogue Community can utilize in its attempt to achieve land ownership. The early U.N. conven-


52. See About the OAS: The OAS and the Inter-American System, supra note 50 (stating OAS human rights system provides recourse to people throughout Americas who have suffered human rights violations by their States and who have not found justice in their own Nations); see also Laurie Sargent, The Indigenous Peoples of Bolivia's Amazon Basin Region and ILO Convention No. 169: Real Rights or Rhetoric?, 29 U. MIAMI INTER-AM. L. REV. 451, 520-22 (1998) (explaining various recourses to human rights violations OAS provides).

tions and treaties established human rights instruments which focused on the individual.\textsuperscript{54} They originally included the Charter of the United Nations ("U.N. Charter"),\textsuperscript{55} the Universal Declaration of Human Rights ("UDHR"),\textsuperscript{56} and the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD").\textsuperscript{57}

The next wave of U.N. commissions included the protection of groups, in addition to individuals.\textsuperscript{58} They also actively protected human rights by establishing organizations designed to adopt human rights resolutions and report human rights violations.\textsuperscript{59} These include the Commission on Human Rights ("CHR")\textsuperscript{60} and the Sub-Commission on the Promotion and Pro-

\textsuperscript{54} See UDHR, supra note 41 (clarifying that UDHR applies to individuals not groups); see also Gillian Triggs, Australia's Indigenous Peoples and International Law: Validity of the Native Title Amendment Act 1998 (CTH), in INTERNATIONAL LAW AND INDIGENOUS PEOPLES 381, 385 (S. James Anaya ed., 2003) (explaining how U.N. CHARTER and UDHR only protect individuals).

\textsuperscript{55} See U.N. CHARTER, art. 1 (stating importance of respect for equal rights and self-determination of peoples and declaring fundamental freedoms for all without distinction to race); see also Sheldon A. McDonald, Caribbean Perspective: The Caribbean Court of Justice: Enhancing the Law of International Organizations, 27 FORDHAM INT'L L.J. 930, 936-37 (2004) (mentioning that U.N. CHARTER attempts to solve international problems of cultural, humanitarian, or social character, and to promote and encourage respect for fundamental freedoms and human rights for all without racial distinction).

\textsuperscript{56} See UDHR, supra note 41, art. 41 (declaring that everyone has right to own property alone as well as in association with others and prohibits arbitrarily depriving anyone of his property); see also Prudence E. Taylor, From Environmental to Ecological Human Rights: A New Dynamic in International Law?, 10 GEO. INT'L ENVTL. L. REV. 309, 324 (1998) (stating that UDHR Article 17 gives everyone right to own property and right not to be arbitrarily deprived of that property).

\textsuperscript{57} See ICERD, supra note 53, art. 5 (stating that everyone has right to own property alone as well as in association with others without discrimination); see also Robin H. Gise, Rethinking McClesky v. Kemp: How U.S. Ratification of the International Convention of the Elimination of All Forms of Racial Discrimination Provides a Remedy for Claims of Racial Disparity, 22 FORDHAM INT'L L.J. 2270, 2271 (1999) (mentioning CERD prohibits any distinction based on race that has effect or purpose of impairing fundamental freedoms and human rights).

\textsuperscript{58} See Commission on Human Rights, supra note 53 (establishing group human rights); see also Sub-Commission, supra note 53 (mentioning Sub-Commission assists CHR in its human rights protection, including protection of group rights).

\textsuperscript{59} See Commission on Human Rights, supra note 53 (stating CHR examines, monitors, publicly reports human rights violations, and adopts resolutions to protect human rights); see also Sub-Commission, supra note 53 (explaining that Sub-Commission assists CHR in its human rights work, and has organizations, such as WGIP, which report to Sub-Commission in effort to protect human rights).

\textsuperscript{60} See Commission on Human Rights, supra note 53 (stating CHR examines, monitors, and publicly reports human rights violations); see also Grainne de Burca, On Enlargement of the European Union: Beyond the Charter: How Enlargement has Enlarged the

61. See Sub-Commission, supra note 53 (mentioning Sub-Commission assists CHR in its human rights work by examining, monitoring, and publicly reporting human rights violations); see also de Burca, supra note 60 (explaining that Sub-Commission, similarly to CHR, protects human rights by responding to complaints made by individuals or groups, or on basis of resolutions adopted at CHR's annual session).


63. See Draft Declaration, supra note 53, Part VI (giving indigenous peoples right to maintain and strengthen their relationship to lands, territories, waters, coastal seas, and other recourses they had traditionally used); see also David B. Jordan, Square Pegs and Round Holes: Domestic Intellectual Property Law and Native American Economic and Cultural Policy: Can it Fit?, 25 AM. INDIAN L. REV. 93, 108 n.72 (2001) (explaining Draft Declaration focuses on indigenous issues by ensuring that indigenous peoples that are deprived of their fundamental freedoms and human rights or dispossessed of lands and resources).

64. See Agenda 21, supra note 53, ch. 26, ¶ 3 (stating that governments should strengthen indigenous legal instruments and recognize lands of indigenous people and that their communities should be protected from environmentally unsound activities or activities indigenous people concerned consider culturally or socially inappropriate); see also Fergus MacKay, Universal Rights or a Universe unto Itself? Indigenous Peoples' Human Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples, 17 AM. U. INT'L L. REV. 527, 579 n.196 (2002) (recognizing Report of the United Nations Conference on Environment and Development - Chapter 26: Recognizing and Strengthening the Role of Indigenous People and Their Communities ("Agenda 21") is devoted entirely to indigenous people, including protection of indigenous lands).

65. See Convention No. 169, supra note 49, art. 7 (stating indigenous peoples concerned shall have right to decide their own priorities for development over their lands);

The early U.N. bodies and resolutions established international human rights standards, but focused primarily on individuals' rights. It began in 1945 with the adoption of the U.N. Charter, which mandated the promotion of equal rights and self-determination of peoples, respect for human rights and fundamental freedoms for all, without regard to language, race, religion, or sex. UDHR elaborated the human rights declared in the U.N. Charter. Although UDHR's founding Nations originally developed it as a mere statement of guiding principles, UDHR has emerged as an authoritative interpretation of international human rights standards. With respect to land owner-


66. See UDHR, supra note 41 (clarifying that UDHR applies to individuals not groups); see also Triggs, supra note 54, at 385 (explaining how early U.N. human rights tools only protect individuals).

67. See U.N. Charter, art. 1(2) & (3) (stating Nations wish to develop friendly relations based on respect for equal rights and self-determination, and to take appropriate measures to strengthen universal peace and that Nations wish to achieve international cooperation in solving international problems of cultural, economic, humanitarian, or social character, in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to language, race, religion, or sex); see also Craig Scott, Towards the Institutional Integration of the Core Human Rights Treaties, in GIVING MEANING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS 7, 10 (Isfahann Merali & Valerie Oosterveld eds., 2001) (noting U.N. Charter and UDHR as force behind U.N. human rights protections).


69. See Triggs, supra note 54, at 385 (explaining UDHR's original intention was to guide but it has become human rights measuring stick); see also Puta-Chekwe & Flood, supra note 68, at 46 (noting UDHR elaborates commitment to human rights first declared in U.N. Charter); Garth Nettheim, The U.N. Charter-Based Human Rights System: An Overview, in INDIGENOUS PEOPLES, THE UNITED NATIONS AND HUMAN RIGHTS 32, 33 (Sarah Pritchard ed., 1998) (stating that scholars agree that by 1968, UDHR constituted
ship specifically, UDHR states that everyone has the right to own property and prohibits arbitrary deprivation of anyone's property.\footnote{70}

ICERD, another U.N. instrument, has provisions that address indigenous peoples.\footnote{71} ICERD defines racial discrimination as any exclusion, preference, or restriction based on color, descent, or race.\footnote{72} Further, ICERD mandates parties to the Convention must condemn racial discrimination and must not engage in any act or practice of racial discrimination against any person or group of persons.\footnote{73} ICERD follows UDHR's principle of non-discrimination and applies the rights to own property and also provides the right to inherit property.\footnote{74}

CHR comprises the largest, most important, and most active human rights forum in the United Nations. It meets annually when members and observers formally speak on various human rights issues. CHR consists of fifty-three member Nations represented by government officials. Most U.N. member Nations that are not members of CHR attend the session as observers. In recent years, CHR has devoted increasing amounts of time and respect, without discrimination, right to own property alone and with others and right to inherit property).


and attention to indigenous issues.  

Similar to other U.N. bodies, CHR may engage in additional projects outside of its annual meeting. In fact, one of the most important elements of CHR’s work remains investigating and reporting on human rights problems. CHR uses a special rapporteur, or individual expert, to conduct reports and investigations.

CHR has a Sub-Commission which performs various functions in order to assist CHR with investigating human rights violations. The Sub-Commission’s agenda covers most human

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80. See Leaflet 3, supra note 75, at 9 (stating that CHR conducts work other than its annual meeting); see also Hurst Hannum, Indigenous Rights, in International Human Rights in the 21st Century: Protecting the Rights of Groups 72 (Gene M. Lyons & James Mayall eds., 2003) (noting ways various other U.N. bodies work when not in their annual meeting). See generally Nettheim, supra note 69 (describing ways various U.N. bodies work beyond their annual meetings).

81. See Leaflet 3, supra note 75, at 9 (discussing functions of CHR); see also Nettheim, supra note 69, at 34-35 (recognizing CHR has developed into body which can respond to human rights violations and pursue wide range of measures to hand human rights, including, investigate allegations of human rights violations and make studies).


83. See Leaflet 3, supra note 75, at 6 (explaining Sub-Commission’s reports to CHR); see also Commission on Human Rights, supra note 53 (explaining Sub-Commission assists CHR in fulfilling its duties).
rights issues of international concern, including the human rights of indigenous peoples. The Sub-Commission considers, and takes action on, recommendations from WGIP. The Sub-Commission also recommends new studies to CHR, its parent body, including studies concerning indigenous issues.

b. Focus on Indigenous Peoples

i. Working Group on Indigenous Populations

Over the past thirty years, the United Nations has focused greater attention on the rights of indigenous peoples and developed bodies and resolutions to specifically address indigenous issues. In 1982, the U.N. Economic and Social Council ("ECOSOC") established WGIP, which is supervised by the Sub-Commission. WGIP, arguably the most important body for in-


85. See LEAFLET 3, supra note 75, at 6 (explaining some of Sub-Commission's duties include recommending studies about indigenous concerns to CHR); see also SUB-COMMISSION LEAFLET, supra note 84, at 3-4 (stating Sub-Commission uses its working groups to make recommendations and conduct research on specific human rights problems, including those concerning indigenous peoples); Working Group Mandate, supra note 84, at 44 (stating WGIP presents its reports to Sub-Commission).

86. See LEAFLET 3, supra note 75, at 2-3 (stating Sub-Commission recommended report on indigenous related studies on cultural, intellectual property, land rights, and treaties); see also SUB-COMMISSION LEAFLET, supra note 84, at 9 (stating Sub-Commission makes recommendations to CHR).

87. See G.A. Res. 48/163, supra note 53 (declaring 1994-2004 "International Decade of the World's Indigenous People" and every August 9th during decade as "International Day of the World's Indigenous People"); see also UNITED NATIONS, LEAFLET NO. 4: HUMAN RIGHTS TREATY BODIES AND INDIGENOUS PEOPLES 4 (2001) [hereinafter LEAFLET 4] (stating United Nations has focused on indigenous rights over past 30 years); Draft Declaration, supra note 53 (reflecting increased attention indigenous peoples' conditions have received from international community).

88. See SUB-COMMISSION, supra note 53 (noting that in 1999, ECOSOC changed name to Sub-Commission on Promotion and Protection of Human Rights from Sub-Commission on Prevention of Discrimination and Protection of Minorities); see also International Service For Human Rights, Charter-Based Bodies: Sub Commission on the Promotion and Protection of Human Rights, available at http://www.ishr.ch/About%20UN/Charter-based%20bodies/Sub.2/sub_2.htm (last visited Nov. 7, 2004) (noting WGIP is one of various working groups governed by Sub-Commission); UNITED NATIONS, FACT SHEET
indigenous peoples, reviews developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples and gives special attention to the evolution of international standards concerning indigenous rights.

The U.N. attention towards indigenous peoples became so great that the United Nations, at the behest of WGIP, named 1993 as the “International Year for the World’s Indigenous People.” The next year, WGIP commenced the U.N. “International Decade of the World’s Indigenous People,” which will end in December 2004. The main objective of the decade is to


90. See United Nations, Leaflet No. 2: INDIGENOUS PEOPLES, THE U.N. AND HUMAN RIGHTS 4 (2001) (distinguishing WGIP as most important U.N. body for indigenous peoples); see also Hannum, supra note 80, at 81-82 (stating WGIP as single most significant forum in United Nations that considers indigenous issues).


strengthen international cooperation to solve problems faced by indigenous people.\textsuperscript{93}

ii. The Draft United Nations Declaration on the Rights of Indigenous Peoples ("Draft Declaration")

If adopted, the Draft Declaration will represent a major new instrument for indigenous peoples' fight for human rights.\textsuperscript{94} Although the United Nations has not completed the Draft Declaration, discussions still continue.\textsuperscript{95} December 2004 marks the end of the "International Decade of the World's Indigenous People," and has been declared the target date for adopting the Draft Declaration.\textsuperscript{96}


93. See \textit{Leaflet 7}, supra note 92, at 1 (noting that in addition to main objective, other issues of interest to WGIP that are important to Chocoe's land claims include cultural heritage of indigenous peoples, working paper on land rights, and Permanent Forum on Indigenous Issues ("Permanent Forum") within U.N. system); see also G.A. Res. 48/163, supra note 53 (stating main objective of "International Decade of the World's Indigenous People" is resolving indigenous peoples' concerns); \textit{Programme of Activities for the International Decade for the World's Indigenous People}, G.A. Res. 50/157, U.N. GAOR, 50th Sess., U.N. Doc. A/Res/50/157 (1996) (explaining goals of "International Decade of the World's Indigenous People" include garnering international cooperation in order to solve problems encountered by indigenous people).


The preamble to the Draft Declaration addresses the problems indigenous peoples have faced involving land rights. The preamble discusses the concern for indigenous peoples' right to development and the colonization and deprivation of their lands and resources. In addition, the preamble recognizes the urgent need to respect and promote rights and unique characteristics of indigenous peoples, especially land rights. Finally, the preamble asserts that control over developments affecting indigenous peoples and their lands will enable indigenous peoples to maintain and strengthen their cultures, and will promote fulfillment of their aspirations.

Part VI of the Draft Declaration deals almost exclusively...
with issues concerning indigenous peoples’ land rights. Part VI gives indigenous peoples the right to maintain and strengthen their relationship to the lands, territories, waters, coastal seas, and other resources they have traditionally used. This declaration includes full recognition of indigenous peoples’ laws, traditions and customs, and suggests that Nations take measures to prevent any interference with or encroachment upon them. Part VI also asserts that indigenous peoples have the right to develop strategies for the development and use of their lands and other resources.


Agenda 21, actually adopted to protect the environ-

101. See Draft Declaration, supra note 53, arts. 25-30 (noting land rights concerns regarding indigenous peoples); see also Equality of Indigenous Peoples, supra note 100, at 496 (noting subject of Part VI of Draft Declaration as territorial security); Working Group Mandate, supra note 84, at 49 (noting Part VI of Draft Declaration addresses rights connected with indigenous peoples and their land and territories).

102. See Draft Declaration, supra note 53, art. 25 (stating indigenous peoples have right to maintain and strengthen their relationship with lands and resources which they have occupied, owned, or used); see also Equality of Indigenous Peoples, supra note 100, at 509 (showing indigenous people have right to strong relationship with their land); Draft Declaration, supra note 53, art. 26 (noting terms “lands and territories” include total environment of air, coastal seas, flora and fauna, lands, sea-ice, and waters); Working Group Mandate, supra note 84, at 49 (explaining right of indigenous peoples to maintain strong relationship with their lands and waters).

103. See Draft Declaration, supra note 53, art. 26 (stating indigenous peoples’ right to full recognition of their customs, laws, land-tenure systems, traditions, and institutions for development and management of resources, and right to State protection from any interference or encroachment upon these rights); see also Equality of Indigenous Peoples, supra note 100, at 509-10 (explaining Draft Declaration mandates full State protection and recognition of indigenous land); Working Group Mandate, supra note 84, at 49 (stating Draft Declaration recognizes importance of indigenous peoples’ traditional use of land).

104. See Draft Declaration, supra note 53, art. 30 (stating indigenous peoples have right to determine priorities and strategies for development or use of their lands and resources); see also Equality of Indigenous Peoples, supra note 100, at 509 (noting Draft Declaration mandates States give indigenous peoples autonomy over decision making regarding their land).

105. See Romina Picolatti, Agenda 21 and Human Rights: The Right to Participate in Linking Human Rights and the Environment 50 (Romina Picolatti & Jorge Daniel Taillant eds., 2008) (mentioning Chapter 26 of Agenda 21 deals with indigenous communities); see also Gregory F. Maggio, Recognizing the Vital Role of Local Communities in International Legal Instruments for Conserving Biodiversity 16 UCLA J. ENVTL. L. & POL’Y
ment, also recognized that indigenous peoples have an historical relationship with their lands as most are descendants of the original inhabitants. Agenda 21 calls for indigenous peoples to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

In accordance with Agenda 21, member State governments should establish a process to empower indigenous peoples through adopting or strengthening appropriate policies and/or legal instruments at the national level. Agenda 21 also recognizes that indigenous peoples’ lands should have protection from activities the indigenous peoples consider culturally and socially inappropriate. Agenda 21 requires member State gov-

106. See Agenda 21, supra note 53, ¶ 8 (expressing guidelines of how countries can successfully implement integrating developmental and environmental policy, planning and management levels, provide legal framework, effectively use economic instruments as incentive and establish systems for environmental and economic accounting); see also United Nations, Agenda 21, available at http://www.un.org/esa/sustdev/documents/agenda21/index. (last visited Nov. 6, 2004) (explaining that Agenda 21 is comprehensive action plan by organizations of U.N. System in every area in which humans impact environment).


108. See Agenda 21, supra note 53, ch. 26, ¶ 1 (stating indigenous people and their communities shall enjoy human rights and fundamental freedoms without discrimination); see also AGENDA 21: EARTH’S ACTION PLAN 507 (Nicholas A. Robinson ed., 1993) (explaining that with no discrimination, indigenous people shall have fundamental freedoms).

109. See Agenda 21, supra note 53, ch. 26, ¶ 3(a) (stating governments should aim to empower indigenous people and their communities through measures including adoption or strengthening of appropriate policies and/or legal instruments, recognition protection of lands of indigenous peoples from activities that are environmentally unsound or that indigenous people concerned consider inappropriate); see also MacKay, supra note 64 (explaining Agenda 21 states governments should empower indigenous peoples through various measures).

110. See Multi-Stakeholder Dialogue Segment of the Second Session of the Commission of the Commission of Sustainable Development Acting as the Preparatory Committee for the World Sum-
ernments to strengthen national dispute-resolution arrangements in relation to the settlement of land and resource-management concerns. Yet, Agenda 21 recognizes that some indigenous peoples may require greater control over their lands and self-management of the natural resources in their territories in accordance with national legislation. Agenda 21 suggests that Nations ratify and apply existing international conventions relevant to indigenous peoples and also support the adoption of the U.N. Draft Declaration on Indigenous Rights.

mit on Sustainable Development (Dec. 28, 2001) U.N. ESCOR, 2nd Prep. Sess. ¶ 9, U.N. Doc. E/CN.17/2002/PC.2/6/Add.3 (2002) (mentioning Agenda 21 calls for protection of indigenous peoples' land from activities that are environmentally unsound or indigenous people involved consider culturally and socially inappropriate); see also GUIDE TO AGENDA 21, supra note 107, at 181-182 (noting governments should protect indigenous peoples' lands from activities that are either environmentally unsound or that they consider inappropriate); Actions of the United Nations Environment Programme to Implement the Plan of Implementation of the World Summit on Sustainable Development, U.N. GAOR, 57th Sess. ¶ 24 UNEP/GC.22/5 (2002) (acknowledging one of Agenda 21's objectives as recognizing lands and protecting indigenous people and their communities from activities that indigenous people concerned consider inappropriate and environmentally unsound).


112. See Agenda 21, supra note 53, ch. 26, ¶ 4 (stating some indigenous people and their communities may require, in accordance with national legislation, more autonomy); see also GUIDE TO AGENDA 21, supra note 107, at 182 (mentioning strengthening of laws and national policy regarding indigenous people and their communities, including indigenous peoples initiative of proposals for such policies).

113. See Agenda 21, supra note 53, ch. 26, ¶ 4(a) (stating governments should consider ratifying and applying existing international conventions relevant to indigenous people and their communities, where not yet done, and support Draft Declaration); see also AGENDA 21: EARTH'S ACTION PLAN, supra note 111, at 509 (stating Agenda 21's support for ratification of international conventions regarding indigenous people including Draft Declaration).
iv. International Labor Organization Convention No. 169
Concerning Indigenous and Tribal Peoples in Independent Countries

Convention No. 169\textsuperscript{114} has replaced Indigenous and Tribal Populations Convention, 1957 ("Convention No. 107").\textsuperscript{115} Scholars criticized Convention No. 107, the first international standard specifically devoted to indigenous rights, for being patronizing and assimilationist in its approach.\textsuperscript{116} Convention No. 169, on the other hand, aimed to resolve the issue of indigenous peoples' right to possess land they traditionally occupied.\textsuperscript{117}

\textsuperscript{114} See Hannum, supra note 80 (stating Convention No. 169 remains most important legally binding instrument on indigenous rights); see also United Nations, Leaflet No. 8: The I.L.O. and Indigenous and Tribal Peoples 1 [hereinafter Leaflet 8] (recognizing legal importance of Convention No. 169).

\textsuperscript{115} See Martin Scheinin, The Right to Enjoy A Distinct Culture: Indigenous and Competing Uses of Land, in The Jurisprudence of Human Rights Law: A Comparative Interpretative Approach 159, 184 (noting Convention No. 169 replaces Indigenous and Tribal Populations Convention, 1957 ("Convention No. 107") in large part because Convention No. 107 had assimilationist orientation that is no longer acceptable in today's world where multiculturalism and right of minority groups to enjoy their own culture and traditions have become norm); see also Gudmundur Alfredsson & Lee Swee-ston, The Rights of Indigenous Peoples and the Contribution by Erica Daes, in JusTice Pending: Indigenous Peoples and Other Good Causes 69, 72 (Gudmundur Alfredsson & Maria Stavropoulou eds., 2002) (ratifying Convention No. 169 into force meant no further ratification of Convention No. 107); Hannum, supra note 80, at 88 (stating Convention No. 169 replaces Convention No. 107); International Labor Standards: Indigenous and Tribal Peoples, available at http://www.ilo.org/public/english/indigenous/index.htm (last visited Nov. 6, 2004) (recognizing Panama ratified Convention No. 107 on June 4, 1971 and that Convention No. 107 is still in force for those countries that ratified it and have yet to ratify Convention No. 169).


Convention No. 169, which became legally binding on member States in 1991, provides indigenous people with the right to decide how they wish to develop the lands they occupy and use, and set their own priorities for those lands. It also ensures that governments take measures to protect and preserve the environment of the lands indigenous people inhabit. Further, Convention No. 169 requires member State governments to respect indigenous peoples and their special relationship with their lands. In particular, Convention No. 169 calls for respect of the collective nature of this special relationship between indigenous peoples and their lands.

Convention No. 169 requires measures to safeguard indigenous peoples' right to use lands not exclusively occupied by them, but which they historically used for sustenance and traditional activities. Convention No. 169 also provides protection

118. See Convention No. 169, supra note 49, art. 7(1) (stating indigenous peoples concerned shall have right to decide their own priorities for process of development and lands they occupy or use); see also INTERNATIONAL LABOR ORGANIZATION, ILO CONVENTION ON INDIGENOUS AND TRIBAL PEOPLES 1989 (No. 169): A MANUAL 31 (2003) [hereinafter ILO MANUAL] (stating Convention No. 169 indicates indigenous peoples have rights to lands they have lived on, used, and managed according to their traditional practices); Hannum, supra note 80, at 88 (listing various ways Convention No. 169 calls for indigenous peoples to control their own lands).

119. See Convention No. 169, supra note 49, art. 7(4) (stating governments shall take measures, in cooperation with peoples concerned, to protect and preserve indigenous lands); see also ILO MANUAL, supra note 118, at 34 (stating Convention No. 169 calls for special measures of protection for indigenous peoples land rights); The People's Movement for Human Rights Education: The Human Right to a Safe and Healthy Environment, available at http://www.pdhre.org/rights/environment.html (last visited Nov. 16, 2004) (stating governments shall take measures to protect and preserve environment of territories indigenous people inhabit).

120. See Convention No. 169, supra note 49, art. 13(1) (stating governments shall respect special importance for indigenous cultures and spiritual values and their relationship with lands which they occupy or use, and in particular its collective aspects); see also LEAFLET 8, supra note 114 (stating Convention No. 169 requires governments to respect special importance to cultures and spiritual values of indigenous and tribal peoples of their relationship with lands or territories); ILO MANUAL, supra note 118, at 34 (stating governments need to respect special relationship between indigenous people and their land).

121. See Convention No. 169, supra note 49, art. 13(1) (emphasizing special relationship indigenous communities have with their land); see also ILO MANUAL, supra note 118, at 34 (stating governments need to respect relationship between indigenous people and their land); LEAFLET 8, supra note 114 (stating Convention No. 169 requires governments to respect special importance between land and cultures and spiritual values of indigenous and tribal peoples).

122. See Convention No. 169, supra note 49, art. 14(1) (stating governments must protect indigenous peoples' use of lands they do not own, but have traditionally used
from people or governments seeking to take advantage of indigenous people due to their lack of understanding of the laws.\textsuperscript{123} In addition, Convention No. 169 supports appropriate legal penalties for unauthorized intrusion upon, or use of, indigenous peoples' lands.\textsuperscript{124}

2. The Organization of American States

OAS has a human rights system which provides recourse to people in the Americas who have suffered human rights violations by a member State.\textsuperscript{125} Its main resources consist of IACHR\textsuperscript{126} and the Inter-American Court.\textsuperscript{127} Together, these two institutions apply the regional law on human rights in the

\textsuperscript{123} See Convention No. 169, \textit{supra} note 49, art. 17(3) (stating no one shall take advantage of indigenous customs or of lack of understanding of laws to secure ownership, possession, or use of land belonging to indigenous peoples); \textit{see also} ILO \textit{Manual}, \textit{supra} note 118, at 34 (recognizing importance of not allowing people to take advantage of indigenous peoples).

\textsuperscript{124} See Convention No. 169, \textit{supra} note 49, art. 18 (stating governments establish adequate legal penalties for unauthorized intrusion upon, or use of, indigenous peoples' lands, and governments shall take measures to prevent such offences); \textit{see also} ILO \textit{Manual}, \textit{supra} note 118, at 34 (recognizing penalties for intrusion upon indigenous land).

\textsuperscript{125} See \textit{Key OAS Issues, available at http://www.oas.org/key_issues/eng/GAhuman.html} (last visited Nov. 1, 2004) (explaining how people in America can address human rights violations); \textit{see also About the OAS: The OAS and the Inter-American System, \textit{supra} note 50 (recognizing Nations of Americas are working more closely together than ever before to advance human rights).

\textsuperscript{126} See Charter of the Organization of American States, April 30, 1948, 2 U.S.T. 2394, ch. 15 (mandating creation of IACHR, whose principal function promotes observance and protection of human rights and serves as consultative organ of OAS in these matters); \textit{see also What is the IACHR?, available at http://www.cidh.oas.org/what.htm} (last visited Nov. 4, 2004) (mentioning IACHR remains one of two bodies in Inter-American system for promotion and protection of human rights); Congo Online, \textit{Human Rights Bodies, available at http://www.congo-online.com/HumanRights/BodyList.asp?Area=Regional} (last visited Nov. 6, 2004) (recognizing IACHR and Inter-American Court together provide recourse to people who have suffered human rights violations).

\textsuperscript{127} See \textit{What is the IACHR?}, \textit{supra} note 126 (mentioning IACHR and Inter-American Court constitute two bodies in inter-American system for promotion and protection of human rights); \textit{see also Statute of the Inter-American Court on Human Rights, O.A.S. Res. 448 (IX-0/79), art. 1 (1979) [hereinafter IACHR Statute] (describing Inter-American Court as autonomous judicial institution whose purpose is application and interpretation of American Convention on Human Rights ("American Convention") and Court exercises its functions in accordance with provisions of American Convention and Statute of Inter-American Court); Congo Online, \textit{supra} note 126 (recognizing IACHR and
a. Inter-American Commission on Human Rights

Continually promoting the observance and defense of human rights,\textsuperscript{128} IACHR analyzes, investigates, and receives individual petitions which allege human rights violations by member States.\textsuperscript{129} IACHR also observes the general human rights situations in member States and publishes special reports regarding the situations when appropriate.\textsuperscript{130} In order to analyze human

\begin{notes}
\textsuperscript{128} See Charter of the Organization of American States, supra note 126 (mandating IACHR will promote observance and protection of human rights in American Nations); see also IACHR Statute, supra note 127, art. 2 (stating any Nation to have ratified American Convention is subject to jurisdiction of Inter-American Court);\textsuperscript{129} United Nations, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers 80 (2003) (recognizing Inter-American Commission and Inter-American Court shall have competence with respect to matters relating to fulfillment of commitments made by State parties to American Convention); Office of Public Communication: United States of America, Bureau of Public Affairs, Travel, History, International Organizations, Trade/Economics, OAS, Human Rights, Terrorism, Narcotics, Democratization, Environment (1991) [hereinafter Office of Public Communication] (mentioning IACHR has been called conscience of hemisphere and together with Inter-American Court give OAS active and at times forceful role in promoting and protecting human rights in Americas); Inter-American Commission on Human Rights available at http://www.fact-index.com/i/in/inter_americancommission_on_humanrights.html (stating IACHR and Inter-American Court are two bodies that comprise inter-American system for promotion and protection of human rights).
\textsuperscript{131} See Key OAS Issues, supra note 125; see also Office of Public Communication, supra note 128 (noting IACHR also publishes special reports, effective in challenging abuses in Nations including Panama); Organization of American States (OAS) - Inter-Ameri-
\end{notes}
rights situations more deeply or to investigate specific situations, IACHR may carry out on-site visits of member States.\textsuperscript{132} IACHR can also bring cases before the Inter-American Court.\textsuperscript{133}

b. The Proposed American Declaration on the Rights of Indigenous Populations

IACHR's Proposed American Declaration on the Rights of Indigenous Populations ("American Declaration") acknowledges that the rights of indigenous peoples constitute a fundamental issue in the future of the Americas.\textsuperscript{134} It recognizes the necessity of various traditional systems for use and control of land by indigenous peoples for their development and well-being.\textsuperscript{135} In
addition, it specifically addresses the importance of preserving traditional collective forms of land ownership for indigenous peoples,\(^{136}\) and mandates that Nations demarcate lands indigenous peoples use.\(^{137}\)

Also, the American Declaration asserts that indigenous peoples have the right to legal recognition, control and enjoyment of their lands and property.\(^{138}\) It recognizes the property and ownership rights that indigenous peoples have with respect to the lands and resources that they have occupied.\(^{139}\) Further-

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\(^{136}\) See American Declaration, supra note 134 (recognizing form of indigenous peoples' control and ownership of their lands are distinctive and varied and does not necessarily coincide with systems protected by domestic laws of countries in which they live); see also Michael Holley, Recognizing the Rights of Indigenous People to their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala, 15 BERKELEY J. INT'L L. 119, 142 (1997) (stating that consideration of traditional collective systems for control and use of land are necessary for indigenous peoples' survival).

\(^{137}\) See American Declaration, supra note 134, art. 18(8) (stating States should give maximum priority to demarcation and recognition of indigenous peoples' lands); see also Complaint of the Inter-American Commission on Human Rights, Submitted to the Inter-American Court of Human Rights in the Case of the Awas Tingni Mayagna (Sumo) Indigenous Community Against the Republic of Nicaragua, reprinted in 19 ARIZ. J. INT'L & COMP. LAW 17, 58 (2002) [hereinafter Awas Tingni Complaint] (explaining American Declaration mandates demarcation of indigenous lands).

\(^{138}\) See American Declaration, supra note 134, art. 18(1) (stating indigenous peoples should have right to legal recognition of their lands); see also Awas Tingni Complaint, supra note 137, at 47 (explaining right to legal recognition of indigenous land).

\(^{139}\) See American Declaration, supra note 134, art. 18(2) (stating indigenous peoples have right to recognition of their property and ownership rights with respect to lands they have historically occupied); see also Indian Law Resource Center, A Report by the Indian Law Resource Center on the Third Special Session of the OAS Working Group on the Proposed American Declaration on the Rights of Indigenous Peoples (Mar. 11-15, 2002), available at http://www.indianlaw.org/body_ilrc_rpt_on_oas wg.htm (mentioning emerging consensus among participants of Third Special Session that indigenous peoples have rights to ownership and possession of lands they have traditionally owned and occupied).
more, the American Declaration entitles indigenous peoples to the use of property or lands to which they have had access for their traditional activities and livelihood.\textsuperscript{140} The American Declaration gives indigenous peoples the right to restitution for lands they owned and traditionally occupied.\textsuperscript{141} Additionally, it calls for member States to take all possible measures to avert, prevent, and punish any intrusion on, or use of, indigenous lands by unauthorized persons trying to possess indigenous lands.\textsuperscript{142}

c. Inter-American Court of Human Rights

In concert with IACHR, the Inter-American Court also addresses human rights violations.\textsuperscript{143} The Inter-American Court

\textsuperscript{140} See American Declaration, supra note 134, art. 18(2) (stating indigenous people should have use of those lands which they have historically had access to for their traditional activities and livelihood); see also Report by the Indian Law Resource Center on the Third Special Session of the OAS Working Group on the Proposed American Declaration on the Rights of Indigenous Peoples, supra note 139 (mentioning experts believe indigenous peoples have rights to ownership of lands they have traditionally owned and occupied).


\textsuperscript{142} See American Declaration, supra note 134, art. 18(8) (asserting States should take all measures, including use of law enforcement mechanisms, to avert, prevent and punish, if applicable, any intrusion or use of indigenous lands by unauthorized people to take possession or make use of lands); see also Osvaldo Kreimer, Seven Principles of Indigenous Rights - A Closer Look at the Proposed American Declaration on the Rights of Indigenous Peoples, 5 DEMOCRACY 2, 6 (1997) (noting Proposed Declaration demands special guarantees to prevent and punish intruders and unauthorized use of indigenous peoples' properties); The Aboriginal Mapping Network, Legal Memorandum Regarding Principle 3 of the Forest Stewardship Council's Principles and Criteria 23, available at http://www.nativemaps.org/news/Docs/Principle%203%20Legal%20Memorandum.doc (last visited Nov. 15, 2004) (recognizing American Declaration includes member States' right to help avert intrusion upon or use of indigenous peoples' lands by unauthorized persons).

\textsuperscript{143} See Charter of the Organization of American States, supra note 126 (establishing Inter-American Court); see also World Policy Institute, American Convention on Human Rights: Who Has Ratified, available at http://www.worldpolicy.org/globalrights/treaties/maps-achr.html (last visited Nov. 6, 2004) (noting Panama has ratified American Convention, and remains subject to IACHR's compulsory jurisdiction); ORGANIZATION OF AMERICAN STATES, B-32: American Convention on Human Rights "Pact of San Jose, Costa Rica" (1979) (mentioning Panamanian Government recognized jurisdiction of Inter-American Court as binding on all matters relating to application or interpretation of American Convention); Right to Education, International Obligations and Access to Remedies: Panama, available at http://www.right-to-education.org/content/rights_and_
has contentious jurisdiction over member States' human rights violations. The majority of the Inter-American Court's cases have dealt with disappearances or extra-judicial executions, but it recently decided its first indigenous land rights case: The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua.

d. American Convention on Human Rights

The American Convention on Human Rights ("American Convention") is an important treaty regarding human rights in the Americas. It applies to all people regardless of color, race, language, social origin, or any other social condition. The American Convention ensures protection of these rights and


144. See Thomas Buergenthal, The Inter-American Court of Human Rights, 76 AM. J. INT'L L. 231, 235 (1982) (noting that Inter-American Court’s contentious jurisdiction is adjudicatory and thus allows it to hear and decide cases brought against State parties alleging human rights violations); see also PASQUALUCCI, supra note 133, at 11 (referencing Inter-American Court’s contentious jurisdiction); DAVIDSON, supra note 133, at 205 (stating Inter-American Court’s main objective regarding contentious jurisdiction is to rule on whether State violated victim’s rights in American Convention and to secure redress for victims of those violated rights); Irum Taqi, Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights’ Approach, 24 FORDHAM INT’L L.J. 940, 956 n.99 (2001) (commenting that Inter-American Court’s contentious jurisdiction allows it to decide cases brought against State parties, provided that State party has expressly recognized Court’s jurisdiction).

145. See generally The Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-Am. Ct. H.R. (Ser. C) No. 79, [2001] (holding that Nicaragua violated Awas Tingni’s land rights). See PASQUALUCCI, supra note 133, at 11 (describing types of cases with which Inter-American Court has predominantly dealt).

146. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 (showing how Inter-American Court relied on American Convention in its ruling). See generally American Convention on Human Rights, supra note 130 (expressing human rights throughout Americas).

147. See American Convention on Human Rights, supra note 130, art. 1(1) (stating State parties to American Convention agree to respect rights and freedoms recognized within it and to ensure to all persons those rights and freedoms); see also Elizabeth M. Misiaveg, Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women, 52 WASH. & LEE L. REV. 1109, 1128 (1995) (explaining Article 1(1) of American Convention mandates State parties to respect and ensure rights and freedoms recognized in American Convention).
freedoms by having member States adopt laws to protect them.\textsuperscript{148}

Article 21 of the American Convention deals solely with the right to property.\textsuperscript{149} While not dealing specifically with indigenous land rights, it states everyone has the right to the use and enjoyment of his/her property.\textsuperscript{150} It also forbids anyone from being deprived of his/her property.\textsuperscript{151} Lastly, Article 21 prohibits any exploitation of people.\textsuperscript{152}

Article 25 of the American Convention asserts the right to judicial protection for violated human rights.\textsuperscript{153} It entitles everyone to recourse by a court or tribunal for human rights concerns recognized by the Nation’s Constitution or the American Convention.\textsuperscript{154} Member Nations of the American Convention must

\begin{itemize}
\item \textsuperscript{148} See American Convention on Human Rights, supra note 130, art. 2 (asserting State parties to American Declaration adopt legislation or other measures as necessary to give effect to those rights); see also Capt. Benjamin P. Dean, An International Human Rights Approach to Violations of NATO Sofa Minimum Fair Trial Standards, 106 MIL. L. Rev. 219, 245 n.141 (1984) (noting Article 2 of American Convention states that member States adopt laws to give effect to human rights outlined in Article 1(1)).
\item \textsuperscript{149} See American Convention on Human Rights, supra note 130, art. 21 (dealing with right to property); see also Sanchez-Moreno & Higgins, supra note 65, at 1789, n.572 (noting Article 21 of American Convention provides right to property).
\item \textsuperscript{150} See American Convention on Human Rights, supra note 130, art. 21(1) (stating every person has right to use and enjoy his property); see also Patrick Macklem, Indigenous Rights and Multinational Corporations at International Law, 24 HASTINGS INT’L & COMP. L. Rev. 475, 478 (2001) (explaining Article 21(1) of American Convention affirms indigenous property rights).
\item \textsuperscript{151} See American Convention on Human Rights, supra note 130, art. 21(2) (stating prohibition of deprivation of anyone’s property, except for listed reasons); Jennifer A. Amiott, Environment, Equality, and Indigenous Peoples’ Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua, 32 ENVTL. L. 873, 888 n.79 (2002) (explaining Article 21(2) of American Convention forbids exploitation).
\item \textsuperscript{152} See American Convention on Human Rights, supra note 130, art. 21(3) (stating prohibition of usury and any other forms of exploitation of people); see also Jonathan P. Vuotto, Awas Tingni v. Nicaragua: International Precedent for Indigenous Land Rights?, 22 B.U. INT’L L. J. 219, 231-32 (2004) (explaining American Convention prohibits usury or exploitation).
\item \textsuperscript{154} See American Convention on Human Rights, supra note 130, art. 25(1) (stating everyone has right to recourse through court or tribunal for protection from acts
ensure the enforcement of remedies when granted.155

Diplomatic tools exist to help move the Mogue Community forward to achieving land rights.156 The Panamanian Constitution has provisions which seem to support the Mogue Community's control over its land.157 The international community affirms this notion by emphasizing indigenous land rights.158 Part
II discusses the merits and legal effect of each tool.

II. FRAMING THE RIGHT TO LAND OWNERSHIP: THE USE OF LOCAL AND INTERNATIONAL LAWS

The United Nations has made advances regarding indigenous rights and has given attention to indigenous problems. The ratification of the Draft Declaration would give the indigenous peoples increased diplomatic means of improving their conditions. The OAS American Declaration, like the U.N. Draft Declaration, would provide moral force to the indigenous peoples' struggle for rights in the Americas, even though neither are legally binding instruments. Further, the Inter-American Court's recent decision in *The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua*, provides a potential legal foundation for the indigenous peoples' movement to achieve land rights.

A. The Panamanian Laws

Law 22 demarcated many Chocoe villages as part of a "comarca." The Mogue Community, however, did not benefit from Law 22 because it failed to include the Mogue Commu-


160. See Third Committee Delegates, *supra* note 96 (expressing it is critical to complete Draft Declaration in 2004); *see also* LEAFLET 5, *supra* note 96, at 3 (stating that preferred date to complete Draft Declaration is by December 2004).

161. See Government of Canada Comments on the Draft Inter-American Declaration on the Rights of Indigenous Peoples (explaining non-binding nature of Draft Declaration); *see also* LEAFLET 5, *supra* note 96, at 1 (explaining moral force behind Draft Declaration even though it does not legally bind Nations).

162. See The Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-Am. Ct. H.R. (Ser. C) No. 79 [2001] (holding Nicaragua violated Awas Tingni's land rights and must demarcate Awas Tingni lands); *see also* S. James Anaya, *International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State*, 21 Ariz. J. Int'l & Comp. Law 13, 42 (2004) (explaining Inter-American Court ruled in favor of Awas Tingni's violated land rights even though land is not held under deed of title and not otherwise specifically recognized by Nation).

163. See generally CERD Committee Observations, *supra* note 17 (noting indigenous Panamanians live in "comarcas"); PANAMANIAN LAW 22, *supra* note 17 (stating Panama recognizes land benefits to various Chocoe villages).
nity’s land in the comarca, thereby not protecting the Mogue Community’s land rights under the law.\textsuperscript{164} Despite being excluded from Law 22, however, many different Chocoe villages, including the Mogue Community, formed the Tierras Collectivas Indigenas in order to achieve land protection.\textsuperscript{165} The Tierras Collectivas Indigenas consists of approximately fifty Chocoe villages not included in the comarca.\textsuperscript{166} They seek to unite to achieve land ownership via inclusion in the comarca.\textsuperscript{167} Although these villages may be stronger as a group, they still have little recourse under Panamanian Law, yet they may find a remedy under international law.\textsuperscript{168}

\textsuperscript{164} See Chocoe Struggle for Land Rights, supra note 3 (explaining while Panamanian Law 22 recognizes land for some Chocoe Peoples, Mogue Community is not included in that group); see also Rito Interview, supra note 2 (noting Mogue Community is member of Tierras Collectivas Indigenas which represents those Chocoe Indian villages not given autonomy due to exclusion from comarca); Plant & Hvalkof, supra note 46, at 36 (stating no jurisprudence covers indigenous people living outside comarcas); Arecio Valiente, Panama: Do Indigenous People Have the Right to Decide about Their Own Natural Resources in Indigenous & Tribal Peoples Centre, available at http://www.itpcentre.org (mentioning Embera District of Panama which grants semi-autonomy to certain Chocoe villages); Rich Winkel, Panama: Indigenous Actions for Land Repressed, Native-L. (July 1993) (noting arrest, tear gassing, and murder of indigenous people who organized demanding Panamanian government complete demarcation of indigenous); see also Atencio Lopez, Panama: Mining Concessions and Indigenous Peoples in Panama, available at http://www.itpcentre.org (noting indigenous peoples in Panama are in danger of losing indigenous districts that have not yet been legalized due to obsolete Mining Code of 1963); Panama Const. of 1973, art. 243 (stating municipalities can tax extraction of wood and other materials).

\textsuperscript{165} See Rito Interview, supra note 2 (mentioning Tierras Collectivas Indigenas represents those Chocoe Indian villages not included in comarca); see also Chocoe Struggle for Land Rights, supra note 3 (explaining Mogue Community is member of Tierras Collectivas Indigenas which includes collection of about 50 Chocoe villages excluded from Panamanian Law 22).

\textsuperscript{166} See Rito Interview, supra note 2 (mentioning that Tierras Collectivas Indigenas represents about 50 Chocoe Indian villages not included in comarca demarcated by Panamanian Law 22); see also Chocoe Struggle for Land Rights, supra note 3 (explaining Collectivas Indigenas is collection of about 50 Chocoe villages excluded from Panamanian Law 22).

\textsuperscript{167} See Brunton Interview, supra note 5 (noting villages excluded by Panamanian Law 22 continue to lobby for inclusion in comarca); see also Rito Interview, supra note 2 (explaining Tierras Collectivas Indigenas as attempt by Chocoe Indian villages not included in comarca demarcated by Panamanian Law 22 to create strong lobby in order to include their villages in comarca).

\textsuperscript{168} See The Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-Am. Ct. H.R. (Ser. C) No. 79, [2001] (holding Nicaraguan Government violated indigenous land rights and must demarcate indigenous lands); see also Draft Declaration, supra note 53 (explaining potential indigenous land rights international commu-
B. United Nations

1. The Charter of the United Nations and the Universal Declaration of Human Rights

While the U.N. Charter and UDHR are extremely important human rights tools, the early years of the United Nations emphasized decolonization and individual human rights rather, than collective rights. More recently, the United Nations has widened its interests to groups and non-State entities. Of particular relevance to indigenous peoples and their fight for land rights, UDHR affirms the right to own property and prohibits the arbitrary deprivation of anyone’s property. The founding members of the United Nations, however, never meant UDHR to become a legally binding instrument, and did not draft it to protect group rights.

2. The International Convention on the Elimination of All Forms of Racial Discrimination

ICERD has complaint mechanisms that enable an individual to voice his or her dissatisfaction regarding the violation of his or her rights. ICERD has recognized Panama’s enactment of
laws establishing indigenous comarcas as encouraging, yet expressed concern that some groups living in Panama, in particular indigenous people, do not fully benefit from the rights in ICERD. 174 Despite this concern and due to a lack of complaints against Panama, the report from 1997 is the last one regarding Panamanian human rights violations.175

3. The Commission on Human Rights

CHR's meetings are not as easily accessible as the Sub-Commission's or WGIP's.176 Nevertheless, CHR remains a forum where high Panamanian officials could hear from Mogue Community representatives or the Pajaro Jai Foundation,177 a non-governmental organization ("NGO") which works with the Mogue Community to achieve a greater standard of living—including obtaining land rights.178 This meeting has the potential

HENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES (2003) (stating ICERD remains one of four core human rights treaties to establish procedures which allow individuals to submit complaints to treaty-monitoring bodies); see also Leaflet 4, supra note 87, at 2-3 (describing complaint mechanisms).


176. See Sub-Commission Leaflet, supra note 84 (stating various ways non-government entities can become involved with Sub-Commission); see also Leaflet 3, supra note 75, at 7-8 (noting CHR's agenda remains very much determined by governments); Working Group Mandate, supra note 84, at 50 (noting participation in U.N. bodies other than WGIP remains limited to indigenous individuals and organizations).

177. See PJF: Conservation through Innovation, supra note 2 (explaining that Pajaro Jai Foundation is NGO that works primarily with Mogue Community to increase its standard of living, including its land rights problems); see also Alan Bisbort, Finding a Connection, Though a World Away, N.Y. TIMES, Dec. 16, 2001, Conn. Ed., at 19 (stating Pajaro Jai Foundation works with Chocoe Indians in Mogue to help human economic problems); Susan Young, Wisdom on the Waterfront: Lobstermen, a Researcher and an Idealist Come Together at the Lobster Institute, BANGOR DAILY NEWS, Oct. 18, 1997, at A1 (explaining Pajaro Jai Foundation aims to help Mogue Community become self-sufficient).

178. See PJF: Conservation through Innovation, supra note 2 (explaining Pajaro Jai Foundation attempts to work with Panamanian Government to improve Mogue Com-
to develop a dialogue between the Mogue Community and Panamanian Government and may ultimately lead to the eventual goal of Mogue Community's land ownership.\textsuperscript{179} CHR remains the most important human rights forum in the United Nations, thus a speech made there has a greater impact on the international community than anywhere else in the U.N. system due to the number of attendants and the high-level government officials attending the session.\textsuperscript{180}

An increasing number of indigenous peoples have taken their human rights concerns to CHR in order to lobby for, and influence, resolutions on indigenous issues.\textsuperscript{181} The Mogue Community can send a representative to participate in informal discussions with other indigenous peoples and NGOs working with indigenous issues; they can also speak with government representatives about preparations underway in WGIP on the Draft Declaration.\textsuperscript{182} A Mogue Community member attending CHR could also give the Mogue Community the opportunity to get

\textsuperscript{179} See PJF: Conservation through Innovation, supra note 2 (explaining how Pajaro Jai Foundation attempts improve Mogue Community’s situation through negotiations with Panamanian Government which could lead to land ownership); see also Brunton Interview, supra note 5 (stating one of Pajaro Jai Foundation’s goals is development dialogue, which could start at CHR, between Panamanian Government and Mogue Community to diplomatically resolve land rights issue).

\textsuperscript{180} See Nettheim, supra note 69, at 35 (explaining that including 53 member-Nations to CHR, other countries, specialized agencies, and intergovernmental organizations participate in CHR’s annual session); see also LEAFLET 3, supra note 75, at 7 (noting generally over 3,000 people participate in CHR each session, including: foreign ministers, ministers of justice, presidents, and prime ministers); United Nations Commission on Human Rights, Dominicans for Justice and Peace at the United Nations, available at http://un.op.org/background/unhrc.php [hereinafter Dominicans for Justice and Peace] (noting that other countries may participate in CHR sessions as observers as well as representatives of other specialized U.N. agencies and intergovernmental organizations).


\textsuperscript{182} See LEAFLET 3, supra note 75, at 8; see also Dominicans for Justice and Peace, supra note 180 (noting NGOs attend and participate in CHR in limited function); Draft Declaration II, supra note 94 (giving examples of work of various NGOs that have already had input in Draft Declaration).
the support of other human rights groups to build a stronger lobby for the Mogue Community's cause.\textsuperscript{183}

4. Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission undertakes studies and makes recommendations to CHR concerning the prevention of discrimination of any kind relating to fundamental freedoms, human rights, and the protection of minorities.\textsuperscript{184} The Sub-Commission requested that Dr. Erica-Irene A. Daes, a special rapporteur of the Sub-Commission, write a working paper on indigenous people and their relationship to land that incorporates comments and information received from governments, indigenous peoples, and others.\textsuperscript{185} Among other things, the working paper suggested practical measures to address ongoing problems regarding indigenous peoples' land rights and to provide the special rapporteur with the assistance necessary to complete her work.\textsuperscript{186}

\textsuperscript{183} See Leaflet 3, supra note 75, at 8 (explaining how NGOs interact during CHR sessions); see also Dominicans for Justice and Peace, supra note 180 (giving example of how NGOs participate in CHR's annual meeting); Nettheim, supra note 69, at 35 (realizing important consultative status of NGOs in process and during CHR annual meeting).


\textsuperscript{186} See Study on Indigenous Land Rights, supra note 185 (giving Daes task of suggesting ways to address indigenous land rights problems and to provide "special rapporteur" with facts necessary to allow her to complete her assignment); see also United Nations, NGLS Roundup: 1997 Substantive Session of the Economic and Social Council 7 (1997) (stating working paper on indigenous people and their relationship
Some of Dr. Daes' proposals include an emphasis on the formal mechanisms for indigenous participation in the World Conference Against Racism, that the U.N. High Commissioner for Human Rights should organize a seminar on indigenous peoples and justice during the preparatory process, and that indigenous peoples should be able to organize parallel activities to the conference, such as panel discussions. Unfortunately, commentators still believe that indigenous peoples have insufficiently utilized special rapporteurs for their causes by indigenous peoples not reporting their concerns. By not employing the work of special rapporteurs, indigenous people are not getting as much international attention for their human rights concerns.

5. Working Group on Indigenous Populations

The most accessible charter-based U.N. body for indigenous peoples remains WGIP. The "Review of Developments," a place where speakers can inform WGIP about recent indigenous
issues from around the world, provides an opportunity for Panamanian Indians to draw attention to their land rights issues and for the Panamanian Government to present their responses to ICERD. Recently, however, the “Review of Developments” session started to address a specific theme each year, including: indigenous children and youth; indigenous peoples and their right to development; and indigenous peoples and conflict resolution. Unless the “Review of Developments” chooses indigenous land rights as its theme, it will not help relieve the Mogue Community’s plight.

6. The Draft United Nations Declaration on the Rights of Indigenous Peoples

If adopted, the Draft Declaration will be the most comprehensive statement to date of indigenous peoples’ rights. While the Draft Declaration will not bind Nations, and thus will


193. See LEAFLET 3, supra note 75, at 2 (mentioning how each year during “Review of Developments,” WGIP has addressed specific theme); see also Highlights from the Twenty Second Session of the Working Group on Indigenous Populations, supra note 192 (explaining WGIP’s 2004 “Review of Developments” theme is indigenous peoples and conflict resolution).

not impose any legal obligations on governments, it will carry moral force. The adoption of this instrument would further demonstrate the international community's commitment to indigenous peoples' human rights protections.

The Draft Declaration promotes procedures for resolving disputes between indigenous peoples and governments, such as mediation, negotiation, and international or regional human rights complaint and review mechanisms. The Draft Declaration's preamble also encourages Nations to comply with and implement all international instruments as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned.

With this in mind, the Draft Declaration promotes the conservation, protection, and restoration of the total environment and the productive capacity of indigenous lands and resources. In order to achieve these goals, the Draft Declaration

195. See Leaflet 5, supra note 96, at 1 (explaining moral force behind Draft Declaration since it will not legally bind Nations); see also United Nations, Mana Tangata: Draft Declaration on the Rights of Indigenous Peoples 1993: Background and Discussion on Key Issues (1994) [hereinafter Mana Tangata] (noting text of Draft Declaration has great moral force).

196. See Leaflet 5, supra note 96, at 1; see also Mana Tangata, supra note 195 (describing Draft Declaration as norms reflecting aspirations of indigenous peoples strongly rooted in broad consensus among international community).


198. See Draft Declaration, supra note 53, pmbl. (encouraging Nations to implement and comply with all international instruments related to human rights and indigenous peoples); see also Consideration of Draft Declaration, supra note 197 (discussing Draft Declaration's call for Nations to comply with existing international instruments); Justice Pending, supra note 97, at 286 (explaining Draft Declaration paragraph 16); Equality of Indigenous Peoples, supra note 100, at 501 (expressing international community should apply and implement international human rights instruments regarding indigenous people).

199. See Draft Declaration, supra note 53, art. 28 (stating indigenous peoples have right to protection of their lands and resources); see also Consideration of Draft Declaration, supra note 197 (restating Article 28 of Draft Declaration gives indigenous peoples right to protection of environment in which they live); Working Group Mandate, supra note 84, at 49 (noting that Article 28 of Draft Declaration affirms right of indigenous peoples to protection of environment and productive capacity of their lands).
provides that the Mogue Community can get assistance from the Panamanian Government.\footnote{200} This goal includes the Mogue Community’s right to require Panama to obtain the Mogue Community’s consent prior to approving any project that affects the Mogue Community’s lands.\footnote{201} Moreover, it would entitle the Mogue Community to receive fair compensation to mitigate any adverse cultural, economic, environmental, spiritual, or social impact from any government acts.\footnote{202} The Mogue Community can also get assistance from other Nations to achieve these goals.\footnote{203}

According to the Draft Declaration, the Mogue Community would have the right to autonomy or self-government in matters relating to their internal and local affairs.\footnote{204} Specifically, this au-

\footnote{200. See Draft Declaration, supra note 53, art. 28 (stating indigenous people are allowed assistance in order to protect themselves from their governments); see also Andrew Huff Resource Development and Human Rights: A Look at the Case of the Lubicon Cree Indian Nation of Canada, 10 COLO. J. INT’L ENVTL. L. & POL’Y 161, 193 (1999) (explaining Article 28 of Draft Declaration states indigenous peoples have right from their government in order to protect productive capacity of their lands).

201. See Draft Declaration, supra note 53, art. 30 (requiring Nations obtain consent before approving any projects which affect indigenous peoples' lands, territories, and other resources); see also Karen E. Bravo, Balancing Indigenous Rights to Land and the Demands of Economic Development: Lessons from the United States and Australia, 30 COLUM. J.L. & SOC. PROBS. 529, 536 (1997) (recognizing Article 30 of Draft Declaration mandates informed consent of indigenous people before development projects are undertaken on their lands).

202. See Draft Declaration, supra note 53, art. 30 (stating indigenous peoples must receive fair and just compensation for any activities and measures taken to mitigate adverse economic, environmental, social, cultural or spiritual impact); see also Benedict Kingsbury, “Indigenous Peoples” in International Law: A Constructivist Approach to the Asian Controversy, 92 AM. J. INT’L L. 414, 440 (1998) (noting indigenous peoples have right to compensation to lessen adverse impact to their lands).


204. See Draft Declaration, supra note 53, art. 31 (stating indigenous peoples have right to autonomy or self-government in matters relating to their internal and local
tonomy includes land and resource management, and the authority to grant access to non-members of the Mogue Community. Some countries, however, attempt to interpret this assertion of self-determination declared in the Draft Declaration as a limitation or reduction of the universal right of self-determination stated in other sections of the Draft Declaration. For example, a proposed revision of the Draft Declaration attempts to limit the right of indigenous peoples to internal self-governance within the framework of, and subject to, their country's domestic laws. The Latin American countries reaffirmed their region's commitment to indigenous peoples and stated that they will make every available effort to adopt the Draft Declaration before the target date.

The target date for the Draft Declaration's adoption is approaching. The Mogue Community will soon lose its opportu-

affairs and means for financing these autonomous functions); see also Kersey supra note 203, at 453 (explaining indigenous peoples have right to autonomy in internal and local affairs in accord with Article 31 of Draft Declaration).

205. See Draft Declaration, supra note 53, art. 31 (stating indigenous peoples' self-determination includes land and resource management and entry by non-members of indigenous community); see also Kersey supra note 203, at 452 (explaining indigenous peoples have right to autonomy and self-determination over their land, resources, and how non-indigenous people can use their land in accord with Article 31 of Draft Declaration).


207. See Statement by the IITC, supra note 206 (explaining how proposed edition to Draft Declaration reduces indigenous peoples self governance within existing laws of their country); see also Draft Declaration II, supra note 94 (giving examples of proposed edits which would weaken Draft Declaration).


209. See Third Committee Delegates, supra note 96 (noting importance of completing Draft Declaration by end of International Decade of World's Indigenous Peoples in 2004); see also LEAFLET 5, supra note 96, at 3 (stating deadline international
nity to participate in the crafting of the Draft Declaration. It is critical that indigenous peoples continue to participate in the writing of the Draft Declaration. Indigenous peoples’ participation in the open-ended working group will ensure that the final text of the Declaration reflects their aspirations, human rights concerns, and needs.


Agenda 21 is another tool important in indigenous land sovereignty, but does not legally bind Nations. Also, indigenous peoples do not have power to take action against governments in Nations that do not recognize indigenous rights within their own legal frameworks. Thus, the indigenous community is still subject to the national laws of the State in which it resides.

210. *See Indigenous Issues: Report of the Working Group, supra* note 208 (explaining indigenous peoples’ opportunity to participate in process of adopting Draft Declaration is almost over); *see also Leaflet 5*, supra note 96, at 3 (stating December 2004 as tentative date for completion of Draft).

211. *See Indigenous Issues: Report of the Working Group, supra* note 208 (explaining importance of indigenous people in process of adopting Draft Declaration); *see also Draft Declaration II*, supra note 94 (giving examples of how indigenous groups have made suggestions to Draft Declaration).

212. *See Indigenous Issues: Report of the Working Group, supra* note 208 (stating why indigenous participation during final stages of Draft Declaration is important); *see also Draft Declaration II*, supra note 94 (giving examples of how indigenous groups suggestions to Draft Declaration tailor it to address their concerns).


214. *See UNITED FAMILIES INTERNATIONAL, NATIONAL SOVEREIGNTY IN UNITED NATIONS DOCUMENTS* 4 (2001) (stating Agenda 21 is binding within that Nation’s legal system); *see also Jeanette Bailey, Indigenous People and Agenda 21, available at* http://tuftsglobaleadership.org/WSSDSite/papers/indigenous_jeanette.doc (stating indigenous people can only take action against governments that recognize indigenous rights within that Nation’s legal framework).

215. *See Agenda 21, supra* note 53, ch. 26, ¶ 3(b) (stating Agenda 21 encourages Nations to strengthen laws); *see also Russel Lawrence Barsh, Indigenous Peoples in the 1990s: From Object to Subject of International Law?, 7 HARV. HUM. RTS. J. 33, 46-47 (1994)
8. The International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries

The International Labour Organization Committee of Experts noted that Convention No. 169 is currently the most comprehensive instrument of international law for the legal protection of indigenous peoples' right to preserve their own customs and laws within the Nations they live. Convention No. 169 remains the only international legal instrument currently in force and open for ratification that specifically addresses indigenous peoples' rights. Currently, seventeen Nations have ratified Convention No. 169.

Panama has not yet ratified Convention No. 169. If Panama adopts Convention No. 169, it would be a legally binding international instrument to address land rights concerns.
Many Latin American Nations, including Colombia and Costa Rica, have ratified Convention No. 169. Since its adoption in these Nations, Convention No. 169 has exerted considerable influence at both the national and regional levels of the respective governments.

C. The Organization of American States

1. The Inter-American Commission on Human Rights

IACHR serves three main functions. First, IACHR recommends measures that would contribute to human rights protections, including the American Declaration. Second, IACHR submits cases to the Inter-American Court and appears before the Court in the litigation of cases. Third, it recommends cases to the Inter-American Court regarding questions of inter-

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221. See ILOLEX, supra note 218 (listing Latin American countries that have ratified Convention No. 169 as Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru, and Venezuela); see also ILO Manual, supra note 118 (noting that while 13 of 17 ratifying Nations consist of Latin American Nations, Panama has not yet ratified it); Hannum, supra note 80, at 88 (noting Latin American countries comprise majority of Convention No. 169's ratifying members).


223. See What is the IACHR?, supra note 126 (explaining IACHR recommends to member countries of OAS adoption of measures which would contribute to human rights protection); see also OAS-IACHR, supra note 130 (noting that IACHR submits cases to Inter-American Court); Permanent Council, supra note 129 (explaining Inter-American Court remains vital part of OAS human rights structure).

224. See What is the IACHR?, supra note 126 (mentioning that to fulfill its mandate IACHR recommends to member States of OAS adoption of measures which would contribute to human rights protection); see also OAS-IACHR, supra note 130 (noting IACHR recommends adoption of measures which would contribute to human rights protection to OAS member States). See generally Proposed American Declaration on the Rights of Indigenous Peoples, OEA/Ser.P AG/RES. 1780 (XXXI-O/01) (June 5, 2001) (Resolution Adopted at Third Plenary Session) (stating IACHR's recommendation towards adopting human rights protections regarding indigenous peoples).

225. See Permanent Council, supra note 129 (noting also that in order to have human rights violation submitted to Inter-American Court party claiming violation must have exhausted all appropriate national legal remedies and have failed); see also
pretation of the American Convention.\footnote{226}{In 2002, IACHR processed about forty cases concerning indigenous peoples throughout the Americas, including The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua.\footnote{227} {The Proposed American Declaration on the Rights of Indigenous Populations

The section of the American Declaration regarding indigenous land rights created controversy as member countries and indigenous groups have consistently proposed, and continue to propose, alterations to the section.\footnote{228}{Consequently, the Working Group to Prepare the Draft of the American Declaration on the Rights of Indigenous People continues to hear from indigenous peoples' representatives, member States, special rapporteurs, and various experts in order to complete the American Declaration.\footnote{229}{The American Declaration, like the U.N. Draft Declaration}

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\item OAS-IACHR, supra note 130 (noting IACHR submits cases to Inter-American Court and appears before Inter-American Court in litigation of cases).
\item See Proposed American Declaration, supra note 134, § 5 (noting all proposed changes and substitutions to section); see also Working Document Comparing the Original Proposed American Declaration on the Rights of Indigenous Peoples and Proposals by Indigenous Representatives, OEA/Ser.K/XVI, OAS Doc. GT/DADIN/doc.41/01 (2001); American Declaration, supra note 134, ¶¶ 23-26 (discussing progress of American Declaration). See generally Permanent Council, supra note 129 (noting more documents regard Section Five of American Declaration than any other section).
\item See Meeting of the Working Group on Chapter V of the proposed Declaration with Spe-
tion, will not legally bind 'ratifying countries.'

3. The Inter-American Court of Human Rights

The Inter-American Court recently decided a landmark case where its holding reaffirmed land rights of indigenous peoples. The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua is the first case submitted to the Inter-American Court directly pertaining to indigenous peoples' rights. The Court's judgment declared that indigenous peoples, by virtue of their very existence, have the right to live freely on their own lands.
The Inter-American Court relied on Article 21 of the American Convention, which recognizes the right to private property.\textsuperscript{234} The court also relied on relevant provisions of the Nicaraguan Constitution of 1996 for its ruling.\textsuperscript{235}

The Inter-American Court held that Nicaragua violated the Awas Tingni Community’s right to judicial protection and its right to property.\textsuperscript{236} The Court also required Nicaragua to adopt an effective mechanism for official titling of the Awas Tingni Community’s property, in accordance with the customs and laws in compliance with Article 2 of the American Convention regarding extent of Nations’ obligation to recognize and protect indigenous lands); Martin Edwin Andersen, \textit{Thankful for Renewed Rights; Native Nicaraguans Needed Protection}, \textit{WASH. TIMES}, Nov. 22, 2001, at A19 (mentioning indigenous peoples’ landmark victory in Inter-American Court as likely to have important effect in numerous other land disputes throughout Latin America); Catherine Elton, \textit{Indians’ Heritage Gets a Legal Stamp}, \textit{CHRISTIAN SCI. MONITOR}, Dec. 4, 2001, at 6 (stating experts on indigenous rights say recent Inter-American Court ruling establishes important precedent and valuable new interpretation of indigenous property rights, which could have far-reaching implications for indigenous people throughout Americas).

234. \textit{See} American Convention on Human Rights, supra note 130, art. 21 (stating everyone has right to use and enjoy his property and law may subordinate such use and enjoyment to interest of society and no one should be deprived of his property except upon stated circumstances and that usury and exploitation of man by man should be illegal); \textit{see also} Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶¶ 142-145 (Nicaraguan Government violated Awas Tingni’s right to property recognized by Article 21 of American Convention).

235. \textit{See} NICAR. CONST. OF 1995, art. 5 (recognizing existence of Nicaraguan indigenous people and their right to communal forms of land ownership and to manage their lands); \textit{see also} Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶¶ 116, 142 (quoting American Convention on Human Rights Article 21 and explaining Article 5 of NICAR. CONST. OF 1995 which states that Nicaragua recognize existence of indigenous peoples, who have right to manage their local affairs, as well as maintaining communal forms of ownership of their lands, and also use and enjoy those lands, in accordance with law).

tion on Human Rights. Further, Nicaragua was instructed by the Inter-American Court to officially demarcate, issue title for, and recognize those lands belonging to the members of the Awas Tingni Community.

In its decision, the Inter-American Court specified a communitarian tradition regarding a communal form of collective property of the land that exists among indigenous people. The Court recognized that the close bond of indigenous peoples with their land represents an essential element of their culture, economic survival, and well-being. The Inter-American Court stated that the relationship between land and indigenous peoples is a material and spiritual element necessary to preserve their cultural heritage and pass it on to future generations.

237. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 173(3) (holding that Nicaragua must adopt in its domestic law, pursuant to Article 2 of American Convention on Human Rights, administrative, legislative, and any other measures necessary to create effective mechanism for delimitation, demarcation, and titling of Awas Tingni property); see also American Convention on Human Rights, supra note 130, art. 2 (stating where exercise of any of rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, Nation parties undertake to adopt, in accordance with their constitutional processes and provisions of this Convention, such legislative or other measures necessary to give effect to those rights or freedoms).

238. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 173(4) (mentioning Inter-American Court's ruling to repair Nicaragua's human rights violations towards Awas Tingni); see also Human Rights and Indigenous Issues Report, supra note 236 (quoting Inter-American Court's Awas Tingni Case paragraph 173(4) and construing decision as holding Nicaragua must demarcate and title lands to Awas Tingni Community).

239. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 149 (recognizing special type of land use Awas Tingni use); see also Anaya & Grossman, supra note 236, at 12 (mentioning Inter-American Court held that concept of property, as articulated in American Convention on Human Rights, includes communal property of indigenous peoples defined by their customary land use).

240. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 149 (stating indigenous groups have right to live freely in their own territories and that Nations must recognize and understand close ties between indigenous peoples and their lands as fundamental bases of their cultures, their spiritual life, their integrity, and their economic survival); see also Press Release, Inter-American Commission on Human Rights (Feb. 22, 2002), available at http://www.cidh.oas.org/Comunicados/English/2002/Press8.02.htm (last visited Nov. 17, 2004) (explaining Inter-American Court's recognition of Awas Tingni's close ties with its land).

The judgment against Nicaragua, however, has not been enforced. The Inter-American Court gave Nicaragua fifteen months from August 2001 to enforce its decision. The Nicaraguan Government did not meet this deadline, thereby violating the Court’s order.

To enforce the order, the Awas Tingni Community has filed an *amparo* action (an action seeking a constitutional guarantee of civil rights), in the Nicaraguan courts against the Nicaraguan President and other government officials requesting that the Supreme Court of Nicaragua accept the case for its consideration. Additionally, the Awas Tingni Community has asked

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242. See also Paul Baker Hernandez, Government Slow to Obey Awas Tingni Ruling, NICAR. NEWS SERVICE, available at http://www.tulane.edu/~libweb/RESTRICTED/NICANEWS/2002_0708.txt (last visited Oct. 15, 2004) (noting slow negotiations between Awas Tingni’s and Nicaraguan Government); see also Robert Spain, Indigenous Nicaraguans Sue President, 4 HOND. THIS WEEK (2003), available at www.marrder.com/htw/2003/jan (last visited Nov. 5, 2004) (reporting Awas Tingni filed lawsuit against Nicaraguan President to have Inter-American Court ruling enforced).

243. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 164 (ruling Nicaragua must delineate, demarcate, and title corresponding lands of Awas Tingni’s Community within maximum of 15 months); see also Awas Tingni Case – Fifteen Months Later, supra note 232, at 1 (stating how much time Inter-American Court gave Nicaragua to comply with ruling); Spain, supra note 242 (noting Inter-American Court gave Nicaragua 15 months to comply with its ruling).

244. See Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79 ¶ 164 (stating that Nicaragua violated Inter-American Court’s ruling); see also Awas Tingni Case – Fifteen Months Later, supra note 232, at 1 (noting status of Nicaragua’s compliance with Inter-American Court’s ruling); Spain, supra note 242 (noting status of Awas Tingni Case decision); see also Press Release, Indian Law Resource Center, Indigenous Community Sues the President of Nicaragua for Failure to Implement Decision of International Tribunal (Jan. 16, 2003), available at http://www.indianlaw.org/awas_tingni_info_english.htm (stating 15 month demarcation period for Nicaragua to comply with Inter-American Court’s order expired).


246. See Awas Tingni Case – Fifteen Months Later, supra note 232, at 1 (mentioning Awas Tingni Community filed *amparo* action with Appellate Court requesting to forward case to Supreme Court of Nicaragua for its consideration against President of Nicaragua, various ministers and government officials claiming that these officials have failed to uphold constitutional and international legal obligations of Nicaragua to implement decision); see also Press Release, Indian Law Resource Center, Meeting with President Bolanos About the Awas Tingni Case (Mar. 26, 2003), available at http://
the Nicaraguan Supreme Court to order the government officials to comply with the Inter-American Court's decision. Due to the precedential importance of this case for the protection of indigenous people's rights in the Americas, the successful implementation of *The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua* decision would be an important step forward for indigenous peoples' land rights.

### III. FINDING THE KEY THAT FITS: HOW THE MOGUE COMMUNITY ACQUIRES ITS HOME

While international law does not immediately translate into local law, it may help the Mogue Community attain ownership over the lands they have lived on, occupied, and used for generations. The United Nations as well as OAS have made efforts to help indigenous peoples regain their land rights. At the present time, however, the OAS is further along in that regard thanks to the recent Inter-American Court decision *The Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua*.

#### A. United Nations

Land rights for indigenous people have taken the spotlight

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247. See *Awas Tingni Case – Fifteen Months Later*, supra note 232, at 1 (mentioning Supreme Court of Nicaragua as being asked to order Nicaraguan government officials to comply with decision of Inter-American Court); see also Spain, *supra* note 242 (stating Awas Tingni filed suit in Nicaraguan Appeals Court to require Nicaraguan government to enforce Inter-American Court's ruling).

248. See *Awas Tingni Case – Fifteen Months Later, supra* note 232, at 2-3 (explaining importance to indigenous peoples throughout Americas of implementation of Inter-American Court's Awas Tingni ruling); see also Anaya & Grossman, *supra* note 236 (noting Intern-American Court's decision forged international legal precedent with implications for indigenous peoples throughout world).

249. See *supra* notes 19-155, 232-241 and accompanying text (explaining different international conventions, bodies of international organizations and discussing recent Inter-American Court of Human Rights' decision).

250. See *supra* notes 19-155 and accompanying text (describing both U.N. and OAS international conventions and bodies of international organizations that address indigenous peoples' land rights concerns).

at U.N. conventions, especially throughout the "International Decade of the World's Indigenous People."252 The U.N. Charter, which established international human rights standards for individuals, continues as an outline and foundation for what the United Nations seeks to accomplish, but focuses on the individual rather than groups.253 UDHR, originally a statement of guiding human rights principles, further developed and expanded the human rights function of the U.N., but also focused on the rights of individuals rather than groups.254 ICERD, which addresses racial discrimination, stretches UDHR further towards helping the Mogue Community realize its land ownership through extending the right to own property to the community rather than limiting it to the individual.255

CHR, a U.N. body which formally addresses various human rights concerns, continues as the most important and most active U.N. human rights forum, yet the Mogue Community cannot easily access it.256 Also, due to the size of the annual meeting, the Chocoe's claims of human rights violations will not be heard by people outside the Panamanian Government, who already know the situation and ignore it.257 Although taking their concerns to CHR might not directly help the Mogue Community's cause immediately, it could help influence CHR's future resolutions.258

WGIP, a U.N. working group which reports to the Sub-Commission and receives its mandate from CHR, is also one of the most important U.N. bodies for indigenous peoples and pro-

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252. See supra notes 53-124 and accompanying text (noting how United Nations has advanced indigenous peoples' land rights since 1945).

253. See supra note 66 and accompanying text (explaining how U.N. CHARTER applies to individuals rather than groups).

254. See supra notes 68-69 and accompanying text (discussing UDHR and its original purpose).

255. See supra note 74 and accompanying text (stating UDHR's position on property ownership).

256. See supra notes 75, 176, 180 and accompanying text (describing importance of CHR within U.N. human rights fora and mentioning indigenous peoples' underutilization of special rapporteurs).

257. See supra notes 178-80 and accompanying text (describing how audience at CHR's annual meeting will not have audience as large as other bodies within U.N. system).

258. See supra note 181-84 and accompanying text (discussing how indigenous peoples have influenced CHR resolutions).
vides an easily accessible forum to indigenous communities.\textsuperscript{259} Further, WGIP has helped advance the Draft Declaration, a non-binding international declaration regarding indigenous rights.\textsuperscript{260} Although the Draft Declaration does not have a legal effect, once adopted it will allow the Mogue Community to apply immense diplomatic pressure on Panama to achieve land ownership.\textsuperscript{261}

Part VI of the Draft Declaration, the most important section dealing with indigenous land rights, gives the Mogue Community assistance from Panama in gaining control of and protecting their lands.\textsuperscript{262} Panama would also have to get the Mogue Community’s consent in order to conduct any project on their lands.\textsuperscript{263} Also, Part VI entitles the Mogue Community to fair compensation for any negative impact on their lands from Ancon.\textsuperscript{264} This compensation aspect of the Draft Declaration remains important to the Mogue Community’s situation since Ancon currently claims ownership of the property on which the Mogue Community has lived on for generations.\textsuperscript{265} While the Draft Declaration’s completion will become a key tool for the Mogue Community to gain land ownership, Part VI of the Declaration remains far from settled.\textsuperscript{266} In fact, if Nations successfully subject indigenous peoples to each country’s domestic laws and systems rather than their own tribal laws, it will limit Part VI to

\begin{footnotes}
\item[259] See supra notes 88-89, 190 and accompanying text (addressing importance and accessibility of WGIP for indigenous peoples).
\item[260] See supra notes 94-96, 194-196 and accompanying text (explaining importance of completion of Draft Declaration to Mogue Community’s achieving land ownership).
\item[261] See supra notes 195-96 and accompanying text (discussing usefulness of Draft Declaration despite its lack of legal accountability for member States).
\item[262] See supra notes 101-104 and accompanying text (detailing specifics of Part VI of Draft Declaration).
\item[263] See supra note 201 and accompanying text (mentioning how Part VI of Draft Declaration would mandate Mogue Community’s consent before anyone, including Panama’s government engaged in any project on Mogue Community’s land).
\item[264] See supra note 202 and accompanying text (noting Part VI of Draft Declaration’s requirement that Panama compensate Mogue Community for any adverse cultural, economic, environmental, social, or spiritual impact on their land).
\item[265] See supra notes 19-39 and accompanying text (describing history of who has owned land on which Mogue Community lives and who currently owns it).
\item[266] See supra notes 96, 208 and accompanying text (stating U.N. target date for completing Draft Declaration and expressing Latin American Nations’ continued commitment to adopt Draft Declaration by 2004).
\end{footnotes}
the point of being ineffective.\textsuperscript{267}

While Nations adopted Agenda 21 to protect the environment rather than human rights, it nonetheless remains an important tool for the Mogue Community to gain land ownership.\textsuperscript{268} An important aspect of Agenda 21 remains helping ease the friction between governments and indigenous peoples.\textsuperscript{269} According to Agenda 21, Panama should support and adopt the Draft Declaration in addition to ratifying all international conventions which apply to indigenous peoples.\textsuperscript{270}

ILO Convention No. 169, a legally-binding convention which focuses on indigenous land rights concerns, continues as a very important legally binding tool that could help the Mogue Community achieve ownership over their lands.\textsuperscript{271} It states that Panama needs to take measures to protect the Mogue Community’s ability to provide for themselves on lands they do not own, but have historically used for their sustenance and traditional activities.\textsuperscript{272} This remains very crucial for the Mogue Community’s survival since the owner of the land on which they live told them they cannot use the land they have historically used in order to provide for their livelihood.\textsuperscript{273}

The ILO has influenced laws at all levels.\textsuperscript{274} A huge hindrance to Convention No. 169 helping the Mogue Community, however, remains Panama’s failure to ratify Convention No. 169

\begin{itemize}
\item \textsuperscript{267} See supra notes 206-07 and accompanying text (discussing various States’ attempts to limit Draft Declaration’s effectiveness).
\item \textsuperscript{268} See supra notes 106-13 and accompanying text (explaining Agenda 21’s usefulness as tool to help Mogue Community achieve land ownership).
\item \textsuperscript{269} See supra note 111 and accompanying text (discussing how Agenda 21 proposes to relieve tensions between indigenous communities and governments).
\item \textsuperscript{270} See supra note 113 and accompanying text (expressing Agenda 21’s view towards other international conventions regarding indigenous peoples).
\item \textsuperscript{271} See supra notes 114, 118 and accompanying text (describing what makes Convention No. 169 such important tool to indigenous peoples and remarking on legal significance of Convention No. 169 to indigenous communities).
\item \textsuperscript{272} See supra note 117 and accompanying text (addressing Convention No. 169’s view towards land that indigenous peoples do not own, but have traditionally inhabited, occupied, and used).
\item \textsuperscript{273} See supra notes 34-36 and accompanying text (depicting historical situation of Mogue Community’s use of land it has sustained itself with for generations and conveying present condition of Mogue Community’s restriction of land it uses to sustain itself).
\item \textsuperscript{274} See supra note 222 and accompanying text (describing influence Convention No. 169 has had on various levels of government).
\end{itemize}
even though Panama ratified its predecessor.275 Hopefully, Panama will follow its neighbors and soon ratify Convention No. 169 creating legally-binding obligations on Panama which the Mogue Community could use to achieve land ownership.276

B. Organization of American States

Action through the OAS probably remains the best way for the Mogue Community to gain ownership over its land.277 The Inter-American Court’s recent decision against Nicaragua gives much hope for the Mogue Community to legally win its land rights through the judicial system.278 In order for the Mogue Community to have its case heard, they need to petition IACHR to submit the case to the Inter-American Court.279

In the Court’s recent Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua decision, it mandated that Nicaragua comply with its constitutional and legal guarantees to the Awas Tingni Community to have a communal property right to the lands it currently inhabits, even though the limits of the territory on which the property rights exist are not yet effectively demarcated.280 Likewise, the Constitution of Panama and Panamanian Laws call for the demarcation of indigenous lands, however, the Panamanian Government has not yet taken steps towards this end.281 In its decision, the Court also relied heavily on Article 21 of the American Convention which applies to both

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275. See supra notes 115-16, 219 and accompanying text (stating that Panama, while ratifying Convention No. 107, has failed to ratify its successor, Convention No. 169).

276. See supra note 219 and accompanying text (conveying which Latin American countries have ratified Convention No. 169).

277. See supra notes 223-48 and accompanying text (discussing merits of various OAS human rights instruments).

278. See supra notes 231-41 and accompanying text (discussing Inter-American Court’s Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79, decision).

279. See supra note 225 and accompanying text (explaining how cases are brought before Inter-American Court).

280. See supra notes 235-36 and accompanying text (conveying part of Inter-American Court’s Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79, decision regarding Nicaragua’s Constitution).

281. See supra notes 42-48; 163-66 and accompanying text (asserting Panama’s Constitutional guarantees and laws Panama promises its indigenous peoples regarding land ownership).
Panama and Nicaragua.\textsuperscript{282}

Nicaragua, however, has so far failed to abide by the Inter-American Court’s ruling and demarcate the Awas Tingni Community’s territory.\textsuperscript{283} Nicaragua’s compliance with the decision remains imperative if other Nations within the Inter-American Court’s jurisdiction are to take notice and adhere to the newly set precedence regarding indigenous group’s land ownership.\textsuperscript{284}

The American Declaration is another tool which, if adopted, will provide pressure on the Panamanian Government to give the Mogue Community control over its land.\textsuperscript{285} It remains important that the American Declaration recognizes that collective land ownership is fundamental for indigenous peoples’ survival.\textsuperscript{286} It also asserts the Mogue Community’s entitlement to ownership recognition by Panama, giving the Mogue Community land the right to use lands that it has traditionally used to sustain itself.\textsuperscript{287}

Under the American Declaration, Panama would have to protect the Mogue Community from any unwanted intrusion upon its land and Panama would also have to punish the offender.\textsuperscript{288} These obligations includes protection from Ancon’s owners.\textsuperscript{289} Also, the Mogue Community could receive restitution for lands it has lived on for generations but are owned by

\textsuperscript{282.} See supra note 234 and accompanying text (describing Inter-American Court’s reliance on American Convention Article 21).

\textsuperscript{283.} See supra notes 242-44 and accompanying text (asserting Nicaragua’s lack of compliance with Inter-American Court’s Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79, decision).

\textsuperscript{284.} See supra note 248 and accompanying text (discussing precedential importance of Awas Tingni, [2001] Inter-Am. Ct. H.R. (Ser. C) No. 79, decision and how Nicaragua’s compliance with decision has implications for not only Mogue Community in Panama but indigenous peoples throughout Americas).

\textsuperscript{285.} See supra notes 134-42, 228-30 and accompanying text (generally discussing American Declaration and explaining controversial portion of American Declaration section regarding land rights).

\textsuperscript{286.} See supra note 136 and accompanying text (expressing American Declaration’s recognition of importance of collective ownership to indigenous people).

\textsuperscript{287.} See supra note 139-40 and accompanying text (explaining American Declaration’s attitude towards indigenous peoples’ property rights towards lands they have historically occupied for their livelihood).

\textsuperscript{288.} See supra note 142 and accompanying text (expressing American Declaration calls to protect indigenous peoples’ land from intrusion by unauthorized persons).

\textsuperscript{289.} See supra notes 34-36 and accompanying text (discussing various encroachment upon and usurpation upon Mogue Community’s traditional land).
people outside the Mogue Community.\textsuperscript{290} The member States of the OAS, however, have not adopted the American Declaration and it still remains in the discussion stage.\textsuperscript{291} Also, like the U.N. Draft Declaration, the American Declaration will not have any binding authority on OAS member States.\textsuperscript{292}

\textbf{CONCLUSION}

There has been a flurry of activity in international law regarding indigenous peoples' property rights in the Americas. The "International Decade of the World's Indigenous People" is coming to a close, but between the United Nations and OAS, there are more international tools currently available to indigenous peoples in the Americas (including the Mogue Community), than ever before to help with their fight to own their land. Despite this optimistic future, the Mogue Community needs to continue to diplomatically fight for the lands it has lived on and used for survival for generations. Members of the Mogue Community remain ever hopeful Ancon will eventually give them the land promised to them. They have endured generations' worth of violence, including hanging themselves to escape the misery imposed upon them, shooting over the heads of fishing boys, and even the murder of a Chocoe Indian by another Chocoe Indian. Hopefully, the Mogue Community's generations worth of shed blood, strife, and struggle will allow it the security to ensure the sustainability of its people for future generations. With the recent developments in international law, especially the Inter-American Court's \textit{Mayagna (Sumo) Awas Tingni Indigenous Community v. Nicaragua} decision there are many different avenues the Mogue Community can pursue in order to achieve land autonomy peacefully, with no more bloodshed.

\textsuperscript{290} See \textit{supra} note 141 and accompanying text (conveying American Declaration's position on compensation of indigenous peoples for land usurped from them).

\textsuperscript{291} See \textit{supra} notes 228-229 and accompanying text (stating current status of American Declaration).

\textsuperscript{292} See \textit{supra} note 230 and accompanying text (explaining American Declaration will not legally bind ratifying States).