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## When Contact Kills: Indigenous Peoples Living in Voluntary Isolation During COVID

Sital Kalantry & Nicholas Koeppen

### ABSTRACT

During the global pandemic, people around the world are at risk of serious illness and death from contact and proximity to other people. But Indigenous peoples, particularly those in voluntary isolation, have always faced that risk. International organizations have relied on the right to self-determination as the primary legal grounds to justify the principle of no-contact for Indigenous peoples living in voluntary isolation. This Essay argues that the right to life and right to health when properly contextualized are stronger bases to push states to prevent outsiders from contacting people living in voluntary isolation.

### AUTHORS

Sital Kalantry, Clinical Professor of Law, Cornell Law School.  
Nicholas Koeppen, Cornell Law School, JD 2020.



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## INTRODUCTION

A fifteen-year-old boy of the semi-isolated Yanomami peoples in Brazil died of COVID-19 in April 2020.<sup>1</sup> Although the source of contraction is unclear, the thousands of illegal gold miners who have infiltrated Yanomami territory are plausible suspects.<sup>2</sup> The global pandemic brings to the fore a problem that has long existed for Indigenous communities. Since the colonization of the Americas, Indigenous peoples' contact with noncommunity members has led to disease, and, in many cases, death.<sup>3</sup> This Essay focuses on Indigenous peoples living in voluntary isolation (IPLVI),<sup>4</sup> for whom contact with the outside world and a lack of immunity to common illnesses continues to mean death even today. For example, a cold epidemic killed roughly 40 to 60 percent of the Yora (Nahua) people in Peru after they were contacted by illegal loggers in 1983.<sup>5</sup>

Estimates indicate there are over 10,000 IPLVI around the world, the majority of whom live in the Amazon regions of Brazil, Peru, Bolivia, Venezuela, Ecuador, and Colombia and the Gran Chaco region of Paraguay.<sup>6</sup> Many IPLVI have had some form of contact with the Western world and retreated thereafter. These peoples are therefore said to be “in voluntary isolation” as opposed to “uncontacted.”<sup>7</sup> IPLVI are particularly under threat because many of them live on

1. Bruce Albert, *Covid-19: Lessons From the Yanomami*, N.Y. TIMES (Apr. 27, 2020), <https://www.nytimes.com/2020/04/27/opinion/yanomami-covid-brazil.html> [<https://perma.cc/55PH-2GP6>].

2. *See id.*

3. Inter-Am. Comm'n H.R., *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights*, ¶ 117, OEA/Ser.L./V/II, Doc. 47/13 (Dec. 30, 2013) [hereinafter IACHR Recommendations], <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf> [<https://perma.cc/BBF5-N6K7>].

4. The Inter-American Commission on Human Rights (IACHR) defines Indigenous Peoples Living in Voluntary Isolation (IPLVI) as:

[I]ndigenous peoples or segments of indigenous peoples who do not maintain sustained contacts with the majority non-indigenous population, and who generally reject any type of contact with persons not part of their own people. They may also be peoples or segments of peoples previously contacted and who, after intermittent contact with the non-indigenous societies, have returned to a situation of isolation and break the relations of contact that they may have had with those societies.

*Id.* ¶ 11 (footnotes omitted).

5. *Id.* ¶ 117.

6. *See* Inter-Am. Comm'n H.R., *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region*, ¶ 330, OAS/Ser.L./V/II, Doc. 176/19 (Sept. 29, 2019) [hereinafter IACHR Pan-Amazon Report].

7. IACHR Recommendations, *supra* note 3, ¶ 13.

lands that are rich with oil and other natural resources.<sup>8</sup> Indeed, Brazil recently announced plans to expand extractive industries in the Amazon notwithstanding the negative impact this will have on IPLVI.<sup>9</sup>

The United Nations (UN) and Inter-American Commission on Human Rights (IACHR) have made great strides in articulating guidelines and recommendations to protect IPLVI. Both the UN's *Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco* (UN Guidelines) and the IACHR's *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights* (IACHR Recommendations), posit that IPLVI have indicated their desire to avoid contact with the Western world.<sup>10</sup> This "principle of no contact" requires that states refuse concessions to companies seeking to undertake extractive projects and ensure that individuals do not illegally conduct mining or other activities in the lands where IPLVI reside.<sup>11</sup>

COVID-19 is a deadly and highly contagious respiratory virus that does not require physical contact, but only proximity for transmission.<sup>12</sup> It may also be contracted via surfaces.<sup>13</sup> In the past, IPLVI have been infected by other contagious diseases through indirect contact. Individuals have left tools and other items within IPLVI territories, which then transmitted viruses to IPLVI.<sup>14</sup> Pollution and dumping into rivers that enter IPLVI's land also create health risks for IPLVI.<sup>15</sup> Thus, in order to protect IPLVI's lives and health during the

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8. For example, the Tagaeri and Taromenane's territory sits atop 20 percent of Ecuador's untapped oil wealth. See Jason G. Goldman, *Ecuador Has Begun Drilling for Oil in the World's Richest Rainforest*, VOX (Jan. 14, 2017, 10:00 AM), <https://www.vox.com/energy-and-environment/2017/1/14/14265958/ecuador-drilling-oil-rainforest> [<https://perma.cc/L7PU-SKC3>].
  9. Mongabay, *Brazil's Bolsonaro Unveils Bill to Open Indigenous Lands to Mining, Oil and Gas Exploration*, ECOWATCH (Feb. 10, 2020, 3:31 PM), <https://www.ecowatch.com/brazil-bolsonaro-bill-open-indigenous-land-2645088985.html?rebelltitem=1#rebelltitem1> [<https://perma.cc/9QB9-GHGT>].
  10. See Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Directrices de Protección para los Pueblos Indígenas en Aislamiento y en Contacto Inicial de la Región Amazónica, el Gran Chaco y la Región Oriental de Paraguay*, ¶¶ 47–52, U.N. Doc. A/HRC/EMRIP/2009/6 (Feb. 2012) [hereinafter UN Guidelines]; IACHR Recommendations, *supra* note 3, ¶¶ 21–23. *But see* Benjamin Gregg, *Against Self-Isolation as a Human Right of Indigenous Peoples in Latin America*, 20 HUM. RTS. REV. 313, 319 (2019) (arguing for limited, controlled contact with IPLVI and suggesting that if IPLVI had "full information," they would choose to not self-isolate).
  11. See IACHR Recommendations, *supra* note 3, ¶ 21.
  12. *Frequently Asked Questions*, CDC (Sept. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> [<https://perma.cc/W97R-3873>].
  13. *Id.*
  14. IACHR Recommendations, *supra* note 3, ¶¶ 91, 119.
  15. UN Guidelines, *supra* note 10, ¶ 62.

COVID-19 pandemic and beyond, governments should interpret the principle of “no contact” to include “no proximity.”

The UN and IACHR justify the principle of no contact on the basis of the right to self-determination.<sup>16</sup> This Essay argues that the rights to health and life provide stronger grounds to legally compel states to protect IPLVI.<sup>17</sup> In Part I, we explain how the UN and IACHR use self-determination to justify the principle of no contact. In Part II, we analyze some of the challenges and shortcomings of relying solely on the right to self-determination as a means of encouraging states to protect IPLVI from contact. In Part III, we suggest that the rights to health and life could be independent and stronger grounds to support the principle of no contact.

### I. SELF-DETERMINATION AS THE RATIONALE TO PROTECT IPLVI

The UN Guidelines and IACHR Recommendations state that countries should ensure IPLVI are not contacted by the Western world.<sup>18</sup> The principle of no contact is justified on the grounds of the right to self-determination. The IACHR Recommendations specifically note that the principle of no contact is “the expression of [IPLVI’s] right . . . to self-determination” and that the right to self-determination is “directly and profoundly related to the rights to [IPLVI’s] lands, territories, and natural resources.”<sup>19</sup> The UN has stated that IPLVI’s “decision to remain isolated can be understood as one of the many forms of exercising the right to self-determination, which contributes to the respect of other rights.”<sup>20</sup> In sum, the international community considers the right to self-determination as the primary justification for the protection of IPLVI and the framework through which all other rights for IPLVI should be understood.

To bolster state compliance with human rights norms (among other things), intergovernmental organizations, including the UN, have taken the position that every person has the same rights across time, space, and community.<sup>21</sup> The UN,

16. IACHR Recommendations, *supra* note 3, ¶ 22.

17. While the United Nations (UN) and IACHR recognize the rights to health and life in the context of IPLVI, they have largely seen them through the lens of self-determination, rather than as independent bases for justifying the principle of no contact. *See id.* ¶ 137.2; UN Guidelines, *supra* note 10, ¶ 62.

18. *See* IACHR Recommendations, *supra* note 3, ¶ 22; UN Guidelines, *supra* note 10, ¶¶ 44–48.

19. IACHR Recommendations, *supra* note 3, ¶ 22.

20. UN Guidelines, *supra* note 10, ¶ 22 (translated from original).

21. *See, e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); *Human Rights Principles*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/resources/human-rights-principles> [https://perma.cc/A5N9-F7VT] (last visited Oct. 1, 2020); *see also* Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400 (1984)

however, deviates from a universal understanding of the right to self-determination when it comes to IPLVI. The UN explicitly states that “[t]he guarantee of self-determination does not mean the same thing for [IPVLI] as it does for indigenous peoples generally.”<sup>22</sup> The standard account of self-determination would allow groups to form their own independent and sovereign political unions if they so desired.<sup>23</sup> But IPLVI do not accept our global order and are certainly not seeking to establish their own sovereignty within it. Acknowledging this view, the UN Guidelines states that self-determination “[f]or [IPLVI] means absolute respect for their decision to remain isolated.”<sup>24</sup> Consequently, the UN has radically redefined the right of self-determination to accommodate the perceived desires of IPLVI. This is a rare, but necessary, departure from the universalism of human rights.

## II. THE LIMITS OF SELF-DETERMINATION AS A BASIS TO PROTECT IPLVI FROM CONTACT

There are several limitations to using the right to self-determination to prevent miners, loggers, missionaries, tourists, and others from contacting or coming into proximity with IPLVI. The right to self-determination appears in several international and regional documents,<sup>25</sup> but it is likely that the only instance where it creates a binding obligation that is immediately effective is the International Covenant on Civil and Political Rights (ICCPR).<sup>26</sup> Even in the ICCPR, the right to self-determination is derogable, which allows states to deviate from it under certain circumstances.<sup>27</sup> The ICCPR articulates the right to

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(evaluating the tension between universal and culturally relative human rights). Yet, when it comes to IPLVI, the UN and IACHR seem to have recognized a need to deviate from this approach.

22. UN Guidelines, *supra* note 10, ¶ 47 (translated from original).
23. See G.A. Res. 1514 (XV), at 66 (Dec. 14, 1960); Eric Kolodner, Comment, *The Future of the Right to Self-Determination*, 10 CONN. J. INT'L L. 153, 154–55, 59 (1994) (defining “external self-determination” as the right of peoples to decide their “international identity” and form their own political unions); Leo Gross, *The Peace of Westphalia, 1648–1948*, 42 AM. J. INT'L L. 20, 20 (1948) (noting that by the end of World War I, self-determination, which was historically linked to the concept of state territorial sovereignty, was defined by notions of secession).
24. UN Guidelines, *supra* note 10, ¶ 47 (translated from original).
25. See, e.g., U.N. Charter art. 1, ¶ 2; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, art. 4 (Sept. 13, 2007) [hereinafter UNDRIP].
26. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 1 [hereinafter ICCPR].
27. Commentators who claim that the right to self-determination is a peremptory norm under customary international law would disagree with this assessment because no derogation is permitted from peremptory norms. See, e.g., Héctor Gros Espiell (Special Rapporteur of the

self-determination in Article 1 but does not include it within the list of Articles specified as nonderogable in Article 4 of the ICCPR.<sup>28</sup> States are allowed to disregard certain provisions of the ICCPR “[i]n time[s] of public emergency which threaten[] the life of the nation and the existence of which is officially proclaimed.”<sup>29</sup> In addition, the American Convention on Human Rights (American Convention) does not even contain a provision on self-determination.<sup>30</sup> By comparison, under no circumstances can states derogate from the right to life found in the ICCPR<sup>31</sup> and in the American Convention.<sup>32</sup>

During the global pandemic, states have derogated from many important provisions of the ICCPR and other treaties<sup>33</sup> and could refuse to honor the IPLVI’s right to self-determination. This is particularly problematic now because IPLVI are at greater risk during the pandemic.<sup>34</sup> It is precisely when contact is more dangerous for IPLVI that states can use the pandemic as a reason to refuse to protect IPLVI from contact with outsiders.

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Sub-Commission on Prevention of Discrimination and Protection of Minorities), *The Right to Self-Determination: Implementation of United Nations Resolutions*, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, at 11–12 (1980); IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 515 (3d ed. 1979).

28. See ICCPR, *supra* note 26, arts. 4, 6–8, 11, 15–16, 18.
29. *Id.* art. 4, ¶ 1.
30. See Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter Am. Convention on Human Rights]; IACHR Recommendations, *supra* note 3, ¶¶ 40–43. The IACHR Recommendations attempt to rectify this deficiency by arguing that the right to self-determination applies to most member states in the Inter-American System through the ICCPR. *Id.* ¶ 43.
31. ICCPR, *supra* note 26, arts. 4, 6. The right to health is enumerated in the International Covenant on Economic, Social and Cultural Rights, which requires that states work to progressively realize the rights enumerated therein. See ICESCR, *supra* note 25, arts. 2, 12. Given that these rights are often thought to be unenforceable anyway, there is no provision explicitly permitting their derogation. See CHRISTINE CHINKIN, *THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS POST-CONFLICT* 8, 27, 33 (2007), [https://www.ohchr.org/Documents/Issues/Women/WRGS/Paper\\_Protection\\_ESCR.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/Paper_Protection_ESCR.pdf) [<https://perma.cc/Q7NT-H2WC>]. The UN, however, stresses that “a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations [of the right to health] . . . which [is] non-derogable.” Comm. on Econ., Soc. and Cultural Rts., *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶¶ 43, 47, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).
32. See Am. Convention on Human Rights, *supra* note 30, arts. 4, 27, ¶ 2.
33. See Hum. Rts. Comm., *Statement on Derogations From the Covenant in Connection With the COVID-19 Pandemic*, U.N. Doc. CCPR/C/128/2 (Apr. 30, 2020) [hereinafter UN Statement on Derogations].
34. For continually updated resources documenting the situation of IPLVI in times of COVID-19, see *COVID-19 and Indigenous Peoples*, UNITED NATIONS, <https://www.un.org/development/desa/indigenouspeoples/covid-19.html> [<https://perma.cc/VJC2-779E>] (last visited Sept. 4, 2020).

In addition, state parties to the ICCPR and other documents mentioning the right to self-determination would likely reject the right as interpreted in its strongest form. One interpretation of the right to self-determination requires states to allow peoples to create their own independent political unions.<sup>35</sup> States might fear acknowledging a self-determination derived principle of no contact for IPLVI, because it could suggest they would allow IPLVI and other Indigenous peoples to form their own political unions. Indeed, much of the pushback to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) arose from a provision of the UNDRIP stating that the right to self-determination for Indigenous peoples includes the right to autonomy and self-government.<sup>36</sup> To address these concerns, the UNDRIP contains a clause denying Indigenous peoples the right to secede from the nation states in which their territories lie.<sup>37</sup> What is perhaps most interesting is that, despite the no-secession clause and the UNDRIP's merely "aspirational" status,<sup>38</sup> four countries voted against the UNDRIP because of "concerns over provisions on[, *inter alia*,] self-determination."<sup>39</sup> Given this discomfort with the right to self-determination, some states might be less inclined to follow the principle of no contact if it is based solely on the right to self-determination. In the next Part, we propose that the rights to health and life are important alternative and potentially stronger justifications for pushing states to protect IPLVI from contact with outsiders.

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35. See *supra* notes 23–24 and accompanying text. It should be noted that there is no accepted definition of the right to self-determination in international law. Some suggest that since the 1990s, the international community has seen it to include only the "freedom from a former colonial power, and, once independence has been achieved, . . . freedom of the whole state's population from foreign intervention or undue influence." Hurst Hannum, *Legal Aspects of Self Determination*, ENCYCLO. PRINCETONIENSIS, <https://pesd.princeton.edu/node/511> [<https://perma.cc/6AQH-D5XD>] (last visited Oct. 2, 2020).

36. "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." UNDRIP, *supra* note 25, art. 4; see also Duane Champagne, *UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights*, WICAZO SA REV., Spring 2013, at 9, 12.

37. See UNDRIP, *supra* note 25, art. 46.

38. The UNDRIP is "aspirational" in that it is a resolution of the General Assembly. "Resolutions *per se* do not create legally binding obligations on States." U.N. High Comm'r for Hum. Rts., *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, U.N. Doc. HR/PUB/13/2, at 37, 42 (Aug. 2013).

39. The four countries to vote against the UNDRIP were Australia, Canada, New Zealand, and the United States. See Press Release, UN Gen. Assembly, General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All, Says President, U.N. Press Release GA/10612 (Sept. 13, 2007).

### III. RIGHT TO HEALTH AND RIGHT TO LIFE TO SUPPORT THE PRINCIPLE OF NO CONTACT

This Essay argues that the right to health in combination with the right to life is a stronger basis to support the principle of no contact than the right to self-determination.<sup>40</sup> Historically, after initial contact, Indigenous peoples' mortality rates were as high as nine hundred for every one thousand Indigenous persons in some areas of the Caribbean.<sup>41</sup> Around 1620, roughly one hundred years after contact, modern-day Peru and Mexico's Indigenous populations had declined by 92 percent and 89 percent, respectively.<sup>42</sup> Even today, the danger of contracting diseases from the external world remains. Especially problematic is IPLVI's lack of immunity to many common infirmities, with diseases such as the "cold, pertussis, hepatitis, malaria, tuberculosis, influenza, pneumonia, measles, mumps, chicken pox, polio, and other diarrheal and gastrointestinal diseases" having epidemic effects on IPLVI.<sup>43</sup> Thus, contact for Indigenous peoples not only puts their health at risk but could kill them on a large-scale.

Because of IPLVI's isolation, it is difficult to say exactly how COVID-19 is affecting their health and wellbeing. The experiences of the world's "contacted" Indigenous peoples with COVID-19, however, does not bode well for IPLVI. In Brazil for instance, the age-adjusted COVID-19 mortality rate for Indigenous peoples was five times higher than that of Brazil's general population in July of 2020.<sup>44</sup> Around that same time, some 48 percent of Brazil's Indigenous peoples who sought hospital care had perished.<sup>45</sup> Even in the United States, COVID-19 has killed one in every 2300 Indigenous Americans compared with one in every

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40. Both the UN Guidelines and IACHR Recommendations mention the rights to health and life of Indigenous peoples, but they are portrayed as corollary to the right of self-determination. See UN Guidelines, *supra* note 10, ¶ 62; IACHR Recommendations, *supra* note 3, ¶ 137.2. Only recently, in light of the pandemic, did the IACHR issue a resolution specifically connecting the principle of no contact with health, noting that governments should "[r]espect unconditionally non-contact with indigenous peoples or groups who are in voluntary isolation, given the very severe impact that [COVID-19] could have on their livelihood and survival as a people." Inter-Am. Comm'n H.R., *Pandemic and Human Rights in the Americas*, ¶ 55, Res. 1/2020 (Apr. 10, 2020).

41. IACHR Recommendations, *supra* note 3, ¶ 115.

42. *Id.*

43. *Id.* ¶ 117.

44. Edson Krenak Naknanuk, *Why Are There So Many Isolated Indigenous Peoples Infected By COVID-19?*, CULTURAL SURVIVAL (July 9, 2020), <https://www.culturalsurvival.org/news/why-are-there-so-many-isolated-indigenous-peoples-infected-covid-19> [<https://perma.cc/B6LT-FADK>].

45. *Id.*

3600 white Americans.<sup>46</sup> It is obvious that COVID-19 will disproportionately affect or is already disproportionately affecting IPLVI. Moreover, IPLVI lack access to healthcare and preventative measures that have lowered mortality rates in the outside world.<sup>47</sup>

Like the right to self-determination, the right to health and life must be contextualized to recognize the special circumstances of IPLVI.<sup>48</sup> While for Western peoples, the right to health might mean access to healthcare services,<sup>49</sup> for IPLVI it should mean that the government ensures that IPLVI's health and lives are protected by preventing contact with and proximity to outsiders. This means not just refraining from granting concessions to extractive industries, but also actively patrolling IPLVI lands to ensure that outsiders do not conduct any unauthorized activities such as mining, logging, tourism, or even missionizing<sup>50</sup> near IPLVI land.

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46. Terri Hansen, *How COVID-19 Could Destroy Indigenous Communities*, BBC FUTURE (July 29, 2020), <https://www.bbc.com/future/article/20200727-how-covid-19-could-destroy-indigenous-communities> [https://perma.cc/7VUG-9EN9].

47. See, e.g., Soumya Karlamangla, *As COVID-19 Cases Surge, Patients Are Dying at a Lower Rate. Here's Why*, L.A. TIMES (Aug. 9, 2020, 5:00 AM), <https://www.latimes.com/california/story/2020-08-09/covid-19-coronavirus-survival-rate-improves> [https://perma.cc/8ZYC-73J5] (explaining how global collaboration among healthcare providers and COVID-19 treatment studies have led to more effective care for COVID-19 patients and lower mortality rates).

48. See SITAL KALANTRY, *WOMEN'S HUMAN RIGHTS AND MIGRATION* (2017); Sital Kalantry, *The French Veil Ban: A Transnational Legal Feminist Approach*, 46 U. BALT. L. REV. 201, 233 (2017) (arguing for the need to contextualize human rights).

49. For Western peoples, the right to health is traditionally conceived as the right to the "highest attainable standard" of physical and mental health and has typically been seen as a "positive right" requiring states to take action by guaranteeing the: (1) availability, (2) accessibility, (3) acceptability, and (4) quality of health services, goods, and facilities. See *Poblete Vilches v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 349, ¶ 106 (Mar. 8, 2018); OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS. & WORLD HEALTH ORG., *THE RIGHT TO HEALTH: FACT SHEET NO. 31*, at 1 (2008), <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf> [https://perma.cc/FZC6-LHEL].

50. Missionaries are often the catalyst for initial contact and act in parallel with extractive industry operators. For example, the Waorani peoples of Ecuador were first contacted in the 1950s by the Summer Institute of Linguistics (SIL), an organization comprised of U.S. evangelical missionaries whose purpose is to translate the Christian Bible into lesser known languages. See Carlos Andrés Vera, *Taromenani, el Exterminio de los Pueblos Ocultos*, VIMEO (Jan. 26, 2012), <https://vimeo.com/35717321> [https://perma.cc/47UM-MPFB]. Working in conjunction with Texaco, which had discovered oil in the Ecuadorian Amazon, the SIL deciphered the Waorani language through conversations with a Waorani woman who had been kidnapped by Ecuadorian colonists. See *id.* The SIL and Texaco subsequently helicopter-dropped gifts and radios speaking the Waorani language into Waorani territory in order to coax the Waorani out of isolation. See *id.*

Health is a right that is to be granted progressively, while the right to life is something that states must immediately protect.<sup>51</sup> As a result, the right to health is often bootstrapped to the right to life to strengthen it and the rights are strongly connected in case law for contacted Indigenous communities under the Inter-American Court of Human Rights (IACtHR).<sup>52</sup> For example, in *Yakye Axa Indigenous Community v. Paraguay*, the IACtHR held that the right to life implicates not only the state's negative obligation to ensure that no person is arbitrarily deprived of his or her life, "but also the right not to be denied the conditions required to ensure a decent existence."<sup>53</sup> The IACtHR also held that the right to health is implicated by the "right to a decent life."<sup>54</sup> In practice, this means that where states fail to provide access to things like healthcare, food, and clean water, the IACtHR may find violations of the right to life and the right to health.<sup>55</sup>

The IACtHR will only find such a violation where there exists a causal connection between state inaction and the alleged violation of the rights to life and health.<sup>56</sup> A causal connection may be shown where: (1) state authorities knew or should have known of the circumstances that gave rise to the violation; (2) it was foreseeable that the circumstances would result in conditions posing an immediate risk to preserving the right to life; and (3) state authorities did not take necessary measures which could be "reasonably expected to prevent or avoid such risk."<sup>57</sup>

If a state fails to adequately protect IPLVI from contact, then, under the legal standard articulated above, the state is in violation of the rights to health and life. First, states know that contact with IPLVI, including by legal and illegal resource extraction, tourism, and missionizing, can lead to sickness and death among IPLVI. Second, the fact that contact causes illness and death among IPLVI should be foreseeable to states, as documented by the many cases where contact with

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51. See Am. Convention on Human Rights, *supra* note 30, art. 4; ICESCR, *supra* note 25 **Error! Bookmark not defined.**, arts. 2, 12.

52. Although the Inter-American Court of Human Rights (IACtHR) has never issued an opinion on IPLVI, on September 30, 2020, the IACHR referred a case involving IPLVI to the IACtHR for the first time. See *Tagaeri & Taromenani Indigenous Peoples in Isolation v. Ecuador*, Petition 422-06, Inter-Am. Comm'n H.R., Report No. 96/14, OEA/Ser.L./V/II.153, doc. 12 ¶ 16 (2014); Press Release, Inter-Am. Comm'n H.R., IACHR Refers Case on Ecuador to the Inter-American Court (Oct. 5, 2020), [http://www.oas.org/en/iachr/media\\_center/PReleases/2020/245.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/245.asp) [https://perma.cc/8NBF-36B9].

53. *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 157, 160-62, 166-67 (July 17, 2015).

54. *Id.* ¶ 162.

55. See *id.* ¶¶ 162-63; *Sawhoyamaya Indigenous Cmty. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 155 (Mar. 29, 2006).

56. See *Sawhoyamaya*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 155.

57. *Id.*

Western peoples has led to the death of Indigenous community members.<sup>58</sup> Third, refusing to grant extractive industry concessions to companies on IPLVI land and providing active police patrol designed to prohibit the entry of illegal and legal loggers, miners, tourists, and missionaries into IPLVI territories are measures that are “reasonably expected to prevent or avoid such risk.”<sup>59</sup> Consequently, under this interpretation of the right to life and health, states that do not take active measures to prevent outsiders from being in proximity to IPLVI would be in violation of the American Convention.

The right of IPLVI to self-determination is what the UN and IACHR use to justify why states should not contact isolated Indigenous communities. A combination of the rights to health and right to life provides a potentially stronger and more direct basis for pushing states to adopt active measures that will ensure isolated Indigenous communities do not come into contact with people outside of their communities.

### CONCLUSION

The IACHR and UN have relied on self-determination as the primary grounds to justify the principle of no contact for IPLVI. We argue that the rights to health and life provides stronger support for the principle of no contact than the right to self-determination. Unlike the right to self-determination, the right to life is not derogable.<sup>60</sup> In addition, states may be reluctant to grant the right to self-determination for fear that it signals that they accept the territorial sovereignty claims of Indigenous communities.

On the other hand, IACtHR case law on the rights to health and life of Indigenous communities gives strong grounds to argue that state parties are obligated to take active measures to prevent any individuals from being in proximity to IPLVI. Measures that are required to protect the health and life of IPLVI are different than those required to protect people in the Western world. For example, to advance the right to health for people in the Western world might require providing them with access to health services. On the other hand, to advance the right to health for IPLVI requires states to prevent outsiders from contacting them or even being in proximity to them. Under this framework, states

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58. See, e.g., IACHR Recommendations, *supra* note 3, ¶¶ 115, 117.

59. See *Sawhoyamasa*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 155.

60. The current COVID-19 pandemic has led the international community to permit restrictions on various ICCPR rights to “protect the right to life and health of all individuals.” UN Statement on Derogations, *supra* note 33, ¶ 2.

must not grant concessions to firms in IPLVI lands, but also prevent miners, loggers, tourists, and missionaries from entering IPLVI territories.

Self-isolation has become a survival strategy for people around the world during the global pandemic. Over one hundred governments around the world have adopted measures that require people to stay at home and not interact with others as a way to slow the transmission of COVID-19.<sup>61</sup> In this way, we remain confined to our own small community (our households). Many people now realize what IPLVI have always known—that contact can kill.

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61. Daniel Dunford et al., *Coronavirus: The World in Lockdown in Maps and Charts*, BBC NEWS (Apr. 7, 2020), <https://www.bbc.com/news/world-52103747> [<https://perma.cc/6D4P-KCVF>].