

THE YASUNI-ITT INITIATIVE: A NEW MODEL TO IMPLEMENT HUMAN RIGHTS AND BIOLOGICAL DIVERSITY CONVENTIONS AND FRAMEWORKS?

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Abstract

Ecuador has proposed a unique initiative: to refrain from oil extraction in three oil blocks, Ispingo-Tiputini-Timbochacha (ITT), in Yasuni, one of the most biologically diverse areas of the world and home to four Indigenous groups. Lost revenues from forgone oil extraction are to be offset through an international fund to be invested in different sustainable development projects. Although the initial development of the initiative lacks participation of Indigenous peoples, the Initiative may function as a model for developing countries containing biologically diverse areas with fossil fuels to implement provisions under the United Nations Declaration of the Rights for Indigenous Peoples (UNDRIP), the International Labour Organization's Indigenous and Tribal Peoples Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169), the Convention on Biological Diversity (CBD), and the United Nations Educational, Scientific and Cultural Organization Man and Biosphere Reserve Programme (UNESCO MAB). Accordingly, the Initiative could resolve conflicts between resource extraction activities, nature conservation, and Indigenous peoples' interests.

Ecuador is a small, developing country in South America that is rich in biological and cultural diversity. Although it has remained dependent on petroleum exports since the 1970s, it has not enjoyed significant economic growth or diversification or reduction in inequalities. The petroleum industry has also had profound negative environmental, social, and health impacts.² For these reasons, and due to global issues of climate change and biodiversity loss, the government proposes to refrain indefinitely from extracting almost one billion barrels of petroleum from three oil blocks – Ispingo-Tiputini-Timbochacha (ITT) – located in Yasuni National Park (see Figure 1), a proposal referred to as the Yasuni-ITT Initiative. The Yasuni National Park is a biologically diverse hotspot and is home to four Indigenous groups, two of which are living in voluntary isolation. The government is willing to forgo oil extraction in ITT if the international community contributes at least half of the revenues otherwise earned (3.6 billion USD), to be invested in nature conservation, renewable energy, and social development projects.³ On August 3, 2010, a Trust Fund agreement for the Initiative was signed between the United Nations Development Programme (UNDP), which is serving as the holder of Trust Fund, and Ecuador⁴. The country aims to receive the first contributions before 2011.⁵

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The Yasuni-ITT Initiative simultaneously aims to address global warming, biodiversity loss, Indigenous peoples' rights, and sustainable development. According to several national and international human rights and biodiversity laws, conventions, and agreements, the protection of Yasuni and its inhabitants is the responsibility of the State. However, the government of Ecuador faces challenges to complying with international conventions

and national laws due to several factors, including the reliance on the oil industry. The Yasuni-ITT Initiative may be a mechanism for the country to implement such international agreements and conventions more effectively and may provide lessons for application of similar initiatives in other countries. This article reviews the national context, explores the Initiative's relation to key human rights and biological diversity instruments, and examines the implications of the Initiative for the addressing tensions between Indigenous peoples' rights, conservation, and resource extraction activities.

1 The author would like to thank the Policy Matters editorial board for their work and critique, as well as those who shared information for this article.

2 Larrea, C., and L. Warnars, 2009. "Ecuador's Yasuni-ITT Initiative: Avoiding emissions by keeping petroleum underground". *Energy for Sustainable Development, International Energy Initiative*. 13(3): 219-223.

3 Larrea and Warnars, 2009.

4 Larrea and Warnars, 2009.

5 See Government of Ecuador. Ministerio Coordinador de Patrimonio. "Yasuni ITT: Ecuador's proposal for changing its History". Bulletin No. 106 (Quito), August 3, 2010; and Falconí, F., personal communication via presentation and interview with the author, August 25, 2010.

A PROFILE OF ECUADOR AND THE YASUNI NATIONAL PARK

Table 1. Species richness, threatened species, and regional endemics of Yasuni National Park (threatened species are those listed as Critically Endangered, Endangered, or Vulnerable in the 2008 IUCN Red List). © Adapted from Bass *et al.*, 2008

	Species Richness	Threatened Species	Regional Endemics
Amphibians	150	1	20
Reptiles	121	2	--
Birds	593	2	19
Mammals	187-217	8	4
Fish	382-499	0	--
Plants	~4,000	54	~200

Table 2. Yasuni conservation value in terms of conserving Amazonian species. © Adapted from Bass *et al.*, 2008

	Yasuni	Amazonia	Amazonian Species in Yasuni (%)
	9,820 km ²	6,683,926 km ²	0.15%
Amphibians	150	427	34.6%
Reptiles	121	371	32.6%
Birds	593	1,300	45.5%
Mammals	187-217	425	44-51%
Fish	382-499	3,200	12%-16%
Plants	~4,000	40,000	10%

Table 3. Threatened and near-threatened species totals for Yasuni National Park. © Adapted from Bass *et al.*, 2008

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928 000-hectare Yasuni, a unique, well-conserved, and highly culturally and biologically diverse park situated in the western Ecuadorian Amazon, a UNESCO Man and Biosphere Reserve.¹⁰ Yasuni contains around 67 threatened species and 243 regional endemic species, including “world record” numbers of tree, amphibian, reptile, and bat diversity (see Tables 1, 2, and 3).¹¹ Furthermore, the region holds one fourth of Amazonian freshwater due to the Napo River, as well as water basins that host 562 fish species. The high biodiversity of Yasuni is mainly due to its unique location, stable and humid climate, and proximity to the Equator.¹²

Ecuador is ranked 89th on the Human Development Index, with a per capita income just above half of the regional average.⁶ Ninety percent of Ecuador’s economy is based on the export of primary products and petroleum is the single most important product. Although oil exports initially (from 1972) stimulated economic growth and social development, since 1982, growth has been insubstantial and the negative environmental, political, economic, and social impacts of the industry have been severe. It was difficult for Ecuador to resist the short-term profits of extracting new petroleum fields due to the increased foreign debt (by 2003, 16.5 billion USD), despite its awareness of the low quality of the oil, the negative impacts of the industry, and the limits of Ecuador’s total oil reserves (it is estimated that oil production will cease in the next thirty years).⁷ The further expansion and exploitation of new reserves of heavy crude led to the construction of pipelines and exploration of “pristine” forest (current-day blocks 16 and 31 in the Yasuni National Park; see Figures 1 and 2).⁸ While the country possesses sufficient renewable energy resources, Ecuador has been unable to invest in it due to dependency on natural resource extraction, institutional and governance shortcomings, and lack of financial resources, among other things.⁹

Ecuador is one of the most biological and culturally diverse countries in the world and home to 27 Indigenous peoples. In 1989, the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared the

6 UNDP, 2007. *Human Development Report, 2007-2008: Fighting Climate Change: Human solidarity in a divided world*. Palgrave Macmillan: Hampshire and New York.

7 Rival, L., forthcoming. “Planning Development Futures in the Ecuadorian Amazon: The Expanding Oil Frontier and the Yasuni-ITT Initiative”, Part 3 in Bebbington, A. (ed.), *Extractive Economies, Socio-Environmental Conflicts and Territorial Transformations in the Andean Region*.

8 Rival, 2010, page 3.

9 Larrea and Warnars, 2009.

10 Bass, M., M. Finer, C. N. Jenkins, H. Kreft, D. F. Cisneros-Heredia, S. F. McCracken, N. C. A. Pitman, P. H. English, K. Swing, and G. Villa, 2008 (unpublished manuscript). “Global Conservation Significance of Ecuador’s Yasuni National Park”. Published with revisions in 2010, PLoS ONE 5(1). Last accessed August 30, 2010, at: <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0008767>.

11 Bass *et al.*, 2008, page 1.

12 According to Bass *et al.*, 2008, 70% of the rain within the Amazon is caused by evapo-transportation: the roots of plants absorb water out of the air (rain/humidity), which evaporates later into the air through the leaves, causing clouds and rain. In addition, some scientists argue that Yasuni

Fifty percent of the park belongs to the Waorani, Quechua, Tagaeri, and Taromenane Indigenous peoples.¹³ Due to the complicated nature of the arrival and continued presence of the oil industry and foreigners in the Amazon, the Tagaeri and Taromenane decided to live in voluntary isolation in Yasuni. Relations have sometimes been tense due to the forced shifting of boundaries of Indigenous territories for oil companies to extract within the park. In January, 2007, through

Relations between Indigenous peoples and oil companies are tense, particularly due to issues around land tenure.

Presidential Decree, several petroleum blocks were banned or minimized in the Amazon to establish an Intangible Zone of 758 000 hectares for the two isolated groups, effectively granting the communities legal titles to the territory (see Figure 2, orange area).¹⁴ In practice, however, the status offers minimal protection from extractive activities, loggers, other illegal economic actors, and contact with ‘outsiders’.¹⁵

The biological and cultural diversity of the Yasuni faces many interrelated threats that are mainly caused by the petroleum industry, including habitat fragmentation due to roads (such as the Maxus road in Figure 2), air, water, and soil pollution, deforestation, illegal logging, biodiversity loss, and agriculture. Indigenous peoples are affected by the compensations and employers of the oil industry (for example, through inappropriate housing, alcohol, drugs, and violence), tourism, and the increase of diseases related to pollution.¹⁶ The Amazon also faces desertification and drought due to climate change and deforestation. However, with the comparatively moderate projected temperature rise in the park due to climate change, the region is “strategically important for the future conservation of species.”¹⁷

The Government aims to resolve the threats posed by petroleum extraction through the new constitution adopted in 2008, which prohibits future extractive activities in protected areas, except when the president gives consent with the full backing of the parliament.¹⁸ Additionally, the new constitution recognizes the Rights of Nature and aims at promoting social development.¹⁹ However, lack of resources, governance shortcomings, contradicting policies, and efficiency constraints complicate the enforcement and implementation of this new constitution.²⁰ The Yasuni-ITT Initiative arguably has the potential to implement the new constitution and resolve the contradictions between, on the one hand, nature conservation, climate change, equity, social development, and Indigenous peoples’ rights and, on the other hand, oil extraction.

Ecuador’s president calls on the international community to be “co-responsible” for protecting Yasuni’s biological and cultural diversity.

THE YASUNI-ITT INITIATIVE

Ecuadorian President Rafael Correa announced to the United Nations in New York in September, 2007, that Ecuador will refrain from exploiting the ITT crude oil blocks²¹ in Yasuni if the international community donates at least half of the revenues (3.6 billion USD) that the State would have otherwise received from extraction.²² The country argues that the international community is “co-responsible” for the protection of Yasuni due to its global biodiversity and cultural value.²³ The contributions will be invested in renewable energy projects and energy savings through a capital fund. A certain percentage of those projects will be put into a revenue fund to be invested in sustainable forest management, watershed management, nature conservation and regeneration, social development, and Indigenous peoples’ protection. It is noted that the other oil blocks within Yasuni (blocks 16 and 31) are not included in the Initiative.

functioned as a refuge for species during the Pleistocene era when glaciers drastically cooled the planet, transforming the majority of the Amazon into savannah and/or grassland except for areas such as Yasuni.

13 Larrea, C., N. Greene, L. Rival, E. Sevilla, and L. Warnars, 2009. *Ecuador. Towards a new development model. Yasuni-ITT. An initiative to change history*, edited by A. Adoum; translated by R. Huber. Global Business: Quito, Ecuador.

14 Larrea *et al.*, 2009; Rival, 2010, page 9.

15 Rival, 2010, page 11.

16 Bass *et al.*, 2008.

17 Larrea and Warnars, 2009.

18 Acosta, A., and E. Martínez, 2009. *Derechos de la Naturaleza. El futuro es ahora*. Ediciones Abaya Yala: Ecuador.

19 Acosta and Martínez, 2009.

20 Larrea and Warnars, 2009; Rival, 2010.

21 According to Larrea *et al.*, 2009, the ITT oil blocks account for 20% of Ecuador’s total oil reserves to be extracted over 13 years, holding 846 million barrels of heavy crude.

22 Correa, R., 2007. *Speech given at High Level Meeting on Climate Change at the United Nations General Assembly in New York, September 25, 2007*. Last accessed August 30, 2010, at: http://www.ecuador.org/bulletin_board/relative_docs/letter_climatechange.pdf.

23 Falconí, pers. comm., August 25, 2010.

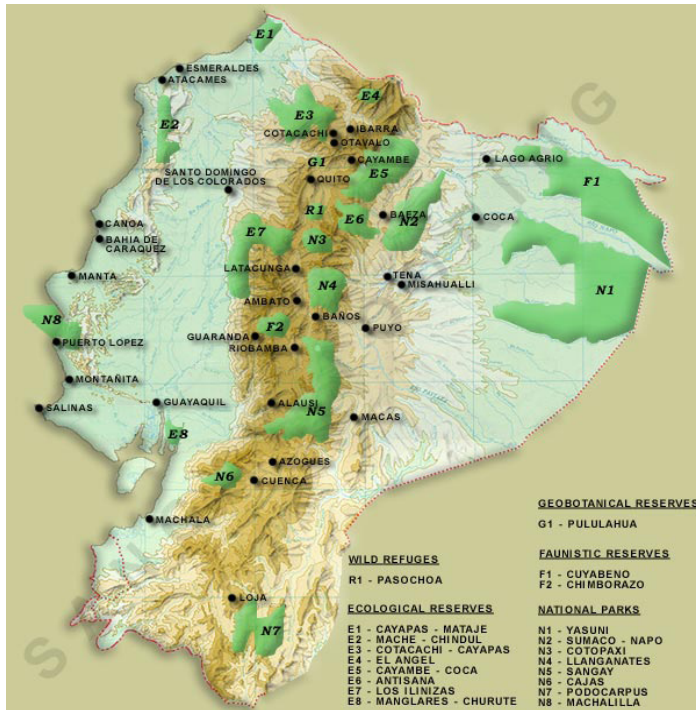


Figure 1. Nature parks in Ecuador. © Sangay Touring

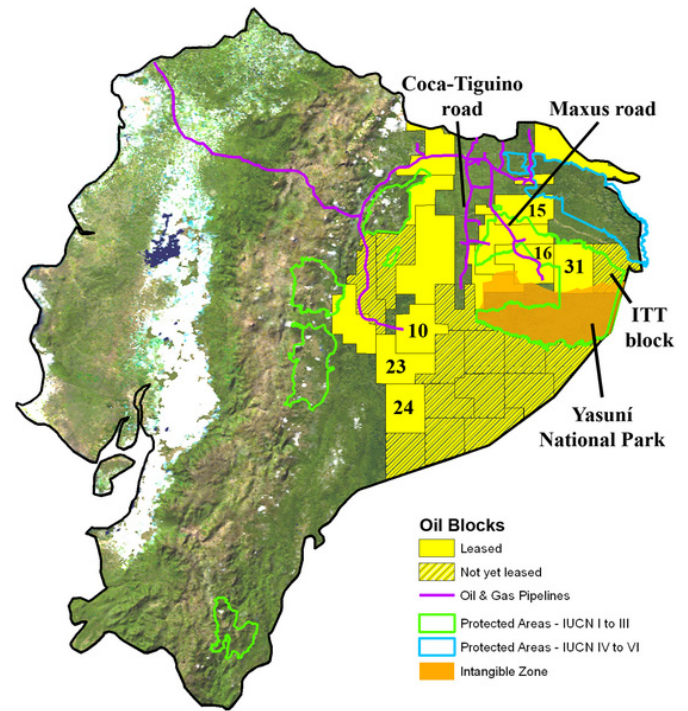


Figure 2. Oil blocks, roads, and protected areas in Ecuador. © SosYasuni

Contributions can come from governments, multilateral organizations, civil society organizations, companies, and individuals. Though still under consideration, the other 50% of the fund may be provided by the State through its own contributions, private investments, and anticipated climate change funding mechanisms for developing countries through the future post-Kyoto protocol. Ecuador does not intend to integrate the Yasuni-ITT Initiative into (post-) Kyoto Protocol mechanisms such as the Clean Development Mechanism and Reducing Emissions from Deforestation and Degradation in Developing Countries (REDD).²⁴ Overall, the Initiative aims to achieve the following results²⁵:

- Reduce/avoid CO₂ emissions by (in total around 12 million metric tonnes) preventing the burning and release of carbon reserves through non-extraction of underground petroleum, avoided deforestation, reforestation and afforestation²⁶ and by reducing the use of petroleum in energy generation and industrial productions by replacing these with carbon free technologies for industries and households and by energy saving programs;
- Protect biodiversity and Indigenous peoples' territories by guaranteeing the protection and sustainable management of 38% of the Ecuadorian natural territory and the full protection of the territories of the isolated Indigenous peoples (Taromenane and Tagaeri) against projects that would otherwise intrude on their lands. The Waorani and Quechua residing in Yasuni will be supported by projects of sustainable forest management, sustainable tourism, education, and poverty eradication; and
- Promote social development by investing in education, eco-tourism, poverty eradication, training, health, technical assistance, and job creation in sustainable activities such as agroforestry and protection of ecosystem services. These will target the poorest and most marginalized sectors and contribute to sustainable employment.

These goals address new sustainable development projects such as renewable energies and coincide with the Millennium Development Goals.²⁷ Contributions made towards the fund will be held by the Multi Donor Trust Fund office of UNDP and administered by a steering committee, which will be chaired by a representative of the Ecuadorian government and will include two other Ecuadorian government representatives, two representatives from contributing governments, and an

24 Larrea and Warnars, 2009.

25 Larrea *et al.*, 2009.

26 Forests absorb carbon dioxide (CO₂). Forestation projects increase CO₂ absorption and lower total CO₂ amounts in the atmosphere.

27 Larrea *et al.*, 2009.

Ecuadorian civil society representative.²⁸ The amount of the fund (3.6 billion USD) is based on the carbon market price of 407 million metric tonnes of avoided carbon dioxide (CO₂) emissions related to the 846 million barrels of ITT as of May, 2009.²⁹ This calculation will be updated each year to account for market fluctuations and to reduce the incentives of future governments to refund the money and extract the resource.³⁰

Ecuador will issue Yasuni Certificates of Guarantee for the nominal value of the contributions, which can be up to a total of 407 million tonnes of CO₂.³¹ In the future, if the Yasuni Certificates of Guarantee are accepted as Emission Permits within the carbon market, the country may sell the certificates to private and/or public entities.³² If future Ecuadorian governments decide to exploit ITT, the Yasuni Certificates of Guarantee would become redeemable; the Trust Fund would return contributions to the donors and suspend capital investment in energy projects and the payment of yields to Ecuador.³³ This system may contain a high risk of non-repayment due to different arguments, including that the government may invest the funds accordingly into various Yasuni-ITT projects. However, the government may jeopardize its credibility and harm its sustainable development potential if it decides to extract ITT after all.

The implementation of Yasuni-ITT can serve as a pilot project, the model of which can be replicated by other developing countries containing significant fossil fuel reserves in highly biologically and culturally sensitive areas such as Bolivia, Colombia, Peru, and the Philippines.³⁴ Ecuador argues that the Initiative is solely applicable to developing countries intending to develop sustainably, without the dependency of fossil fuel extraction, and to develop in an equal way in comparison with developed countries. The model should also be adjusted to local and national situations, as each country contains unique aspects.

PLAN B: EXTRACTING ITT

If the Yasuni-ITT Initiative receives insufficient funding and political support or if the implementation of the different projects is not effective, the government may decide to extract ITT by using off-shore techniques to minimize the negative environmental and social impacts (hereafter referred to as Plan B). However, Plan B can only be implemented with the full support of the parliament in accordance with the 2008 Constitution. Some petroleum companies already utilize off-shore techniques in the Ecuadorian Amazon, yet the success of these techniques is questionable, given current examples such as the ongoing class action law suit of Ecuadorian plaintiffs against Texaco-Chevron due to its polluting activities from 1970-1992.³⁵ Petroleum companies, mainly Petroecuador (the State company), have already explored extraction options for ITT and promise subsequent economic development to the State and Indigenous peoples.³⁶

The Ecuadorian Government ultimately decides what happens with the Yasuni-ITT Initiative, but much is at stake and there are many challenges, including the fact that it is a pilot project based on a new concept, many different stakeholders are involved, donations are forthcoming, and there are political barriers within the government system.³⁷

YASUNI-ITT AND HUMAN RIGHTS

The Yasuni-ITT Initiative not only aims to address climate change and sustainable development, but may also address provisions for Indigenous peoples under international, regional, and domestic human rights instruments. Under the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)³⁸, a set of standards is defined to protect and address the rights and cultures of Indigenous peoples. In its Preamble, UNDRIP recognizes the “urgent need to respect

28 UNDP, 2010. “Ecuador Yasuni-ITT Trust Fund”. Last accessed August 25, 2010, at: <http://mdtf.undp.org/yasuni>.

29 The amount is similar to the amount of the oil price related to the 846 barrels of ITT.

30 Larrea and Warnars, 2009.

31 Larrea and Warnars, 2009.

32 Rival, 2010; UNDP, 2010.

33 Larrea *et al.*, 2009, page 19.

34 Larrea *et al.*, 2009, page 20.

35 Larrea-Maldonado, C., 2006. *Hacia una historia ecológica del Ecuador. Propuestas para el debate*. Universidad Andina Simón Bolívar and Corporación Editora Nacional EcoCiencia: Ecuador.

36 El Dario Hoy, April 4, 2010a. “Plan B del ITT va a paso firme”. Last accessed April 6, 2010, at: <http://www.hoy.com.ec/noticias-ecuador/plan-b-del-itt-va-a-paso-firme-400868.html>; El Comercio, April 4, 2010. “Las sombras se extienden sobre el ITT”. Last accessed August 30, 2010, at: <http://www.maippa.org/%C3%9Altimas-noticias/ecuador-las-sombras-se-extienden-sobre-el-itt.html>.

37 For instance, in early January, 2010, President Correa condemned the Trust Fund as a form of neo-colonialism threatening national sovereignty and interests, causing the resignation of the Yasuni-ITT commission, including the Minister of Foreign Affairs, Fander Falconi.

38 United Nations Declaration on the Rights of Indigenous Peoples, 2007. UN Doc A/RES/61/295 (opened for signature September 13, 2007).

and promote the inherent rights of Indigenous peoples,” including rights to their lands, territories, and resources, and recognizes and reaffirms that Indigenous peoples “possess collective rights which are indispensable for their existence, well-being and integral development as peoples”. The Preamble also recognizes that “respect for Indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”. Furthermore, UNDRIP emphasizes that Indigenous peoples have the right to provide or deny free (non-influenced), prior and informed consent regarding governmental approval of projects affecting them and their territories. It is noted that possessing legal title to their territories is often a prerequisite for Indigenous peoples to provide free, prior and informed consent.³⁹

In addition to UNDRIP, the 1989 International Labour Organization’s Indigenous and Tribal Peoples Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169)⁴⁰ contains several key provisions related to Indigenous peoples (see Box 1⁴¹). Parties (including Ecuador) are legally bound to implement the described provisions, even if a company is extracting resources within the lands of the concerned groups. However, companies should comply with the national legislation that enacts the Convention and should consult and compensate the groups for the activities in forms of, for example, royalty payments, employment development, and provision of services.⁴² Although participation and consultation are among the key provisions of the Convention, “this does not mean that Indigenous peoples’ communities have a right to veto projects that affect them.”⁴³

While instruments such as UNDRIP and ILO 169 set important standards and mandates, domestic legislation and regional commissions give legal weight to international provisions. For example, the Inter-American Commission granted precautionary measures in favour of the Tagaeri and Taromenane peoples with respect to petroleum extraction and illegal logging in 2006 by calling upon the Ecuadorian Government to prohibit the entry of ‘third persons’ into their territories⁴⁴. In accordance, Ecuador’s 2008 constitution states, “The territories of peoples in voluntary isolation are ancestral homelands, irreducible and untouchable, and they will be off-limits to all extractive activities. The State will adopt measures to guarantee

their lives, respect their self-determination and will to remain in voluntary isolation, and ensure that their rights are respected. The violation of these rights will constitute the crime of ethnocide, and should be dealt with by the law”.⁴⁵ Additionally, according to the 2007 Presidential Decree explained above, an Intangible Zone was set aside for these groups to inhabit.

Regional and domestic instruments give legal weight to international provisions under UNDRIP and ILO 169.

The stated provisions enshrined in international, regional, and domestic instruments indicate that Indigenous peoples’ lives and territories must be protected and they must be consulted with regards to activities within their territories. However, as history has shown, Ecuador’s high economic dependency on the petroleum industry, institutional and governance shortcomings (including corruption), and limited financial resources pose challenges to the proper implementation of these provisions.⁴⁶ Studies have shown that current extractive activities have violated and threatened human rights recognized in UNDRIP and ILO 169 in the Amazon, including in the Yasuni.⁴⁷ As such, if Plan B occurs, it will likely be executed without respecting internationally and nationally recognized human and Indigenous rights. Certain petroleum companies provide some platform for consultation on IIT by discussing the possibilities of extraction with the Indigenous peoples and offering them so-called royalty payments, including economic benefits, education, supplies (often alcohol and drugs), and sanitation facilities. However, these payments are often perceived as threats to Indigenous cultures and companies have used the payments simply to avoid conflict and to be able to claim that they are recognizing human rights.⁴⁸

39 Colchester, M., and M. Farhan Ferrari, 2007. *Making Free, Prior and Informed Consent (FPIC) Work: Challenges and Prospects for Indigenous Peoples*. Forest Peoples Programme: Moreton-in-Marsh.

40 ILO 169, opened for signature June 27, 1989, 28 ILM 1382 (entered into force September 5, 1991).

41 International Finance Corporation, 2007. *ILO Convention 169 and the Private Sector. Questions and answers for IFC Clients*. World Bank Group, pages 3-6.

42 International Finance Corporation, 2007.

43 International Finance Corporation, 2007, page 6.

44 Finer, M., C. N. Jenkins, S. L. Pimm, B. Keane, and C. Ross, 2008. *Petroleum and Gas Projects in the Western Amazon: Threats to Wilderness, Biodiversity, and Indigenous Peoples*. Forrest C. and Frances H. Lattner Foundation Inc.: USA.

45 Government of Ecuador, 2008. *National Policy towards peoples in voluntary isolation*, Ecuador.

46 Larrea and Warnars, 2009.

47 Bass et al., 2008; Finer et al. 2008; Finding Species, 2010. “Finding Species: Giving a Face to Biodiversity”. Last accessed August 30, 2010, at: <http://www.findingspecies.org>; Orta Martinez, M., 2010. *Oil frontiers in the Peruvian Amazon. Impacts of oil extraction for the Achuar of Río Corrientes*, PhD thesis. Institut de Ciència i Tecnologia Ambientals, Universitat Autònoma Barcelona: Spain.

48 El Dario hoy, April 4, 2010b. “Indigenas desconocen sobre el proyecto Yasuni-IIT”. Last accessed August 30, 2010, at: <http://www.hoy.com>.

Box 1. Key provisions of ILO 169.

- Governments shall develop coordinated and systematic action to protect the rights of Indigenous and tribal peoples.
- Governments shall consult these peoples through appropriate procedures and representative institutions when applying the Convention's provisions and ensure their participation in the process of development.
- Governments shall ensure that Indigenous and tribal peoples have the right to decide their own priorities for the process of development.
- Governments shall respect Indigenous and tribal peoples' special relationship with lands, which includes territories both occupied and used.
- Governments shall recognize the rights of ownership and possession over lands traditionally occupied and take steps to identify these peoples' lands and establish procedures to resolve land claims.
- Governments shall safeguard their rights to natural resources on lands and territories, including the right to participate in the use, management, and conservation of resources.
- Where the State retains ownership of mineral and subsurface resources, Indigenous and tribal peoples shall be consulted prior to programmes of exploration or exploitation of resources and wherever possible, participate in the benefits of exploitation and receive compensation for damage resulting from exploitation.
- Indigenous and tribal peoples shall not be removed from lands except where necessary as an exceptional measure and with their free and informed consent. If consent cannot be obtained, relocation should only occur in compliance with due legal process.
- Whenever possible, Indigenous and tribal peoples shall have the right to return to traditional lands or to receive compensation if return is not possible.

Although the Yasuni-ITT Initiative does not explicitly include provisions of UNDRIP and ILO 169, if its objectives are well-implemented, it could arguably be one response to conflicts between and barriers to Indigenous peoples' interests, nature conservation, and resource extraction projects.⁴⁹ The success of the Initiative, however, depends greatly on the realization of the right to free, prior and informed consent, as well as the development of trust between the implementing institutions and Indigenous peoples. To date, the development of the Initiative proposal has included neither the active participation nor the real consent of Indigenous peoples. Various Indigenous people are disappointed about this and some have even protested against the general lack of participation with governmental policies.⁵⁰

YASUNI-ITT AND BIOLOGICAL DIVERSITY

Arguably, the Yasuni-ITT Initiative also has the potential to realize aspects of the Convention on Biological Diversity (CBD) and the UNESCO Man and Biosphere Reserve Programme (MAB). To begin with, the objectives of the CBD⁵¹ are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.⁵² Parties are mandated to consider several cross-cutting issues such as sustainable management, traditional knowledge, protection of threatened species and biological diversity, financial mechanisms, technology and information sharing, and raising of awareness. Under Article 8 (In-Situ Conservation), Parties are obliged to establish "a system of protected areas or areas where special measures need to be taken to conserve biological diversity".⁵³ Furthermore, the Convention mandates developed country Parties to "provide new and additional financial resources" to developing country Parties" and fully accounts for the fact that "economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties".⁵⁴ However, some critics feel that that the CBD principles have not been effectively implemented either in Ecuador or internationally.⁵⁵

With more specific focus on Yasuni, a UNESCO MAB is not intended to be strictly protected; it needs to include sustainable management practices. Biosphere reserves are zoned into core areas, buffer zones, and transition zones. The core requires legal protection and has the highest biological and protection value. Yasuni's core is not yet declared, as the whole area contains the high levels of biological diversity and it is thus difficult to decide which part is most diverse. The

ec/noticias-ecuador/indigenas-desconocen-sobre-el-proyecto-yasuni-itt-400869.html.

49 Larrea *et al.*, 2009.

50 Warnars, L., 2010. *The Yasuni-ITT Initiative: An international environmental equity mechanism?* MSc Thesis. School of Management, Radboud University Nijmegen: the Netherlands; El Dario hoy, April 4, 2010b.

51 United Nations Convention on Biological Diversity (CBD), opened for signature June 5, 1992, 1760 UNTS 79 (entered into force December 29, 1993).

52 Article 1, CBD.

53 Article 8, CBD.

54 Article 20, CBD.

55 Valérie Biosvert, personal communication via presentation and interview with the author, August 23, 2010.

core should be surrounded by a buffer zone which can support some activities such as tourism, research, and sustainable use and extraction of resources by local inhabitants, according to tradition and local utilization. The transition zone needs to include people (such as in small towns) who practice sustainable development and conservation.⁵⁶ Thus, the extractive activities in Yasuni's buffer or transition areas are arguably not only in accordance with its MAB status, but could also be harnessed to support sustainable development of the local communities in other parts of the biosphere reserve.⁵⁷

According to Gregory Thaler of UNESCO MAB, "The Yasuni-ITT Initiative offers a creative mechanism for recognizing the value of a portion of the biosphere reserve's core area and ensuring its protection, and this pioneering proposal exemplifies the function of a biosphere reserve as a site for innovation and learning for sustainable development".⁵⁸ The Initiative thus aims to properly implement provisions under the CBD and UNESCO MAB guidelines. The Initiative may even go beyond the MAB guidelines by preventing extractive activities. Moreover, as the CBD is not well-implemented by the Parties, including through the lack of sufficient financial flows from developed to developing countries, the Initiative may be seen as improving the realization of CBD-mandated financial flows not only from CBD Parties, but also from other governments, organizations, enterprises, and individuals.⁵⁹

The success of the Initiative depends on funding, compliance with legal obligations, governance capacity, and trust between stakeholders.

CONCLUSION

Although the Ecuadorian Government argues that the international community is co-responsible for protecting Yasuni due to its global biodiversity and cultural value, one could argue that it lies in the hands of the national State to protect Yasuni and its inhabitants properly and in accordance with international and national law from activities such as oil extraction. However, Ecuador, like many other developing countries, highly depends on the (oil) extraction economy, lacks financial resources, and faces governance shortcomings to properly implement international and national legal obligations.⁶⁰ Moreover, international agreements such as the CBD are not well-implemented. Indigenous peoples and nature have suffered from the oil extraction industry since 1970s and an alternative economic income seems to be necessary to address these problems.

The Yasuni-ITT Initiative arguably may function as a model for other developing countries containing biologically diverse areas with fossil fuel reserves to not only properly implement human rights and environmental instruments, but also to resolve conflicts between resource extraction, nature conservation, and Indigenous peoples' rights and interests. Although further research is needed to fully understand the Initiative's implications and functioning, it is clear that the success of the Initiative depends on the forthcoming of the funds, the implementation of the Initiative in accordance with international, regional, and domestic obligations, institutional and governance capacity, and trust within and between the Ecuadorian government and the different stakeholders involved, particularly Indigenous peoples.

Lavinia Warnars (lwarnars@gmail.com), MA, wrote her Master's thesis on the Yasuni-ITT Initiative in relation to environmental and climate equity. She plans to undertake PhD research on the Initiative as well.

56 David Romo (University of San Francisco, Ecuador), personal communication via interview with the author, June, 2009.

57 Gregory Thaler (UNESCO MAB), personal communication via email with the author, May, 2010.

58 Thaler, May 2010.

59 Larrea and Warnars, 2009.

60 Larrea and Warnars, 2010; Rival, 2010.