

**The Territorial Rights of the Wounaan Communities of Río Hondo, Platanares and Majé (Panama): Legal Strategies for Protection at the National and International Level**

**By: Leonardo J. Alvarado, Attorney and Legal Consultant**

**Report for Native Future and Wounaan Communities  
(July 2007)**

**EXECUTIVE SUMMARY**

This report analyzes the legal and political situation of three indigenous Wounaan communities (“the Communities”, “Wounaan Communities” or “Wounaan”) in Panama in order to recommend possible legal and political strategies at the national and international levels that would aid the Wounaan in securing the legal recognition and protection of their territory. The report focuses especially on the feasibility of a legal action at the international level, particularly through the Inter-American Commission on Human Rights (IACHR). Therefore, it is necessary to evaluate the Wounaan’s situation within the Panamanian legal context in order to determine if the admissibility and other requirements for submission of cases to the IACHR are met.

The Wounaan Communities, with a total population of about 942 people, presently inhabit a territory of about 20,000 hectares around the Río Hondo, Platanares and Majé region in the province of Panamá according to their traditional usages and customs. The Communities have been left out of the regime of indigenous *comarcas* or reserves that have benefited other indigenous communities in Panama. Consequently, the Wounaan’s lack any legal recognition of their lands and this has ultimately led to the invasions of those lands by non-indigenous *latino* colonists since the 1970’s.

Since the 1980’s, the Wounaan have contacted various government agencies in order to resolve their precarious land situation in the face of growing presence of colonists, but without success. In 2004, the Wounaan met with members of the Ministry of Governance and Justice and the colonists and signed a provisional accord stating the colonists and government would respect the integrity of the Wounaan’s territory. These promises have been unfulfilled and the Wounaan have not been able to obtain further support from the Ministry. The Wounaan and their local attorney plan to take civil and criminal legal actions against the mayor of the city of Chimán for his role in inciting the invasions and also plan to file, in the long-term, a constitutional *amparo* action against the Ministry for the lack of enforcement of the provisional accord.

In light of the ineffectiveness of the Wounaan’s attempts to obtain recognition of their land and the Panamanian government’s unwillingness to recognize any more

indigenous comarcas or collective lands, the Wounaan have a viable case that could be brought to the IACHR. The IACHR along with the Inter-American Court of Human Rights have in recent years issued important resolutions and judgments recognizing indigenous human rights to collective property and natural resources - and these institutions are likely to find in favor of the Wounaan. This type of international legal action would strengthen and complement the efforts that the Wounaan have undertaken and plan to undertake at the national level. It would provide a much needed source of political pressure to make the Panamanian government provide legal recognition to the Wounaan and even possibly to establish a legal mechanism for land demarcation and titling that would benefit other indigenous communities outside of the comarca regime.

Therefore, the Wounaan need to think of strategies that will help meet the requirements for the exhaustion of domestic remedies set by the IACHR – this could be done through the legal mechanism of the *amparo* action for protection of constitutional guarantees. The Wounaan should think of filing an *amparo* action (as recommended in the report) within the next 6 months so that a petition at the IACHR could be conceivably filed within one year. It is likely that said legal action will be rejected in the national courts or that its processing might be delayed through the various stages including appeal and thus, the Wounaan would then be justified in filing their international claim. The urgency of the growing invasions by colonists and the government's unwillingness to officially recognize any more indigenous territories merits a prompt legal action at the national level that could then be used to enable the Wounaan to access the IACHR.

The process of drafting and submitting a petition to the IACHR along with the different stages that this type of international case entails will require a joint effort between the Wounaan Communities, Native Future and the legal advisors. Within the period of one year, a petition could be drafted along with the gathering of evidentiary documents on the Wounaan's long struggle in defense of their territory. It will also be necessary to obtain ethnographic studies about the Wounaan's culture and presence in their territory and also seek anthropological and legal expert testimonies that could be used in the long-term for negotiations with the government during the initial stages of the case or for possible legal hearings at the IACHR. In addition, there will have to be constant communication with the Wounaan Communities and their leaders in order to inform them of the various stages of the case and what could be expected from the Inter-American human rights system.

Due to the ongoing difficulties that the Wounaan have faced in trying to assert their rights as indigenous communities, a legal action at the international level is strongly recommended in order to pressure the Panamanian State to act in favor of the Wounaan. The legal recognition of the Wounaan's territory is an indispensable element for confronting the ongoing depredations caused by non-indigenous colonists that threaten the integrity of the lands and natural resources of the Wounaan and other indigenous communities. Therefore, an international legal action could also help bring positive changes for other indigenous peoples and communities in Panama.