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**CAPTIVE COMMUNITIES: SITUATION OF THE GUARANÍ  
INDIGENOUS PEOPLE AND CONTEMPORARY FORMS OF SLAVERY  
IN THE BOLIVIAN CHACO**

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Internet: <http://www.cidh.org>

E-mail: [cidhoea@oas.org](mailto:cidhoea@oas.org)

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# INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

## MEMBERS

Luz Patricia Mejía Guerrero

Víctor E. Abramovich

Felipe González

Sir Clare Kamau Roberts

Paulo Sérgio Pinheiro

Florentín Meléndez

Paolo G. Carozza

\*\*\*\*\*

Executive Secretary: Santiago A. Canton

Assistant Executive Secretary: Elizabeth Abi-Mershed

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**TABLE OF CONTENTS**

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
	A. Background and issues to develop .....	1
	B. Working visit and observation in Bolivia in June 2008 .....	5
	C. Preparation and approval of the report .....	6
	D. Contemporary forms of slavery nationally, regionally, and internationally .....	6
	E. Brief introduction on indigenous peoples in Bolivia.....	8
<b>III.</b>	<b>INTERNATIONAL LEGAL FRAMEWORK: THE STATE'S OBLIGATIONS TO ERADICATE CONTEMPORARY FORMS OF SLAVERY AND PROTECT THE RIGHTS OF INDIGENOUS PEOPLES .....</b>	<b>14</b>
	A. Definitions .....	14
	B. International Standards.....	15
	1. The prohibition on contemporary forms of slavery .....	16
	2. The duty to protect the rights of indigenous peoples to collective property and access to justice.....	18
<b>IV.</b>	<b>THE GUARANÍ PEOPLE AND THE SITUATION OF THE CAPTIVE COMMUNITIES IN THE BOLIVIAN CHACO .....</b>	<b>23</b>
	A. The Guaraní indigenous people and the Chaco region of Bolivia.....	23
	B. Working and living conditions of the captive communities .....	27
	C. Situation of women and children in the captive communities.....	34
	D. Access to land and conflictiveness in the Bolivian Chaco.....	36
	E. Access to justice for members of the Guaraní people .....	40
	F. Other difficulties faced by the Guaraní people .....	45
	G. Conclusions .....	47
<b>V.</b>	<b>DOMESTIC LEGISLATION AND INITIATIVES TAKEN BY THE STATE IN RELATION TO THE GUARANÍ CAPTIVE COMMUNITIES .....</b>	<b>48</b>
	A. Prohibition on practices analogous to slavery in the national legislation .....	48
	B. Agrarian legislation and its application in the context of the captive communities.....	49
	C. Other initiatives for confronting the situation of bondage and forced labor.....	52
	D. Provisions of the Political Constitution of the State.....	55
	E. Observations with respect to the duty of the State to guarantee and protect the right of indigenous peoples to land, territory, natural resources, and the right to consultation .....	57
	F. Observations with respect to the duty of the State to guarantee due process, judicial protection, and access to justice .....	59
	G. Observations with respect to the initiatives of the State in the sociopolitical context of the Bolivian Chaco.....	62
<b>VI.</b>	<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>63</b>

## **CAPTIVE COMMUNITIES: SITUATION OF THE GUARANÍ INDIGENOUS PEOPLE AND CONTEMPORARY FORMS OF SLAVERY IN THE BOLIVIAN CHACO**

### **I. EXECUTIVE SUMMARY**

1. In this report the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission" or "IACHR") analyzes the situation of the Guaraní indigenous people in the region known as the Bolivian Chaco, focusing particularly on the situation of Guaraní families subjected to conditions of debt bondage and forced labor. This phenomenon, which affects approximately 600 families, is known by reference to "captive communities," and it clearly involves contemporary forms of slavery that should be eradicated immediately. In addition, this report analyzes the situation these captive communities face in order to gain access to their ancestral territory.

2. The report was preceded by a working and observation visit conducted June 9-13, 2008, by Commissioner Luz Patricia Mejía Guerrero, in her capacity as Rapporteur for Bolivia, and by Commissioner Víctor E. Abramovich, in his capacity as Rapporteur on the Rights of Indigenous Peoples.

3. The Commission deplores the existence in Bolivia of practices of bondage and forced labor, which are absolutely prohibited by the American Convention on Human Rights and other international instruments to which Bolivia is a party. The Commission also observes that the situation of bondage and forced labor in which the captive communities live is an extreme manifestation of the discrimination that indigenous peoples have suffered historically and continue suffering in Bolivia.

4. Despite the efforts made by the Bolivian State (hereinafter "the State," "Bolivia," or "the Bolivian State") to address the situation of bondage and forced labor and to facilitate the reconstitution of the Guaraní territory, there are still captive communities whose members are subject to performing forced labor for debts supposedly contracted and who most of the time do not receive any salary for their work.

5. The report concludes with recommendations aimed at cooperating with the Bolivian State in its efforts to eradicate these contemporary forms of slavery and to guarantee and protect the human rights of the Guaraní indigenous people, especially their collective property, their right of access to justice, and their right to a dignified life. The recommendations include actions to: (1) prevent, investigate, and punish contemporary forms of slavery; (2) reconstitute the territory of the Guaraní indigenous people; and (3) guarantee access to justice for the Guaraní indigenous people and all other indigenous peoples in Bolivia.

### **II. INTRODUCTION**

#### **A. Background and issues to develop**

6. This report sets forth the situation of the Guaraní indigenous people in the region known as the Chaco, in Bolivia. The report is focused particularly on the situation of the Guaraní indigenous people subjected to conditions of debt bondage and forced labor. This phenomenon, known by reference to "captive communities," clearly involves contemporary forms of slavery that should be eradicated immediately. In addition, this report analyzes the situation these communities face in order to gain access to their ancestral territory. The report concludes with recommendations aimed at cooperating with the Bolivian State in its efforts to eradicate these contemporary forms of

slavery and to guarantee and protect the human rights of the Guaraní indigenous people, especially their collective property, their right of access to justice, and their right to a dignified life.

7. The report was preceded by a working visit and observation on June 9-13, 2008, which was carried out in the wake of a series of complaints received by the IACHR on the existence of the captive communities during an on-site visit it had made in 2006, whose purpose was to observe the general human rights situation in Bolivia, and during the 131<sup>st</sup> regular period of sessions of the IACHR. During the 2006 on-site visit, the IACHR found that practices analogous to slavery, in the form of bondage and forced labor, were continuing and affected approximately 600 families who belong to the Guaraní indigenous people in the Bolivian Chaco.<sup>1</sup>

8. In its report on the 2006 visit, entitled “Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia,” the Commission referred to the situation of forced labor, bondage, and slavery.

The Commission learned that there are many people who, in a variety of circumstances, have been subjected to situations of bondage analogous to slavery, aggravated in some cases by forced labor, dating back for decades and still persisting because of the lack of any comprehensive and effective response from the State.<sup>2</sup>

9. In that report, the IACHR also made a series of recommendations to the State, especially:

Give priority to measures for eradicating forced labor and bondage, and take immediate steps to strengthen the recognition and regularization of property for persons affected by this situation, and to prevent any weakening of labor and social rights for persons working in the rural sector.

Conduct an immediate analysis of the situation of bondage analogous to slavery and/or forced labor in various parts of Bolivia, including data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and State players involved, particularly weaknesses in the various administrative and judicial bodies.<sup>3</sup>

10. On March 11, 2008, during the IACHR's 131<sup>st</sup> regular period of sessions, a hearing was held on the “Human rights situation of captive communities in Bolivia,” requested by the Consejo de Capitanes Guaraníes and the Centro de Estudios Jurídicos e Investigación Social (CEJIS), with the participation of the State. The petitioners submitted information on the human rights violations of which the captive families, their leaders, and their legal representatives are said to be victims. The representative of the State agreed with the information submitted by the petitioners and reported on the actions it was undertaking in the context of the process of territorial reconstitution of the Guaraní people, for the specific purpose of giving them sufficient lands and freeing their communities from the regime of servitude to which they are subjected. On that occasion, the parties signed a

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<sup>1</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, 2007, para. 258.

<sup>2</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, 2007, para. 257.

<sup>3</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, 2007, paras. 416.30 and 416.31.

protocol of commitment (*acta de compromiso*) in which the State undertook to adopt “the measures of protection necessary to ensure the integrity of all the Guaraní families who still live on estates, their leaders and the advisers who accompany the process implementing the plan for the emancipation of the Guaraní people.”<sup>4</sup>

11. On April 25, 2008, the IACHR issued a press release deploring the fact that a large number of indigenous families of the Guaraní people in Bolivia continued in a situation of servitude similar to slavery, and reminding the State of its obligation to “eradicate all situations of bondage and/or forced labor throughout its territory immediately and as a priority matter.”<sup>5</sup>

12. During the working and observation visit to Bolivia in 2008, state authorities presented information on the situation of the captive indigenous communities, referring mainly to the Guaraní people in the Bolivian Chaco. Similarly, the Commission collected information and testimony that verify the continuity, since the last visit by the IACHR in November 2006, of the problems of debt bondage and forced labor as well as the aggravation of the social conflict affecting the Guaraní indigenous people in relation to their claims to their ancestral territory.

13. The Commission deplores the existence in Bolivia of practices of bondage and forced labor, which are absolutely prohibited by the American Convention on Human Rights<sup>6</sup> (“American Convention”) and other international instruments to which Bolivia is a party. The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines as practices similar to slavery “debt bondage” and “serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”<sup>7</sup>

14. The Commission observes that the situation of bondage and forced labor in which the captive communities live is an extreme manifestation of the discrimination that indigenous peoples have suffered historically and continue suffering in Bolivia. Even though this situation is increasingly drawing the attention of Bolivian and international agencies, such as the Office of the United Nations High Commissioner for Human Rights, the United Nations Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, and the International Labour Organization, such practices continue.

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<sup>4</sup> In Protocol of Commitment signed March 11, 2008, at IACHR headquarters.

In addition, the petitioners and the State agreed that the IACHR, in particular the Rapporteur for Bolivia and the Rapporteur on the Rights of Indigenous Peoples should “make a visit to Bolivia... with the objective of being able to verify, in the geographic areas affected, the facts reported that threaten the process of agrarian reform and the security of the captive families of the Guaraní people.” In addition, the State undertook to keep the IACHR informed periodically as to the measures adopted and the gains made within the process of reconstitution of the Guaraní people.

<sup>5</sup> IACHR, Press Release 17/08: IACHR DEPLORES SITUATION OF CAPTIVE COMMUNITIES IN BOLIVIA. April 25, 2008. Available at <http://www.cidh.oas.org/Comunicados/English/2008/17.08eng.htm>.

In the press release, the IACHR also condemned the acts of violence that occurred in April 2008 in areas where the process of clearing title to lands was being carried out on behalf of the Guaraní people. The IACHR reminded the Bolivian State of its obligation “to adopt the necessary measures to prevent them from being repeated and to investigate and punish those responsible, with strict respect for human rights.”

<sup>6</sup> Bolivia ratified the American Convention on Human Rights on June 20, 1979.

<sup>7</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva September 7, 1956. Entered into force: April 30, 1957, Art. 1.

15. In the report one notes that despite the efforts made by the Bolivian State to address the situation of bondage and forced labor and to facilitate the reconstitution of the Guaraní territory, there are still captive communities that are subject to performing forced labor for debts supposedly contracted, and who most of the time do not receive any salary for their work. The report finds that the members of these captive communities live in extreme poverty and are subjected to cruel punishments, the burning of their crops, and the killing of their animals. In addition, in the Alto Parapetí, the Commission verified the existence of child labor, which is prohibited by domestic statutes and international treaties ratified by the Bolivian State. All this is happening in a context of impunity due to the almost total absence of the State in the Chaco region and the ineffective action of the Public Ministry. This impunity fosters the repetition of these practices, which are incompatible with human rights.

16. The Inter-American Commission recognizes the efforts made by the State to address this situation, and finds that the Bolivian State has attempted to direct its agrarian policy to this end, among others. Nonetheless, the effective observance of new laws and the application of public policies face serious resistance on the part of various political and economic sectors, leading to a climate of social conflict in the region, with persistent opposition to the policies of the State. Nonetheless, the Commission reiterates the State's obligation to implement the law in terms of indigenous rights, agrarian reform, and labor law so as to help resolve the grave situation affecting the captive communities. In addition, the State has the obligation to investigate, prosecute, and punish the persons responsible for committing these practices, which constitute crimes under Bolivian and international law.

17. The analysis and recommendations contained in this report are based on the regional human rights obligations assumed by the Bolivian State, principally the American Convention on Human Rights, Convention 105 on the abolition of forced labor,<sup>8</sup> Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries<sup>9</sup> (hereinafter, "ILO Convention 169"), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,<sup>10</sup> and the United Nations Declaration on the Rights of Indigenous Peoples.<sup>11</sup> These recommendations include three categories: (1) recommendations to prevent, investigate, and punish contemporary forms of slavery; (2) recommendations to reconstitute the territory of the Guaraní indigenous people; and (3) recommendations to guarantee access to justice for the Guaraní indigenous people and all other indigenous peoples in Bolivia.

18. The recommendations are focused mainly on addressing the situation of bondage and forced labor by expanding the technical capacity of the State to eradicate such crimes and the need to effectively implement international instruments signed by the State that legislate on the issue. The Commission's recommendations also emphasize the need for the State to take measures to resolve the underlying problem of access to the land faced by the Guaraní indigenous people.

19. The Inter-American Commission on Human Rights and the Rapporteurship on the Rights of Indigenous Peoples reiterate their commitment to work with the Bolivian State to

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<sup>8</sup> Ratified by Law No. 1119 of November 1, 1989, deposited June 11, 1990.

<sup>9</sup> Ratified by Law No. 1257 of July 11, 1991.

<sup>10</sup> Acceded to by Supreme Decree No. 19777 of September 13, 1983, elevated to statutory status by Law No. 2116 of September 11, 2000.

<sup>11</sup> United Nations Declaration on the Rights of Indigenous Peoples, approved by the General Assembly September 13, 2007, Art. 17. Elevated to statutory rank by Law No. 3760 of November 7, 2007.



implement solutions to the problems identified. Some steps taken to address this situation make clear the commitment by the members of the State and non-State sectors to effectively hold liable the perpetrators of the violence, and to prevent future acts of violence. These initial steps show the capacity exists to adopt the additional measures that are urgently needed.

#### **B. Working visit and observation in Bolivia in June 2008**

20. The Commission made a visit to the Republic of Bolivia on June 9-13, 2008, to collect information on the situation of the communities of the Guaraní indigenous people who are living in servitude and forced labor. This visit came in the wake of the Protocol of Commitment of March 11, 2008, signed at the headquarters of the IACHR during its 131<sup>st</sup> regular period of sessions by the Bolivian State, the Consejo de Capitanes Guaraníes, and CEJIS. The Commission delegation was made up of Commissioner Luz Patricia Mejía Guerrero, in her capacity as Rapporteur for Bolivia, and Commissioner Víctor E. Abramovich, in his capacity as Rapporteur on the Rights of Indigenous Peoples. The delegation also included specialists Débora Benchoam and Anexa Alfred; the director of press and outreach, María Isabel Rivero; and administrative assistant Sandra Morin.

21. The visit began June 9 in the city of La Paz and continued with meetings in Sucre on June 10, in Camiri June 11 and 12, and in Santa Cruz on June 12. It concluded with a press conference held in La Paz on June 13, 2008.

22. In the course of its stay in Bolivia, the Commission met with the following state authorities at the national and departmental levels: the Minister of Foreign Relations and Worship; the Minister of Rural and Agricultural Development and the Environment; the Vice-Minister of Land; the Vice-Minister of Labor, Labor Development, and Cooperatives; the Vice-Minister of Citizen Security; the Vice-Minister of the Presidency; the Vice-Minister of Community Justice; the Vice-Minister of Human Rights; the Vice-Minister of Coordination of Social Movements; the President and other members of the Chamber of Deputies; the Human Rights Ombudsman; the Attorney General; members of the Agrarian Tribunal; the Director of Lands; the National Director of the National Agrarian Reform Institute; the National Director of Citizen Security; the Coordinator of Indigenous Peoples and Registration of the Ministry of Justice; the Mayor of Sucre; the Inter-institutional Committee of Sucre; the Mayor of Camiri; members of the *prefectura* (departmental government) of Santa Cruz; and the presidential representative in Santa Cruz.

23. Meetings were also held with various sectors of organizations of indigenous peoples and civil society, such as the Asamblea del Pueblo Guaraní (APG: Assembly of the Guaraní People), the Consejo de Capitanes Guaraníes de Chuquisaca (CCCH), Capitanías Guaraníes of the Santa Cruz area, Teko Guaraní, Organización Indígena Chiquitana, Confederación de Pueblos Indígenas de Bolivia (CIDOB), Coordinadora de Pueblos Étnicos de Santa Cruz, Federación Sindical Única de Campesinos de Chuquisaca, Confederación Única de Sindicatos Campesinos, Centro de Estudios Jurídicos e Investigación Social (CEJIS), Asamblea de Derechos Humanos de Bolivia, Capítulo Boliviano de Derechos Humanos, Amnesty International, Confederación Sindical de Trabajadores de la Prensa de Bolivia, Pastoral Social Caritas, Centro de Investigación y Promoción del Campesinado (CIPCA), the director of Radio Erbol, Fundación Acción Cultural Loyola, Fundación Tierra, Confederación Sindical Única de Trabajadores Campesinos de Bolivia, and estate owners from Camiri. The delegation also met with representatives of international organizations such as the Office of the United Nations High Commissioner for Human Rights and UNICEF.

24. The delegation also made a visit on June 11, 2008, to the Guaraní indigenous community of Itacuatía, situated in the Alto Parapetí area in the province of Cordillera, department of Santa Cruz. That community is made up of persons who had worked under conditions of bondage and forced labor on a nearby estate. On that occasion, the IACHR met with members of the community and received information and testimony on their prior and current living conditions.

### C. Preparation and approval of the report

25. This report was approved by the Inter-American Commission on August 3, 2009. Pursuant to Article 58(a) of the Commission's Rules of Procedure, this report was transmitted to the Bolivian State on September 17, 2009, with the request that it submit its observations within one month.

26. On October 19, 2009, the Bolivian State requested an extension for submitting the respective observations. The extension was granted and the State's observations were received on November 11, 2009. On December 24, 2009, the Commission approved the publication of this report.

### D. Contemporary forms of slavery nationally, regionally, and internationally

27. The existence of contemporary forms of slavery is not a phenomenon found only in the Bolivian Chaco, but also in other regions of Bolivia, and elsewhere in the Americas and around the globe. According to assessments by the International Labour Organization (ILO): "Today, at least 12.3 million people are victims of forced labour worldwide. Of these, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking. Another 2.5 million are forced to work by the State or by rebel military groups."<sup>12</sup> According to the ILO, the forced labor imposed by private actors is for the purpose of commercial sexual exploitation or economic exploitation. Economic exploitation includes work in servitude, forced domestic work, and forced labor in agriculture and in remote rural areas.<sup>13</sup>

28. Worldwide, the regions with the greatest incidence of forced labor in relation to population are Asia and the Pacific (3 victims per 1,000 population), Latin American and the Caribbean (2.5 victims per 1,000 population), and Sub-Saharan Africa (1 victim per 1,000 population). In Latin America, the predominant form of "forced labour is private-imposed for economic exploitation (75% per cent), followed by State-imposed forced labour (16 per cent), and forced labour for commercial sexual exploitation (9 per cent)."<sup>14</sup> As can be observed, in Latin America as in the rest of the regions of the world, forced labor is used at present in the vast majority of cases by private actors.<sup>15</sup> Moreover, the IACHR observes with concern that worldwide, States also use forced labor. In that regard, the States have a duty to investigate and punish these practices, whether used by private actors or by the States themselves.

29. Discrimination, whether on racial, ethnic, social, or other grounds, is the main factor perpetuating contemporary forms of slavery. Along with this discrimination, poverty also represents a factor that perpetuates such practices. In Latin America, these factors of discrimination

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<sup>12</sup> International Labour Organization, *A Global Alliance against Forced Labour*. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 93<sup>rd</sup> meeting, 2005, para. 37.

According to this ILO report, "Relating this estimate to the current world population, it can be calculated that there are at least two victims of forced labour per thousand inhabitants. In relation to the total world labour force, the minimum estimate corresponds to about four persons per thousand workers. This number is significant but it does not present an insurmountable problem if the will to solve it exists."

<sup>13</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 40.

<sup>14</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 53.

<sup>15</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 63.

and poverty impact above all on indigenous peoples in isolated regions where there is almost no state presence to impede such exploitation. As a result of this situation of poverty and discrimination, the members of the indigenous peoples are “compelled to work, or induced into debt which they or even their descendants find impossible to repay despite very long hours of arduous work.”<sup>16</sup>

30. In the Chaco regions of Bolivia and Paraguay, and in the Amazon jungle in Bolivia and Peru, many indigenous agricultural workers fall into a situation of debt bondage as a result of salary advances that they receive from private labor contracting companies.<sup>17</sup> In the Chaco region of Paraguay, discriminatory treatment has been seen against the indigenous peoples (which includes workers belonging to the Guaraní and Enxet peoples, among others) where they receive a salary lower than that paid to non-indigenous workers, the labor legislation is not enforced, and it is common for the indigenous workers to be paid for months of work with a pair of pants, a shirt, and a pair of boots, and in general the women are not paid anything.<sup>18</sup>

31. In Bolivia one finds forms of bondage and forced labor different from those found in the Bolivian Chaco, particularly in the sugar harvest in the department of Santa Cruz and the extraction of chestnuts in the northern Bolivian Amazon. Each year the sugar harvest “mobilizes ... tens of thousands of indigenous workers and their respective families” to the sugar cane producing regions in the departments of Santa Cruz and Tarija.<sup>19</sup> This activity involves the recruiting system known as “*enganche*,” which consists of some companies in Santa Cruz using intermediary labor contractors to recruit the workers in other regions of the country with a predominantly indigenous population. The intermediary gives cash advances that will be discounted from the worker’s future income.<sup>20</sup> According to a study by the ILO, the *enganche* system leads to a situation of debt bondage and forced labor:

To pay his debt, the farmer who receives an advance has no option other than to work in the place determined by the *enganchador*—in this case, a sugar plantation in the Santa Cruz region. The farmer cannot repay that advance with money, nor can he look for another recruiter who will give him more money, nor is he in a position to seek other employment in Santa Cruz. The *enganche*, therefore, is a system of getting labor that entails the worker’s loss of liberty and it takes place in the absence of a developed labor market or a modern credit market.<sup>21</sup>

32. According to the ILO, in 2003, some 21,000 workers in the cane harvest were subjected to some form of forced labor in Santa Cruz; 15,000 of them were recruited using the *enganche* system and another 6,000 freely took the jobs but were subsequently subordinated to a

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<sup>16</sup> International Labour Organization, *A Global Alliance against Forced Labour*, paras. 132-133.

<sup>17</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 180.

<sup>18</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 182.

<sup>19</sup> Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Office, DECLARATION/WP/41/2004, January 2005, p. 1.

<sup>20</sup> Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Office, p. 1.

<sup>21</sup> Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Office, p. 1.

debt bondage system.<sup>22</sup> It should be noted that in this as in other cases of bondage and forced labor in the rest of the world, there are important differences in the type of exploitation to which the workers are subjected, but in any event as a “result of the debts that they have acquired they have all lost an important measure of liberty.”<sup>23</sup>

33. As evidenced by the study cited, debt bondage and forced labor are practiced in all parts of the world, affecting mainly those sectors of the population that have historically suffered poverty and discrimination. In Latin America, the main victims of this form of exploitation have been the members of indigenous peoples. In Bolivia, indigenous peoples have been subjected to such exploitation not only in the estates in the Chaco, which is the subject of this report, but also in the sugar harvest and in chestnut extraction. While this report refers to the situation of bondage similar to slavery in which the Guaraní indigenous people finds itself in Bolivia, according to studies by the ILO, the Guaraní people are exploited similarly in the Paraguayan Chaco.<sup>24</sup> In addition, the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”), in its judgment in the Case of the Yakye Axa Indigenous Community, verified the critical living conditions to which the community was subjected by the estate owners who occupied their ancestral territory:

Also, the first livestock estate in the area was established at a place known as Alwáta Etkok; it was managed by the Chaco Indian Association, which in turn was managed by the Anglican Church. Said estate was known as The Pass and today it is known as Estancia Maroma. The indigenous people who inhabited these lands were employed on that same estate. The Loma Verde and Ledesma estates were established several years later, and the indigenous people of the area worked on them.

In early 1986, the members of the Yakye Axa Indigenous Community moved to El Estribo due to their very bad living conditions on Estancia Loma Verde, where the men either received no wages or these were very low, the women were sexually exploited by Paraguayan workers, and they did not have enough food or health services.<sup>25</sup>

#### **E. Brief introduction on indigenous peoples in Bolivia**

34. The Commission notes that in Bolivia, the term *campesino* (peasant) has been used commonly to refer to the members of the indigenous peoples both in Bolivian society and in the national legal provisions,<sup>26</sup> which would give the impression that the terms *campesino* and *indígena*

<sup>22</sup> Eduardo Bedoya Garland and Álvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Office, p. 2.

<sup>23</sup> Eduardo Bedoya Garland and Álvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Office, p. 2.

<sup>24</sup> Álvaro Bedoya Silva-Santisteban, *Servidumbre por Deudas y Marginación en el Chaco de Paraguay*, International Labour Organization, DECLARATION 45/2005, July 2005.

<sup>25</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, paras. 50.11 and 50.13.

<sup>26</sup> By way of example, the Law on Agrarian Reform, Decree Law No. 3464 of August 2, 1953, provides in its Article 60: “The peasants of the indigenous community do not recognize any form of obligation of personal services or of in-kind contributions.”

Similarly, the Political Constitution of the State, approved on January 25, 2009, at its Article 60 makes reference to “peasants of the indigenous community”:

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are interchangeable. Nonetheless, the Commission considers it important to clarify that for the purposes of this report, reference will be made to the situation of the indigenous peoples and in particular the Guaraní indigenous people (or “Guaraní people”) in a manner differentiated from the use of the term *campesino*. At the same time, the Commission clarifies that under international law, self-identification is the main criterion for determining the status as indigenous of the members of those peoples, both individually and collectively.<sup>27</sup>

35. Bolivia has proclaimed itself to be a multiethnic and multicultural State (*un Estado multiétnico y pluricultural*),<sup>28</sup> and is constituted by 37 indigenous peoples, the majority of them Quechua, Aymara, Guaraní, Chiquitano, and Mojeño, in descending order in the size of their populations.<sup>29</sup> The indigenous peoples constitute the majority of the population in Bolivia, which is reflected in the last census, done in 2001, which indicates that more than 60% of the national population over the age of 15 is indigenous based on the criterion of self-identification, and of this percentage, 55% of the indigenous population in Bolivia lives in the rural area.<sup>30</sup>

36. Even though they represent the majority of the population, the indigenous peoples in Bolivia historically have remained outside the spheres of political and economic power as a result of the deeply rooted discrimination in the political structures of the Bolivian State and society. In addition, the indigenous peoples are affected by poverty to a disproportionate extent compared to other groups of society. Extreme poverty is three times more prevalent in the country’s rural areas, where most of the indigenous people live, than in the urban areas.<sup>31</sup>

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All of the human collectivity that shares a cultural identity, language, historical tradition, institutions, territoriality, and cosmovision whose existence is prior to the Spanish colonial invasion constitutes a first-nation peasant indigenous nation and people.

<sup>27</sup> ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries provides at Article 1(2) the criteria for applying the term “indigenous” in the following terms: “Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.” In addition, the United Nations Declaration on the Rights of Indigenous Peoples provides in Article 9: “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.” For its part, the Draft American Declaration on the Rights of Indigenous Peoples notes at its Article 1(2): “Self-identification as indigenous peoples will be a fundamental criteria for determining to whom this Declaration applies. The States shall respect the right to such self-identification as indigenous, individually or collectively, in keeping with the practices and institutions of each indigenous people.”

<sup>28</sup> The multiethnic and multicultural nature of the State has been recognized in the 2004 Political Constitution of Bolivia, Law No. 2650:

Article 1: I. Bolivia, free, independent, sovereign, multiethnic, and multicultural, constituted in a Unitary Republic, adopts the democratic, representative, and participatory form of government, based on the union and solidarity of all Bolivians. II. It is a Social and Democratic State under the Rule of Law, which upholds as paramount values of its legal order liberty, equality, and justice.”

<sup>29</sup> See the official website of the National Institute of Statistics of Bolivia. Official population census 2001. Bolivia: Self-identification with native or indigenous peoples of the population 15 years or more, by sex, geographic area, and age group.

<sup>30</sup> See official website of the National Institute of Statistics of Bolivia. Official population census of 2001. Bolivia: Self-identification with native or indigenous peoples of the population 15 years or more, by sex, geographic area, and age group.

<sup>31</sup> According to information published on the official website of the National Institute of Statistics of Bolivia (INE). Bolivia: Indicators of extreme poverty, by geographic area, 1999-2006. The intensity of poverty in the

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37. Bolivia is the poorest country in South America, and ranks as number 117 out of 176 countries in the human development index.<sup>32</sup> According to the 2007-2008 report by the United Nations Development Programme's Human Development Report, in Bolivia, life expectancy at birth is 64.7 years, and illiteracy stands at 13.3%,<sup>33</sup> affecting mostly rural communities and mostly women.<sup>34</sup> In the rural area, there are very few health centers, they are widely scattered, mainly in the provincial capitals, plus they don't have the necessary infrastructure or adequate personnel. The UNDP report indicates that 23% of the population in Bolivia suffers malnutrition, and infant mortality is 52 per 1,000 live births; in the case of children under 5 years, mortality is 65 per 1,000 live births.<sup>35</sup> With respect to the labor situation in Bolivia, of every 100 persons of working age, 29 do not have fixed employment. The minimum wage, as of January 2009, is 647 bolivianos, equivalent to US\$91.50,<sup>36</sup> which means less than 22 bolivianos a day.

38. The Commission recognizes the efforts of the Government to achieve a high percentage of literacy, which culminated in the declaration of a "territory free of illiteracy" by UNESCO on December 20, 2008.

39. In this context of poverty and social inequity, the indigenous peoples in Bolivia have sought to vindicate their civil, political, economic, social, and territorial rights within the various historical and political junctures the country has gone through, particularly over the last 50 years. During the period of the so-called "National Revolution," in 1952 universal suffrage was decreed for all citizens of age, including women and the illiterate.<sup>37</sup> The 1953 Agrarian Reform Law<sup>38</sup> was one of the first legislative measures that recognized the property rights of the indigenous peoples in

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urban area is 12.22%, and in the rural area, 38.22% (the data correspond to 2006) Available at: <http://www.ine.gov.bo/indice/visualizador.aspx?ah=PC3060101.HTM>.

<sup>32</sup> Human Development Report 2007-2008; *Fighting climate change: Human solidarity in a divided world*, published by the United Nations Development Programme (UNDP) New York. 2007. P. 233 available as of December 29, 2007. [http://hdr.undp.org/en/media/HDR\\_20072008\\_SP\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_20072008_SP_Complete.pdf).

The human development index (HDI) is a synthetic measure that combines three dimensions: enjoying a long and healthy life, having education, and having economic resources.

<sup>33</sup> Human Development Report 2007-2008; *Fighting climate change: Human solidarity in a divided world*, p. 241.

<sup>34</sup> In its observations, the State of Bolivia informed the Commission that, by virtue of its National Literacy Program "Yo sí puedo" ("Yes I can"), illiteracy was eradicated in Bolivia, "mainly benefiting 819,417 persons of rural and native populations. This eradication culminated with the declaration in Cochabamba on December 20, 2008, which was certified by UNESCO, recognizing Bolivia as the third territory Free of Illiteracy in Latin America." Observations of the Bolivian State, November 11, 2009.

<sup>35</sup> Human Development Report 2007-2008; *Fighting climate change: Human solidarity in a divided world*, p. 265.

<sup>36</sup> Observations of the Bolivian State, November 11, 2009.

<sup>37</sup> Carlos D. Mesa Gisbert, *Breve historia*, website of the Government of Bolivia. Available at <http://www.bolivia.gov.bo/BOLIVIA/paginas/historia6.htm>.

<sup>38</sup> Law on Agrarian Reform, Law No. 3464 of August 2, 1953.

Bolivia,<sup>39</sup> which had as its purpose to address the situation of unequal land tenure reflected in widespread latifundia.<sup>40</sup> In addition, in 1955, a new education code was issued that made the right to education universal and helped promote the construction of schools in rural areas, where most of the indigenous population lives.<sup>41</sup>

40. In subsequent decades, the indigenous and peasant organizations of Bolivia such as the Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB) and the Confederación de Pueblos Indígenas de Bolivia (CIDOB) have played an important role in the Bolivian political scene that coincides with major normative advances in terms of the recognition of the rights of indigenous peoples nationally. In 1991, Bolivia ratified ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries and in 1994 the Political Constitution of the State was amended so as to recognize, for the first time, the multiethnic and multicultural nature of the nation, the rights to original community lands (Tierras Comunitarias de Origen) of the indigenous peoples as well as the juridical personality of the indigenous communities, whose natural authorities “may perform functions of administration of the enforcement of their own laws and regulations as an alternative for dispute settlement.”<sup>42</sup>

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<sup>39</sup> Law on Agrarian Reform, Law No. 3464 of August 2, 1953.

Article 57.- The indigenous communities are the private owners of the lands that they possess jointly. The family allocations made in the reviews or those recognized by custom within each community constitute family private property.

Article 58.- The properties of the indigenous communities are inalienable, except for those cases that will be established in a special regulation. They have all the rights and obligations indicated for private and cooperative agrarian properties.

<sup>40</sup> Law on Agrarian Reform, Decree-Law No. 3464 of August 2, 1953.

Article 12. The State does not recognize the latifundium, which is the rural landholding of large size, variable depending on its geographic situation, which remains unexploited or deficiently exploited with extensive stock-raising, using antiquated tools and methods that lead to the squandering of the human force or by the receipt of land rent by means of tenant farming (*arrendamiento*), characterized, moreover, in terms of the land use in the inter-Andean zone, by the concessions of *parcelas*, *pegujables*, *sayañas*, *aparcerías*, or other equivalent modalities such that their profitability, due to the imbalance in factors of production, depends fundamentally on the surplus value produced by the peasants in their capacity as serfs or settlers, and which is appropriated by the landowner in the form of labor-rent, defining a feudal regime, which translates into agricultural backwardness and a low standard of living and of education for the peasant population.

<sup>41</sup> Carlos D. Mesa Gisbert, *Breve historia*, website of the Government of Bolivia: <http://www.bolivia.gov.bo/BOLIVIA/paginas/historia6.htm>.

<sup>42</sup> Political Constitution of the State (Constitución Política del Estado), Law No. 1615 of February 6, 1995, Article 1, 171.

Article 1. Bolivia, free, independent, sovereign, multiethnic, and multicultural, constituted in a Unitary Republic, adopts representative and participatory democracy as its form of government, founded on the union and solidarity of all Bolivians.

Article 171. I. The social, economic, and cultural rights of the indigenous peoples who live in the national territory are recognized, respected, and protected in the framework of the law, especially those relating to their community lands of origin, guaranteeing the use and sustainable exploitation of the natural resources, to their identity, values, languages, customs, and institutions.

II. The State recognizes the juridical personality of the indigenous and peasant communities and of the peasant associations and unions.

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41. It should be noted that from 1993 to 1997, the vice-president of Bolivia was Víctor Hugo Cárdenas, the first indigenous person to serve in that post. During that period major strides were made and legislative reforms introduced in the area of indigenous education and political participation. In 1994, the Law on Popular Participation was promulgated to consolidate the “popular participation [of] the peasant and urban indigenous communities in the country’s legal, political, and economic life.”<sup>43</sup> By means of that law, the forms of social organization of the indigenous peoples won legal recognition in the form of Grassroots Territorial Organizations (OTBs: Organizaciones Territoriales de Base),<sup>44</sup> which enable them to administer, manage, and control public services as well as actions related to preserving the environment in their communities.<sup>45</sup>

42. In the area of education, in July 1994, Law 1565 was enacted, recognizing bilingual and intercultural education in the schools in rural areas, and ordering the creation of the Educational Councils of First-Nation Peoples (Consejos Educativos de Pueblos Originarios) that would come to represent each of the indigenous peoples and would participate in the design of education policy so as to favor bilingual and intercultural education.<sup>46</sup>

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III. The natural authorities of the indigenous and peasant communities may perform functions of administration and enforcement of their own norms as alternative dispute resolution, in keeping with their customs and procedures, so long as they are not contrary to this Constitution and the laws....

<sup>43</sup> Law on Popular Participation No. 1551 of April 20, 1994, Article 4. Available at: [http://www.enlared.org.bo/legislacionmunicipal/Archivo/Docs/Leves/Ley\\_1551.pdf](http://www.enlared.org.bo/legislacionmunicipal/Archivo/Docs/Leves/Ley_1551.pdf).

<sup>44</sup> Law on Popular Participation No. 1551, Article 3, which provides as follows:

Article 3 (Grassroots Territorial Organizations and Representation)

I. The Grassroots Territorial Organizations, expressed in the peasant communities, indigenous peoples, and neighborhood boards, organized in keeping with their uses, customs, or statutory provisions, are defined as subjects of Popular Participation.

II. The men and women who are *Capitanes, Jilacatas, Curacas, Mallcus, Secretaries General*, and others, designated in keeping with their uses, customs, and statutory provisions, are recognized as representatives of the Grassroots Territorial Organizations.

<sup>45</sup> Law on Popular Participation No. 1551, Article 7, which provides:

Article 7 (Rights of Grassroots Territorial Organizations)

The Grassroots Territorial Organizations have the following rights:

a. To propose, request, oversee, and supervise the construction of works and the provision of public services in keeping with community needs in the areas of education, health, sports, basic sanitation, micro-irrigation, local roads, and urban and rural development.

b. To participate and promote actions related to the management and preservation of the environment, ecological equilibrium, and sustainable development.

c. To represent and secure the modification of actions, decisions, workers, or services provided by the public organs when contrary to the community interest.

<sup>46</sup> Law No. 1565, Law on Educational Reform, of July 7, 1994.

Article 6 – The mechanisms of Popular Participation in Education are:

5. The Educational Council of First-Nation Peoples which, taking account of the concept of trans-territoriality, shall be national in scope and are organized in: Aymará, Quechua, Guaraní, multiethnic Amazonian, and others. They shall participate in the design of educational policies and shall see to their appropriate implementation, particularly on interculturality and bilingualism.



43. In 1996, after a strong social mobilization of various rural sectors of the country, Law 1715 of October 18, 1996, was enacted. It was known as the "Law on the National Agrarian Reform Service,"<sup>47</sup> and its aim was to deepen the country's first agrarian reform regime. Law 1715 established the National Agrarian Reform Institute, and provided for a process for clearing title and adjudicating title to lands for the purpose of de-concentrating and redistributing the land to address the territorial demands of the indigenous peoples.

44. With the election of the first indigenous president, Juan Evo Morales Ayma, in 2005, there has been a significant increase in initiatives to favor the rights of indigenous peoples. One example is the adoption of the United Nations Declaration on the Rights of Indigenous Peoples as domestic law.<sup>48</sup> In addition, the agrarian legislation has been amended again by Law No. 3545 on Community Redirection of the Agrarian Reform of 2006<sup>49</sup> in response to the inconformity expressed by the indigenous movement with the implementation of Law No. 1715.

45. The current Bolivian Constitution contains major advances in the recognition of the rights of indigenous peoples. It guarantees the right of indigenous peoples to "their self-determination in the context of the unity of the State, which consists of their right to autonomy, self-government, culture, recognition of their institutions, and consolidation of their territorial entities."<sup>50</sup> Significantly, the Constitution also recognizes the indigenous jurisdiction in which the authorities of the indigenous peoples "shall apply their own principles, cultural values, norms, and procedures."<sup>51</sup> In addition, the right to political participation is recognized for indigenous peoples, who, through their organizations, may nominate candidates chosen through their own norms of communitarian democracy for elective office.<sup>52</sup>

46. The special treatment the current Constitution provides in the area of the rights of indigenous peoples in Bolivia and other initiatives, such as the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and Law 3545, represent major initiatives for attaining full observance of the human rights of indigenous peoples. These actions are major points of reference for analyzing the particular situation of the Guaraní people in the Bolivian Chaco and the possible solutions that could be undertaken by the Bolivian State.

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<sup>47</sup> Law No. 1715, Law of October 18, 1996, Law on the National Agrarian Reform Service, available at <http://www.congreso.gov.bo>.

<sup>48</sup> Law No. 3760 of November 7, 2007. It incorporated as domestic statute the 46 articles of the United Nations Declaration on the Rights of Indigenous Peoples, approved at the 62<sup>nd</sup> session of the United Nations (UN) General Assembly, done at New York, September 13, 2007.

<sup>49</sup> Law No. 1715 on the National Agrarian Reform Service, of October 18, 1996, modified by Law No. 3545 on Community Redirection of the Agrarian Reform of November 28, 2006, available at <http://www.congreso.gov.bo>.

<sup>50</sup> 2009 Political Constitution of the State, Article 2.

<sup>51</sup> 2009 Political Constitution of the State, Article 190.

<sup>52</sup> 2009 Political Constitution of the State, Article 209.

### III. INTERNATIONAL LEGAL FRAMEWORK: THE STATE'S OBLIGATIONS TO ERADICATE CONTEMPORARY FORMS OF SLAVERY AND PROTECT THE RIGHTS OF INDIGENOUS PEOPLES

#### A. Definitions

47. In international law, slavery has been understood as the subjugation of one person to another as property. The 1926 Slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” That Convention defines the slave trade as including “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”<sup>53</sup>

48. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 includes the prohibition on debt bondage and serfdom. That Convention obligates the States to abolish completely other similar practices “where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention,” specifically:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status[.]<sup>54</sup>

49. For its part, the Rome Statute establishing the International Criminal Court defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>55</sup>

50. Together with the element of treating the person as property, slavery includes the element of control over a person that results in “a state marked by the loss of free will where a person is forced through violence or the threat of violence to give up the ability to sell freely his or her own labour power.”<sup>56</sup> Accordingly, slavery may have the following three fundamental

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<sup>53</sup> Slavery Convention, signed in Geneva September 25, 1926. Entered into force: March 9, 1927, Article 1. Signed by Bolivia October 6, 1983.

<sup>54</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva, September 7, 1956. Entered into force: April 30, 1957, Article 1.

<sup>55</sup> Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998. Entered into force July 1, 2002. Ratified by Bolivia, June 27, 2002, Article 7(2)(c).

<sup>56</sup> Kevin Bales and Peter T. Robbins, “No one shall be held in slavery or servitude: A critical analysis of international slavery agreements and concepts of slavery,” *Human Rights Review*, 2001, p. 32, cited in, *Report of*  
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dimensions: control by another person, the appropriation of labor power, and the use or threat of use of violence.<sup>57</sup>

51. On analyzing the characteristics of contemporary forms of slavery or practices similar to slavery, one should consider various factors such as: "(i) the degree of restriction of the individual's inherent right to freedom of movement; (ii) the degree of control of the individual's personal belongings; and (iii) the existence of informed consent and a full understanding of the nature of the relationship between the parties."<sup>58</sup>

52. Forced labor is distinguished from the concept of slavery as it does not include the element of ownership; nonetheless, there is a degree of restriction of individual liberty similar to that of slavery, which in some cases may be imposed by the use of violence.<sup>59</sup> Forced or compulsory labor has been defined by ILO Convention 29 on forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>60</sup>

## **B. International Standards**

53. International law, as a fundamental principle, prohibits the practices of slavery, servitude, forced labor, and other practices similar to slavery. The Universal Declaration of Human Rights provides: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."<sup>61</sup> In addition, numerous international conventions to which Bolivia is a party explicitly prohibit these practices.

54. The prohibition on slavery and similar practices is part of customary international law and of *jus cogens*.<sup>62</sup> Protection from slavery is an obligation *erga omnes* that all States are bound

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*the Special Rapporteur on Contemporary forms of Slavery, Including its Causes and Consequences, Gulnara Shahinian*, UN Doc. A/HRC/9/20 (July 28, 2008), para. 9.

<sup>57</sup> *Report of the Special Rapporteur on Contemporary forms of Slavery, Including its Causes and Consequences, Gulnara Shahinian*, UN Doc. A/HRC/9/20 (July 28, 2008), para. 9.

<sup>58</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms* (HR/PUB/02/4), UNHCHR, 2002, para. 21

<sup>59</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms*, para. 38.

<sup>60</sup> ILO Convention 29 on forced or compulsory labor, 1930. Entered into force on May 1, 1932, Article 2(1). Ratified by Bolivia on May 31, 2005.

Excluded from this definition are the kinds of labor related to military duty; to the serving of a sentence handed down by a court; the work required due to conditions of force majeure, such as war, natural disasters, or threats of natural disasters; and the community work done by members of a community that benefit it directly, Article 2(2).

<sup>61</sup> Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly in resolution 217 A (III), of December 10, 1948.

<sup>62</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms* (HR/PUB/02/4), UNHCHR, 2002, para. 6.

to comply with that arises from the provisions of international human rights law.<sup>63</sup> In addition, slavery and forced labor, practiced by public officials or private persons against any person, not only constitute a violation of human rights, but also represent a crime under international law independent of whether a State has ratified the international conventions that prohibit such practices.<sup>64</sup>

### 1. The prohibition on contemporary forms of slavery

55. The American Convention on Human Rights was ratified by Bolivia on June 20, 1979. Article 6 affirms the absolute and non-derogable prohibition on slavery, servitude, and forced labor: “1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labor.” In addition, Article 27(2) of the American Convention establishes that the prohibition on slavery and servitude is one of those fundamental human rights that cannot be suspended by the States in “time of war, public danger, or other emergency that threatens the independence or security of a State Party.”

56. The International Covenant on Civil and Political Rights, ratified by Bolivia on August 12, 1982, provides that no one shall be subjected to slavery, the slave trade, servitude, or forced labor.<sup>65</sup> In addition, the International Covenant on Economic, Social and Cultural Rights, ratified by Bolivia on August 12, 1982, reinforces the provisions against slavery and forced labor on providing for the protection of the right to work freely chosen, with fair and satisfactory working conditions.<sup>66</sup>

57. Under Article 1 of ILO Convention 29, ratified by Bolivia on May 31, 2005, the states parties are obligated “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.” ILO Convention 105 on the abolition of forced labor, ratified by Bolivia on June 11, 1959, also obligates states parties to suppress forced labor and lists other circumstances in which that practice should be prohibited: as a means of political coercion or for expressing political opinions; for economic purposes; as a means of discipline in the workplace; as punishment for participating in strikes; or as a means of racial, social, national, or religious discrimination.<sup>67</sup> Conventions 29 and 105 apply in cases of work or services required by governments, public authorities, private entities, and individuals, and include slavery, servitude, and various forms of child labor.<sup>68</sup>

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<sup>63</sup> Judgment of the International Court of Justice in *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, judgment of February 5, 1971, *I.C.J. Reports*, 1970, para. 34.

<sup>64</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms*, para. 7. See also, *Report of the Special Rapporteur on Contemporary forms of Slavery, Including its Causes and Consequences*, Gulnara Shahinian, UN Doc. A/HRC/9/20 (July 28, 2008), para. 13.

<sup>65</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification, and accession by the United Nations General Assembly in its resolution 2200 A (XXI), December 16, 1966. Entered into force March 23, 1976, Article 8. Ratified by Bolivia on August 12, 1982.

<sup>66</sup> International Covenant on Economic, Social and Cultural Rights, Doc. A/6316 (1966), 993 U.N.T.S., entered into force January 3, 1976, Articles 6, 7. Ratified by Bolivia on August 12, 1982.

<sup>67</sup> ILO Convention 105 on the abolition of forced labor. Entered into force January 17, 1959, Article 1. Ratified by Bolivia on June 11, 1990.

<sup>68</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms*, para. 42.

58. Slavery, bondage, and forced labor often entail violations of other fundamental human rights under the American Convention and other instruments of the universal system of human rights, such as the right of all persons to liberty, not to be subjected to cruel, inhuman, or degrading treatment, freedom of movement, the right of access to justice, freedom of expression, and freedom of association and identity.<sup>69</sup>

59. The prohibition on slavery and forced labor is also reflected in instruments on the rights of the child and child labor. Article 32 of the Convention on the Rights of the Child, ratified by Bolivia on June 26, 2006, obligates the states parties to protect children from economic exploitation and to adopt legislative, social, and educational measures to enforce this right.<sup>70</sup> ILO Convention 182 on the prohibition of the worst forms of child labor, ratified by Bolivia on June 6, 2003, requires the states parties to eliminate “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”<sup>71</sup>

60. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Bolivia on September 22, 1970, provides that the States must eliminate racial discrimination in the enjoyment of fundamental rights, including the right to work, to the free choice of work, and to just and favorable working conditions and pay.<sup>72</sup>

61. ILO Convention 169 on indigenous peoples, ratified by Bolivia in 1991, provides in its Article 20 that the States must adopt special measures to guarantee indigenous workers effective protection in hiring and conditions of employment, and to avoid any discrimination against indigenous workers in relation to access to employment, equal pay for equal work, medical care and social assistance, and the right to association. Those measures should guarantee, *inter alia*, that “workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude.”<sup>73</sup> The states parties are also to establish labor inspection services in the regions where indigenous persons work to ensure implementation of the Convention.<sup>74</sup>

62. The United Nations Declaration on the Rights of Indigenous Peoples, which is Bolivian domestic law, establishes the right of indigenous individuals and peoples to enjoy fully all the rights established in applicable international and domestic labor law and not to be subjected to

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<sup>69</sup> David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms*, paras. 26 and 27.

<sup>70</sup> Convention on the Rights of the Child, adopted and opened for signature and ratification by the General Assembly in its Resolution 44/25, of November 20, 1989, Article 32. Ratified by Bolivia on June 26, 2006.

<sup>71</sup> ILO Convention 182 on the worst forms of child labor. Entered into force in 2000. Ratified by Bolivia on June 6, 2003, Article 3.

<sup>72</sup> International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in its Resolution 2106 A (XX), Article 5. Entered into force: January 4, 1969. Ratified by Bolivia on September 22, 1970.

<sup>73</sup> ILO Convention 169, Article 20(3).

<sup>74</sup> ILO Convention 169, Article 20(4).

discriminatory conditions of work, employment, or wages.<sup>75</sup> With respect to indigenous children, the Declaration provides that the States shall take measures to protect them from economic exploitation and from all work that may be dangerous to their health and development.<sup>76</sup>

**2. The duty to protect the rights of indigenous peoples to collective property and access to justice**

63. The IACHR also considers it relevant to highlight the international provisions regarding property rights and access to justice for indigenous peoples, since the situation faced by the Guaraní people in general and the captive communities in particular requires not only eradicating practices similar to slavery in this case, but also ensuring access to their ancestral territories to be able to develop and enjoy their own social, political, and legal institutions as well as their own vision of integral development.

64. ILO Convention 169 on indigenous peoples establishes that the states parties have the duty to respect “the special importance for the cultures and spiritual values of the peoples concerned [i.e. indigenous peoples] of their relationship with the lands or territories ... and in particular the collective aspects of this relationship” – the term “lands” being understood as the concept of “territories” – which “covers the total environment of the areas which the peoples concerned occupy or otherwise use.”<sup>77</sup> Of special relevance for the Guaraní people, Article 14 of that Convention establishes the duty of States to take measures “to safeguard the right of the [indigenous] peoples ... to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”

65. Article 14 also establishes a duty on States in the following terms: “Adequate procedures shall be established within the national legal system to resolve land claims by [indigenous] peoples...” In addition, Convention 169 provides that the indigenous peoples “shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights.”<sup>78</sup>

66. With respect to access to justice, the United Nations Declaration on the Rights of Indigenous Peoples provides that indigenous peoples have the right to procedures that are “just and fair procedures for the resolution of conflicts and disputes with States or other parties” that lead to prompt decisions that include effective reparations for the injury to their individual and collective rights, taking due consideration of “customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”<sup>79</sup>

67. In relation to the issue of reparations, the United Nations Declaration on the Rights of Indigenous Peoples provides at Article 28 that reparations should be made by means of restitution; and in case the restitution of lands is not possible, there should be “fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or

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<sup>75</sup> United Nations Declaration on the Rights of Indigenous Peoples, approved by the General Assembly on September 13, 2007, Article 17. Incorporated into Bolivia’s domestic law by Law No. 3760 of November 7, 2007.

<sup>76</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 17.

<sup>77</sup> ILO Convention 169, Article 13.

<sup>78</sup> ILO Convention 169, Article 12.

<sup>79</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 40.

otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”<sup>80</sup> It should be noted that in relation to any legislative, administrative, or other measure that affects indigenous peoples, including measures of reparation, States should engage in consultations and should cooperate in good faith with those peoples so as to secure their free, prior, and informed consent.<sup>81</sup>

68. For the captive Guaraní communities, it is important to consider that a possible granting of lands should incorporate the right of indigenous peoples “to the improvement of their economic and social conditions, especially in the areas of education, employment, training, housing, sanitation, health, and social security.”<sup>82</sup> Considering that the members of these Guaraní communities find themselves at a disadvantage since on emerging from their situation of captivity they would not have the resources for addressing all their needs, the State therefore has the obligation to adopt “effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.”<sup>83</sup>

69. In addition, the United Nations Declaration establishes that the indigenous peoples have the right to “determine and develop priorities and strategies for exercising their right to development,” which also includes the right of those peoples “to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”<sup>84</sup>

70. The above-mentioned provisions of international law with respect to the rights of indigenous peoples are also backed by the case law of the inter-American human rights system in the context of its interpretation of the American Convention.

71. With respect to the duty of the State to protect the right to life with respect to the indigenous peoples, the Court has reiterated that “the States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; ... and to protect the right of not being prevented from access to conditions that may guarantee a decent life.”<sup>85</sup>

One of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty

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<sup>80</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article. 28. That article also provides that:

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

<sup>81</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 19.

<sup>82</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 21(1).

<sup>83</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 21(2).

<sup>84</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 23.

<sup>85</sup> I/A Court H.R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 153; *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 161.

to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.<sup>86</sup>

72. The Inter-American Commission and the Inter-American Court have issued rulings in matters related to the right to communal property, the restitution of ancestral lands, the contradictions that may arise between indigenous communal property and individual private property, the right of access to justice, as well as the obligation of the States to ensure a dignified life for the members of indigenous peoples.

73. The Inter-American Court of Human Rights has established that Article 21 of the American Convention (right to property) also protects “the rights of members of the indigenous communities within the framework of communal property,” and recognizes that “[a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community.”<sup>87</sup> The Inter-American Court recognizes: “For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”<sup>88</sup>

74. The possession of land under the custom or “customary law” of the indigenous peoples, according to the Inter-American Court, “should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.”<sup>89</sup> Therefore, the Court has ruled as follows on the right to property of indigenous peoples and the obligation of the States to recognize that right in their domestic legal systems:

... (1) traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title; (2) traditional possession entitles indigenous people to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality. Consequently, possession is not a requisite conditioning the existence of indigenous land restitution rights....<sup>90</sup>

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<sup>86</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 162.

<sup>87</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, paras. 148, 149.

<sup>88</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 149.

<sup>89</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 151.

<sup>90</sup> I/A Court H.R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 128.



75. In those cases in which the restitution of ancestral lands of the indigenous peoples is made difficult by the presence of third parties who have acquired title to or possession of those lands, the guidelines under the provisions and case law of the inter-American system dictate that there may be restrictions on the enjoyment of and right to property if these (a) are established by law; (b) are necessary; (c) are proportional; and (d) are put in place for the purpose of achieving a legitimate objective in a democratic society.<sup>91</sup> The American Convention, at Article 21, provides that a law of a State “may subordinate [the] use and enjoyment [of property] to the interest of society.” The need for such restrictions depends on the imperative public interest sought to be satisfied; and proportionality is “based on the restriction being closely adjusted to the attainment of a legitimate objective, interfering as little as possible with the effective exercise of the restricted right.”<sup>92</sup> In addition, the restrictions on the right to property “must be justified by collective objectives that, because of their importance, clearly prevail over the necessity of full enjoyment of the restricted right.”<sup>93</sup>

76. Therefore, in the context of indigenous peoples, and the contradictions that may arise between the ancestral property claimed and the existence of private property within the area claimed, the Court has established:

... the States must assess, on a case by case basis, the restrictions that would result from recognizing one right over the other. Thus, for example, the States must take into account that indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations. Property of the land ensures that the members of the indigenous communities preserve their cultural heritage.

... Disregarding the ancestral right of the members of the indigenous communities to their territories could affect other basic rights, such as the right to cultural identity and to the very survival of the indigenous communities and their members.

... On the other hand, restriction of the right of private individuals to private property might be necessary to attain the collective objective of preserving cultural identities in a democratic and pluralist society, in the sense given to this by the American Convention; and it could be proportional, if fair compensation is paid to those affected....<sup>94</sup>

77. According to the case law of the inter-American system, the State has the duty to ensure the right to collective property of the indigenous peoples, and with respect to the indigenous

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<sup>91</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 144.

<sup>92</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 145.

<sup>93</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 145; *See (mutatis mutandi) Ricardo Canese v. Paraguay Case*. Judgment of August 31, 2004. Series C No. 111, para. 96; *Herrera Ulloa v. Costa Rica Case*. Judgment of July 2, 2004. Series C No. 107, para. 127.

<sup>94</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, paras. 146-148.

peoples who are not in possession of their ancestral territory, the State should facilitate the restitution of their lands, which may include the impairment of private rights that currently vest in the lands claimed by those peoples. As follows from the case law cited above, private property may be restricted for the sake of a greater collective interest, so long as there is fair compensation for the owner harmed, if he or she has been an innocent third-party buyer to whom that right has been conveyed.

78. The Inter-American Court has established that the right of the indigenous peoples to the recovery of their traditional lands that are not in their full possession persists indefinitely to the extent that there continues to be a cultural, spiritual, ceremonial, or material relationship of the indigenous people with their territory.<sup>95</sup> Nonetheless, as the Court explains, “if the members of the indigenous people carry out few or none of such traditional activities within the lands they have lost, because they have been prevented from doing so for reasons beyond their control, which actually hinder them from keeping up such relationship, such as acts of violence or threats against them, restitution rights shall be deemed to survive until said hindrances disappear.”<sup>96</sup>

79. The case law of the inter-American system has also established that to ensure access to justice for the members of indigenous peoples, the States have the duty to grant effective protection that takes into account their own particularities:

As has been established by this Tribunal [on] other occasions and pursuant [to] the principle of non-discrimination enshrined in Article 1(1) of the American Convention, in order to guarantee the members of indigenous communities access to justice, “it is necessary that the States grant an effective protection taking into account their specific features, economic and social characteristics, as well as their special situation of vulnerability, their common law, values, uses and customs.”<sup>97</sup>

80. Moreover, the Court has highlighted that under Articles 8 (right to a fair trial) and 25 (judicial protection), and in light of the duty to adopt provisions of domestic law pursuant to Article 2 of the American Convention, the State is “obliged to provide for appropriate procedures in its national legal system to process the land claim proceedings of the indigenous peoples with an interest thereon. For such purpose, the generic obligation to respect rights established in Article 1(1) of [the Convention] imposes on the States the duty to ensure an accessible and simple procedure and to provide competent authorities with the technical and material conditions necessary to respond timely to the requests filed in the framework of said procedure.”<sup>98</sup>

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<sup>95</sup> I/A Court H.R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 131.

<sup>96</sup> I/A Court H.R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 132.

<sup>97</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 63; *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 83; and *Saramaka People v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 178; *Case of Tiu Tojin*, Judgment of November 28, 2008. Series C No. 190, para. 96.

<sup>98</sup> I/A Court H.R., *Indigenous Community Sawhoyamaya v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 109.

#### IV. THE GUARANÍ PEOPLE AND THE SITUATION OF THE CAPTIVE COMMUNITIES IN THE BOLIVIAN CHACO

##### A. The Guaraní indigenous people and the Chaco region of Bolivia

81. The Guaraní indigenous people, according to the national census of 2001, is made up of a population of 81,011 persons 15 years and older, 71.7% of whom reside in the department of Santa Cruz, 10.8% in Chuquisaca, 8.4% in Tarija,<sup>99</sup> and the rest in various departments of Bolivia. Most of the Guaraní are found in 16 municipalities of the provinces of Hernando Siles and Luis Calvo in the department of Chuquisaca, the provinces of Gran Chaco and O'Connor in the department of Tarija, and the province of Cordillera in the department of Santa Cruz, which constitute the region known as the Bolivian Chaco, which borders on Argentina and Paraguay. Of all the Guaraní, 56% reside in urban areas and 44% in rural areas. The Guaraní who reside in urban areas are engaged in activities related to the services sector, mainly commerce, whereas those who reside in rural areas are mainly peasant farmers (*campesinos*) or workers on agricultural estates.

82. There are 320 Guaraní communities in the Bolivian Chaco that are organized traditionally in *Capitanías*, which constitute the political structure that represents the interests of the community members. These communities are known as “free communities” in the sense that they are not tied to a certain geographic location since they permanently move among various regions for different reasons, whether due to ecological changes or pressures from estate owners that lead them to exit a given territory. This mobility has been a cultural characteristic of Guaraní families and communities along with other factors such as the merging and fragmentation of groups of Guaraní, the collective and individual movements and the resettlements, as a result of which one can observe that within the Guaraní people there is a continuing process of recomposition.<sup>100</sup> A total of 25 *Capitanías* have been counted in the Bolivian Chaco.<sup>101</sup> The maximum authority is the *Mburuvisa Guasu* (Great Captain), who has a group of advisers, and each community has a *Mburuvisa* (captain), who is assisted by a set of councils and advisers.<sup>102</sup>

83. The Assembly of the Guaraní People (APG: Asamblea del Pueblo Guaraní),<sup>103</sup> created in 1987, is the main representative organization of the Guaraní people and is affiliated with the Confederación de Pueblos Indígenas de Bolivia (CIDOB). The APG and other organizations began a process of territorial reconstitution of the Guaraní “nation” in order to recover their ancestral lands and to be able to develop in keeping with their own view of development, health, and education.<sup>104</sup>

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<sup>99</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Los pueblos indígenas de Bolivia: diagnóstico sociodemográfico a partir del censo del 2001*, July 2005, p. 47.

<sup>100</sup> International Labour Organization, *Enganche y Servidumbre por Deudas en Bolivia*, 2005, p. 50.

<sup>101</sup> *Aipota aiko chepiaguive cheyambae/ Quiero ser libre, sin dueño*, Human Rights Ombudsman, 2006, p. 18.

<sup>102</sup> International Labour Organization, *Enganche y Servidumbre por Deudas en Bolivia*, 2005, p. 50.

<sup>103</sup> The APG, or Asamblea del Pueblo Guaraní (Assembly of the Guaraní People), is an organization whose mission is to press the claims for rights to the territory; it played the role of organizing the Guaraní communities into *capitanías*, *zonas*, and the *concejo de capitanes Guaranies*. The APG is recognized by the government and is affiliated with the Confederación de Pueblos Indígenas de Bolivia (CIDOB). Available at: [www.cidob-bo.org](http://www.cidob-bo.org).

<sup>104</sup> Interview done by Reuters, during the visit of the IACHR, of Wilson Changaray, President of the Asamblea Nacional del Pueblo Guaraní.

84. Economic activity in the Chaco consists mainly of farming and ranching.<sup>105</sup> The Guaraní in the Chaco are engaged mainly in raising corn, beans, cassava, plantain, and citrus fruits, and if allowed by the ranchers they can do some hunting and fishing.<sup>106</sup> Subsistence agriculture prevails in the indigenous and peasant sector, yet this becomes difficult, as with the Guaraní of the province of Cordillera, where the land available is less than one arable hectare per inhabitant.<sup>107</sup> As for the captive communities, a miniscule plot of arable land that the estate owner assigns as he pleases may correspond to each family; usually these are the poorest quality lands.<sup>108</sup>

85. It should be noted that in the Chaco region there has been an upswing in economic activity related to the production of hydrocarbons, since it is the region that has the largest hydrocarbon reserves in Bolivia. Tarija has the largest national reserves, 85.7% and 84.4% of natural gas and crude oil, respectively; Santa Cruz has 10.6% of the natural gas and 7.2% of the oil; and Chuquisaca has eight exploration areas, and its reserves are equivalent to 1.3% of Bolivia's natural gas and 0.7% of the oil in the country.<sup>109</sup> These reserves are of special interest for the groups that hold political and economic power in the region, and are a motive of conflict in the region.

86. The Chaco is a region marked by great socioeconomic inequalities, where the extreme poverty affecting the indigenous peoples and the rural population generally is apparent. The poverty rate in the region is 76.48%, according to the 2001 census data. Nonetheless, in rural municipalities such as Huacaya, the percentage of the population affected by poverty is 97.8%, in contrast with the records of cities such as Camiri or Yacuiba, where the poverty rates are 31.2% and 48.7%, respectively.<sup>110</sup>

87. The Guaraní people were able to resist Spanish colonization, and it was not until the republican era, and in particular after the battle of Kuruyuki in 1892,<sup>111</sup> that the Guaraní began to be dispossessed of their ancestral territories. It was precisely at the end of the 19<sup>th</sup> century that large latifundia were established in the Bolivian Chaco with the forced insertion of Guaraní families and

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<sup>105</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, territorio, libertad*. Fundación Tierra, 2005, p. 49.

<sup>106</sup> *Pueblos Indígenas de Bolivia: Guaraní; economía y actividades productivas*. Available at: [http://www.amazonia.bo/economia\\_p.php?id\\_contenido=31](http://www.amazonia.bo/economia_p.php?id_contenido=31).

<sup>107</sup> Capitanía Guaraní del Alto Parapeti, Ministry of Justice – Vice Ministry of Community Justice, Project on Indigenous Peoples and Empowerment, Swiss Red Cross, *Comunidades Cautivas del Alto Parapeti: Diagnóstico demográfico, tenencia de tierra y relaciones laborales*, 2007, p. 23.

<sup>108</sup> Capitanía Guaraní del Alto Parapeti, Ministry of Justice – Vice Ministry of Community Justice, Project on Indigenous Peoples and Empowerment, Swiss Red Cross, *Comunidades Cautivas del Alto Parapeti: Diagnóstico demográfico, tenencia de tierra y relaciones laborales*, 2007, p. 23.

<sup>109</sup> Bolivian Chamber of Hydrocarbons, *Hidrocarburos en Bolivia*. Available at: <http://www.cbh.org.bo/es/index.php?cat=36&pla=5>.

<sup>110</sup> Data taken from the official website of the National Statistics Institute – Social and Economic Policy Analysis Unit (UDAPE), Social Statistics, Poverty. Statistics and Poverty Indicators by Municipal Section 2001. Available at: <http://www.ine.gov.bo/indice/visualizador.aspx?ah=PC3060209.HTM>.

<sup>111</sup> On January 28, 1892, in Kuyuruki, located some 60 kilometers from the current city of Camiri, 5,000 Guaraní who were defending their lands with bows and arrows were massacred by the republican army of Bolivia. Neither the Inca empire nor the Spanish empire had been able to vanquish the Guaraní people. (Ruth Llanos. Presencia, Reportajes, 16/1/94). Available at: [http://www.redtercermundo.org.uy/revista\\_del\\_sur/texto\\_completo.php?id=1050](http://www.redtercermundo.org.uy/revista_del_sur/texto_completo.php?id=1050).

communities as laborers on these estates in conditions of semi-slavery.<sup>112</sup> Throughout the 20<sup>th</sup> century, the Bolivian State encouraged this system of domination as it granted large expanses of lands in the Chaco to families associated with the regional political elites.<sup>113</sup> As a result of these actions, there is a model of latifundium characterized by a high concentration of land, scant investment in animal husbandry and farming technologies, the priority use of a non-remunerated labor force, and the paternalistic relationship between estate owners and laborers.<sup>114</sup>

88. The agrarian reform of the 1950s did not bring the same benefits to the Guaraní people in the Chaco as to the indigenous peoples in the Andean region of Bolivia. In effect, that reform, in some respects, strengthened the economic and political power of the estate owners of the Chaco, who had strong ties to the government parties.<sup>115</sup> The dictatorial governments gave free title to those estate owners who had ties with them in the 1970s, contributing to the consolidation of latifundia in the region. Accordingly, the latifundium model continued to exist in the Chaco along with the use of forced Guaraní labor.<sup>116</sup>

89. The Guaraní were forced to submit to the conditions imposed on them because they had no access to their own territory affording the possibility of providing for their own sustenance. This situation facilitated the exercise of control by the estate owners over the Guaraní laborers, resulting in a situation of total dependence and discriminatory treatment.<sup>117</sup> It should be

<sup>112</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, February 2008, pp. 4, 6. Available at: [http://www.bancotematico.org/archivos/documentos/familias\\_guarani\\_empatronadas\\_analisis\[1\].pdf](http://www.bancotematico.org/archivos/documentos/familias_guarani_empatronadas_analisis[1].pdf).

See also, Washington Estellano, *Indígenas se organizan para reclamar sus derechos*, Revista del Sur, No. 77, March 1998:

"In Kuruyuqui we were thousands, according to the grandparents, but the survivors dispersed to Argentina or to the uplands," according to Juan Tejerina, 51 years old, Capitán Ivo of the Province of Cordillera. Women, children, and adults were distributed or sold in houses and estates of "honorable persons" and neighbors. It was the first great defeat of the Guaraní people and it marks the beginning of 100 years of silence and disbandment and subjugation of thousands of Guaraní on the estates in conditions of semi-slavery. Citing Ruth Llanos. Presencia, Reportajes, 16/1/94. Available at: [http://www.redtercermundo.org.uy/revista\\_del\\_sur/texto\\_completo.php?id=1050](http://www.redtercermundo.org.uy/revista_del_sur/texto_completo.php?id=1050).

<sup>113</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 6.

<sup>114</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 4.

<sup>115</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra Territorio y Libertad*, February 2005, p. 75. Publication of Fundación Tierra available at: <http://www.ftierra.org>.

<sup>116</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 6.

<sup>117</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra Territorio y Libertad*, February 2005, p. 76. For example:

The Guaraní of Chuquisaca did not have any option other than to live in debt bondage on small plots or die. This cruel reality was handled as a discourse of the dominant elites for the total domination of the Guaraní. The bosses were even capable of doing away with the cultural self-esteem of the Guaraní indigenous people, introducing in their subconscious concepts undervaluing themselves as lazy, vice-ridden (alcoholic, coca consumers), incapable of surviving without the boss.

noted that such labor dependence, while maintained in essence, has taken different forms over time. In particular, in response to different crises in agriculture, many Guaraní had to abandon the estates and continued working on a temporary basis or receiving merchandise as payment.<sup>118</sup>

90. At present, it is estimated that approximately 600 families of the Guaraní indigenous people are still living in conditions of captivity and forced labor on the various estates of the Chaco.<sup>119</sup> The State refers to this situation as relations of “*servidumbre, servidumbres o empatronamiento*”<sup>120</sup> (bondage, servitude, or debt bondage) and to the persons affected as *familias*

<sup>118</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 7.

<sup>119</sup> There is a major disparity in the figures. There is talk of at least 600 Guaraní families based on the following summary of figures taken from: *Informe. Aipota aiko chepiaguive cheyambae. Quiero ser libre, sin dueño. Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. Office of the Human Rights Ombudsman. Ministry of Justice, program on Indigenous Peoples and Empowerment. Consejo de Capitanes Guaraníes de Chuquisaca (CCCH) Monteagudo-Bolivia. First edition: April 2006. Pp. 18-23. The figures that have been verified in recent years are: in 1996 the CCCH counted, for the provinces of Hernando Siles and Luis Calvo in the department of Chuquisaca, 106 estates and 773 captive families; in 1999 the CCCH counted 121 estates and 578 captive families that corresponded to 3,179 persons in all, as well as 61 settlements of landless Guaraní tenant farmers that correspond to 372 families; the newspaper *Presencia* of November 16 and 23, 1999, estimated a total of 7,000 Guaraní in conditions of labor exploitation in the four provinces of the departments of Santa Cruz (Cordillera), Tarija (Gran Chaco), and Chuquisaca (Hernando Siles and Luis Calvo); in 2001 it was determined that practically all the persons over 6 years of age who speak Guaraní in the whole department of Chuquisaca are found in the two provinces mentioned; in 2003 the final consulting report “*Procesos de Empoderamiento en el Área de Trabajo de la Oficina de Derechos Humanos de Monteagudo*” speaks of 63 Guaraní communities in Chuquisaca with a total of 1,060 families and 4,600 persons, i.e., approximately 9,900, of which 275 families are captive, all in the two provinces; in December 2003 the CCCH published the report “*Situación de la Vida de las Comunidades Guaraníes en el Departamento de Chuquisaca*,” which records a total of 11,227 free Guaraní in 67 communities of the 9 zones of the Chaco region in Chuquisaca, as well as 942 persons in debt bondage on 39 estates located in the same provinces; in March 2004 the International Labour Organization (ILO) published the report “*El Régimen de Servidumbre en las Comunidades Cautivas Guaraníes y Haciendas del Chaco Boliviano*,” in which it was determined that there are 5,100 to 7,200 Guaraní in the departments of Santa Cruz, Tarija, and Chuquisaca who still live in captivity or in conditions of forced labor, based on questionable criteria; in July 2005 the Ministry of Sustainable Development, through the Vice-Ministry of Lands, published a document called “*Proyecto para la liberación de las familias y comunidades cautivas Guaraníes*,” which notes that in Chuquisaca there are 449 captive families in the region of the Alto Parapetí and 200 families in the zone of Huacareta, department of Chuquisaca.

<sup>120</sup> The Human Rights Ombudsman of Bolivia defines the following terms:

Servitude, or bondage, is understood as free personal service and compulsory labor under coercion that originate in debts acquired using deceitful procedures, fraud, and other deceptive practices. It is characterized by the establishment of labor relations of forced labor and non-transparent systems of indebtedness, which are part of the relationship of servitude.

Semi-slavery is the obligation to work for a person until paying off the accumulated debt, which in many cases is inherited by the children. Slavery is represented by servitude, labor exploitation, and coercive labor. Its principal characteristic, we understand, is the loss of freedom and the transmission of the debt from generation to generation.

The concept of bondage is analogous to that of semi-slavery, encompassing the idea of subjugation to the will, of the employer, which accords the worker the status of a thing; it does not always presuppose the physical deprivation of liberty, and even less of movement.

The system of servitude and debt bondage is characterized by the overexploitation of the family labor power, indebtedness (through the “advance” or provision of foodstuffs,

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"*hacendadas*."<sup>121</sup> These families or "captive communities," as they are also known, have lost their land and their association with the other communities, thereby losing their own forms of social, economic, and cultural organization, which has resulted in the destructuring of their identity. Those families are on estates located in the municipalities of Huacareta and Muyupampa in the department of Chuquisaca, as well as in the jurisdiction that corresponds to the Capitanía of the Alto Parapetí, in the municipalities of Cuevo and Lagunillas, department of Santa Cruz, as well as in the provinces of Gran Chaco and O'Connor in Tarija.<sup>122</sup>

91. According to a study, there are different models of estates in the Chaco. Some rely exclusively on Guaraní labor in conditions of servitude, others combine the use of servitude with the labor of seasonal laborers, and still others use only a salaried work force.<sup>123</sup>

92. In the last 20 years several Guaraní communities have been reestablished and taken shape that are considered free because they are not on lands of private estates. Nonetheless, many of their members have to go back to work as laborers on the estates, to be able to survive in the face of the scant production on the small plots known as "*chacos*," where the corn is barely enough to eat poorly for half the year.<sup>124</sup>

93. In addition, the IACHR was able to verify the existence of Guaraní communities such as Itacuatía in Alto Parapetí that have settled on an estate but are made up of Guaraní who left other estates or were expelled by the employers. Those communities operate as a territory in a given area on the estate, in some cases awaiting recognition by the State.

#### **B. Working and living conditions of the captive communities**

94. In the Chaco region, one observes that the captive communities live in conditions characterized, in general terms, by the excessive physical labor to which their members are subjected; they are Guaraní indigenous persons of all ages and conditions, including boys, girls, adolescents, older adults, and persons with disabilities. They live under the threat of corporal punishment and frequently must work to satisfy debts that the estate owners force them to contract in an irregular and fraudulent fashion. This situation results in relations of vertical domination, in some cases paternalistic, in which the Guaraní workers exist subject to the will of the boss.

95. The number of workers varies with the size of the estates and their forms of production. A report by the ILO notes that on large cattle ranches, such as Chiriguanía-Chuquisaqueña, which extends over more than 2,500 hectares, approximately 100 Guaraní families work, and in some extreme cases 300 families, while in the provinces of the Cordillera in Santa Cruz,

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...continuation

clothes, or other goods) and in-kind remuneration for the time and work performed that does not cover or remunerate the effort made. Human Rights Ombudsman, Resolution of the Office of the Human Rights Ombudsman No. RD/SCR/2/2005/DH, November 21, 2005.

<sup>121</sup> The Guaraní families that belong to an estate (*hacienda*) are called *familias hacendadas*. Report of the Human Rights Ombudsman 2005.

<sup>122</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 7.

<sup>123</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 7.

<sup>124</sup> Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo. *Situación de las Comunidades Guaraní en Bolivia. Resumen del Diagnóstico 1998-2001*.

the figure is less than 30, and there are even some estates on which one finds only two or three families.<sup>125</sup>

96. The type of work done is defined by roles historically assigned to women and men based on gender stereotypes. The women mainly do kitchen work and must take food to the men at work, generally walking several kilometers. They also perform other work such as shelling peanuts, combing wool, cleaning the estates, caring for the small livestock, and laundering clothes.<sup>126</sup> The men on the estates are engaged in farming, animal husbandry, or caring for the boss's cattle.<sup>127</sup>

97. The work days are generally more than 12 hours a day, and in many cases they are assigned to perform a specific task that must be finished that same work day, which is normally impossible.<sup>128</sup> A Guaraní man in the community of Itacuatía narrated the following: "When I was a boy, I got up to work at 3 in the morning, because before that was the time the bell tolled to go to work at that hour."<sup>129</sup> According to a Guaraní woman who was subjected to these conditions, they had to work from 6 in the morning until nightfall, even when they were ill, and were always paid two bolivianos for their work.<sup>130</sup> Testimony by other persons confirmed that the payment they received was practically negligible or they received no payment at all, and the treatment they received was degrading:

The work that we are doing, at times they don't pay us for it, or they don't pay us well, and they treat us like animals. They tell us that we are animals but they give the animals 5 hectares per head of cattle.... There are laws for the cows, but there are no laws for us.<sup>131</sup>

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<sup>125</sup> International Labour Organization, *Enganche y Servidumbre por deuda en Bolivia*, 2005, p. 49. The report notes that the difference in the number of workers on the estates lies in the fact that on the estates in Chuquisaca the cattle are kept with the corn crop planted on the same cattle ranch, whereas in the province of Cordillera, the cattle graze in the bush and only require workers for the subsidiary activities.

<sup>126</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, p. 46.

<sup>127</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, p. 54.

Guaraní men are also engaged in hunting and fishing for their own subsistence. They plant crops if they have some land. Nonetheless, they don't actually have much time to cover these subsistence activities. Some Guaraní have small plots that the boss gives them on loan, and others possess their own land but it is insufficient or of poor quality. *Id.*

<sup>128</sup> Ministry of Labor, *Comunidades Cautivas y familias Guaraníes en Situación de Empatronamiento, Servidumbre, Trabajo Forzoso y Formas Análogas: 2007-2008 Inter-Ministerial Plan*, p. 4.

<sup>129</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>130</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008:

... [I worked] from 6 in the morning until nightfall every day, sometimes we'd get sick but they don't believe us.... When I began to work I earned 2 bolivianos, that's what has never changed to date.

<sup>131</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.



98. The Guaraní are allowed to work a small plot of land on the estate, on which they can plant crops or keep very few smaller animals. According to the testimony received, this plot is usually arid and hardly fertile. After completing the work day established for them by the boss, the Guaraní continue working on small plots so as to eke out a minimal subsistence based on what they are able to grow.

99. The Guaraní in bondage are subjected to the limited exercise of their political rights, scant integration with the regional economy, and physical violence.<sup>132</sup> The Guaraní families do not have access to formal education outside of the relations of bondage, and run the risk of gradually losing their traditions such as their own forms of economic reproduction and their own cultural elements. They live under constant threat, which forces them to continue working on the boss's estate, as evidenced in the following account in which the Guaraní workers were even afraid to speak with the IACHR:

Those of us brothers and sisters who are here are afraid to speak before this Commission and tell the truth, we have to speak always what we are feeling.... For years we have suffered due to the work, in the early morning, in the afternoon, sometimes at night. We don't know what Sunday is.... They don't even allow us to have a party.... I know very well from what year I went to work as a laborer on the estate, I began when I was seven years old ... to feed the pigs, and then there wasn't a single day of rest. When I would not leave my house early to go to work I was lashed, for that reason I am afraid to speak, now I am going to tell the truth so this Commission finds out the truth. We do not have liberty, we do not have justice, we cannot produce like these owners produce. A while ago I showed you, all the good lands have been fenced in – and we have been removed to a piece of land that is not fertile, that's why I have come to speak.<sup>133</sup>

100. What the Guaraní are given in exchange for the work they perform on the estates is in kind and/or minimal sums of money, which range from 10 to 15 bolivianos for men and less than half that for women. This remuneration, in addition to repudiating applicable labor laws and being perceived as a consequence of the long work days, in no way covers the workers' basic subsistence needs. The estate owner is the provider of food, clothing, medicines, coca leaf, and even alcohol at prices that are excessively higher than the market price. As a result of the insufficient remuneration, a situation is created of permanent and successive indebtedness to the estate owners. A Guaraní woman explained to the IACHR that she began to work for an estate owner when she was 15 years old, and her sole payment was in the form of clothes:

... at that time I don't know if he paid me or not. At that time he simply gave me.... Once a year, he would give us clothes and ... we never knew money or coin. At that time ... we hadn't even seen the face of bills or coins.<sup>134</sup>

101. The situation of indebtedness is generated by the registry the bosses have of their workers in a notebook in which they note their name, the activities they perform, the advances given in kind or in cash in payment for the work done. This notebook is the only document for making the "arrangements" that are made, and in almost all cases the workers end up owing the boss. This

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<sup>132</sup> *Familias guaraní empatronadas: análisis de la conflictividad*, German Technical Cooperation Service, p. 7.

<sup>133</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>134</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

generates obligations of future work, a situation that may become lifelong and that may even be passed down from one generation to the next. For that reason, many Guaraní recount that they were born on that estate where they now have children and grandchildren, constituting a small community. There have even been cases in which the owners and bosses of estates transfer personnel with debts, deciding on persons' liberty. Thus, the buyer pays the debt to the previous owner and the workers continue to owe it to the new one.<sup>135</sup> The same Guaraní woman mentioned above recounts:

I am from the community of Itacuatía. I was born there, I have always lived there. My father was from Villa Mercedes... in my youth, I also worked with my grandparents for the boss – then they brought me.... I have always worked, I have worked since I was 15 years old, but with different bosses.... I have worked many years as a slave....<sup>136</sup>

102. In other testimony taken by the IACHR, a Guaraní man recounted that when he worked for an estate owner "he [the boss] told me, your father was here and he buried my father, and he told me you'll stay here until you bury me. And so it was, when the boss died recently, that I was able to leave the estate."<sup>137</sup> Another Guaraní man explained to the IACHR: "For us it is modern slavery, because there is a historic debt ... the children cannot go because they have to pay [the] account left by the mother or father.... The families that are on [the estates] have no right to leave freely to seek work elsewhere. And if a Guaraní insists on going to work on another estate, this boss generally sells him to a neighbor."<sup>138</sup>

103. The situation of bondage and forced labor is maintained by the conditions of poverty and scant education in which the majority of the members of the Guaraní people live in the region, as a result of the living and working conditions imposed by the estate owners. In the rural Chaco more than 90% of the population is living in poverty in most of the Guaraní communities. Over 55% of the Guaraní are illiterate; of these, 60% are women and 40% men; and of the Guaraní who live on estates, nearly 80% are illiterate, 70% of them women and 30% men.<sup>139</sup> Infant mortality in the provinces with Guaraní population is alarming: Santa Cruz, 78 per 1,000 live births; Chuquisaca, 98 per 1,000; and Tarija, 74 per 1,000.<sup>140</sup>

104. On creating and maintaining this situation of poverty and illiteracy, the estate owners establish the working conditions: hours of work, pay for day worked, form of payment for debts acquired, the frequency of the arrangements, how advances are administered, and the type of

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<sup>135</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, p. 47.

<sup>136</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>137</sup> Testimony received by the IACHR during meeting with leaders of the Asamblea para el Pueblo Guaraní, June 12, 2008.

<sup>138</sup> Testimony of Justo Molina, received by the IACHR during meeting with leaders of the Asamblea para el Pueblo Guaraní, June 12, 2008.

<sup>139</sup> Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo. *Situación de las Comunidades Guaraní en Bolivia. Resumen del Diagnóstico 1998-2001*.

<sup>140</sup> Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo. *Situación de las Comunidades Guaraní en Bolivia. Resumen del Diagnóstico 1998-2001*.

work to be done, among others.<sup>141</sup> The following testimony is from a man interviewed by the IACHR during its working visit who explained: "There is no education from birth. Therefore many of us are illiterate, that's why we continue to sign with our thumb. We want to protest, there is nowhere to turn, and they treat us like animals, that's why we're living here."<sup>142</sup>

105. The Guaraní families in this situation live in absolute misery and their living conditions are precarious and inhuman. They generally live in huts whose conditions are insalubrious and generally inadequate for a dignified life. These huts are located in marginal areas of the estates and where the land is not productive. The huts have a single room in an area no greater than 20 m<sup>2</sup> that includes a sort of bed on which all the members of a family sleep. Their belongings are in the open air, and the kitchen is made up of stones set on the ground that hold the receptacles.<sup>143</sup>

106. During its visits in 2006 and 2008, the Commission learned of and even received testimony related to events involving the physical abuse of Guaraní by "*huasqueadas*" (lashings), burning of their crops, and killing of their animals as punishment for "disobedience." In the words of a Guaraní man in Itacuatía, "they deal with us with sticks and whips ... they have always known how to whip him, they abused him. These acts of violence have always existed."<sup>144</sup>

107. The estate owners with whom the IACHR met denied the present-day existence of a relationship of servitude with the Guaraní families on their estates. Some alleged that there was servitude in the past, but that at present the situation is in line with the law. In this regard, the prosecutor (Fiscal de Materia) assigned to the province of Cordillera told the IACHR:

In the wake of this problem they [the estate owners] are legalizing the labor contract. In these cases the contract was oral, and in the wake of this problem they are drawing up written contracts and left it that they were going to get them to me. For one of the conditions for losing one's property is not having a regular labor situation, so they're rushing to regularize now.<sup>145</sup>

108. The estate owners argue that the labor relationship does not constitute servitude because they pay in kind, such as food, clothes, and services. In addition, the IACHR received information from estate owners who indicated that there is a collaborative relationship between them and the Guaraní families in the context of economic difficulties that are affecting the whole country, especially the Chaco region. For example, the president of the Asociación de Ganaderos y de

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<sup>141</sup> Documentary. "*Quiero ser libre, sin dueño*". *Pueblos Indígenas y empadronamiento*. 32 minutes, 8 seconds. Office of the Human Rights Ombudsman. Ministry of Presidency. Vice-Ministry of Justice. *Pueblos Indígenas y Empoderamiento*. Testimony of estate owners.

<sup>142</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>143</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empadronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, pp. 52 and 53.

<sup>144</sup> Testimony received by the IACHR during visit to Itacuatía, June 11, 2008.

<sup>145</sup> Information received at the meeting of the IACHR at the Office of the Attorney General of Bolivia, Sucre, June 10, 2008.

Hacendados del Alto Parapetí (Association of Ranchers and Estate Owners of the Alto Parapetí) told the IACHR:

The government is not reaching all sectors as it should. The ranching sector, the productive sector, tries to live and is living with its poverty. We are not saying that the Guaraní are slaves. But there is a symbiotic relationship between work and survival. We continue drinking water from the area where the animals go and defecate, that is where we ranchers draw water, and the Guaraní as well. The abandonment of the State affects us all, us ranchers as well as the Guaraní.<sup>146</sup>

109. Based on these perspectives, the estate owners do not perceive the situation as a regime prohibited by the Constitution, but as a labor relationship with obligations performed and agreements between parties that are periodically cancelled and renewed.<sup>147</sup>

110. The Guaraní are stereotyped as “lazy” people who “don’t have any initiative for anything” and that one must “goad” them to get them to work.<sup>148</sup> According to the account by a Guaraní man from the community of Itacuatía:

[the bosses] say that there is no slavery, they want to see us tied up ... with the horse ahead taking us ... that is what their fathers knew how to do before, but now the children say that no.... It’s a lie that they [too] live [and] work as we do.... A lie that people work only eight hours and that they pay 25 pesos, that’s just what they say [*eso es solo nombre*].<sup>149</sup>

111. The IACHR has also been informed that the estate owners have used their position of power to attempt to diminish the work that members of the Guaraní people have been doing to end the situation of servitude that affects them. According to the information received, this has been evidenced in offers of lands and money by estate owners and members of regional civic committees to the Guaraní who agree to abandon the Asamblea del Pueblo Guaraní (APG) and to create parallel organizations.<sup>150</sup> According to testimony received by the IACHR from community members from Itacuatía: “The powerful ones came from Santa Cruz ... they came as if we were hens, provoking divisions in the community.”<sup>151</sup> As explained in another testimony, “The Comité Cívico de Santa Cruz has organized a secretariat of indigenous peoples, and so they are no longer from the CIDOB [Confederación de Pueblos Indígenas de Bolivia], [other Guaraní] are going to that committee.”<sup>152</sup> Such measures are taken by the estate owners with a view to undermining any type

<sup>146</sup> Testimony received by the IACHR in meeting with rancher and farmer leaders of the area, held at the Office of the Mayor of Camiri, June 12, 2008.

<sup>147</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, para. 260.

<sup>148</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Democracy in Bolivia*, para. 263. Testimony in documentary “*Quiero ser libre sin dueño*.” 32 minutes 8 seconds. Prepared by the Human Rights Ombudsman, Ministry of the Presidency, and Vice-Ministry of Community Justice - Indigenous Peoples and Empowerment.

<sup>149</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>150</sup> Information received by the IACHR during meeting with the director of the nongovernmental organization Empoder, June 8, 2008.

<sup>151</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>152</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

of independent organization of the Guaraní. In another testimony received by the IACHR in Itacuatía, a Guaraní said: “We had a mobilization on February 28, the organization arrived from Santa Cruz, and divisionism began ... it’s not good for the organization, we were 14 families, and now just six. We’re divided now.... The boss doesn’t like us coming to the organization.”<sup>153</sup>

112. Some estate owners indicated that the Guaraní families are free to leave their estates and that this in fact has happened many times in recent years. The IACHR received information from Guaraní that this in effect has occurred, but that there have also been expulsions. In recent testimony taken by the IACHR in Itacuatía, a Guaraní man indicated: “Before I worked on that estate; since we joined the organization, they threw us out. I worked there until last year. I always participate, they threw us out because we’re with the organization and they don’t like that, that’s why we left” the estate. Another Guaraní man said: “Those of us who are with the organization, each and every one of us was rejected, not a one of those who are with the APG can work.”<sup>154</sup>

113. According to several sources, many Guaraní have been expelled by the estate owners as a result of the process of clearing title undertaken in their respective zones, and in reprisal for their participation in the activities of the APG. The Commission received other testimony that indicates that the situation of the expelled Guaraní is very precarious due to the fact that they have nowhere to live and nowhere to farm the minimum to ensure their subsistence.

114. Expelled Guaraní families have reached free communities established in previous years and decades on lands purchased for that purpose by the Church and some NGOs. This has provoked a problem of overpopulation and food scarcity that has even led some communities to make the decision not to receive more Guaraní families.

115. Another type of situation is that experienced by those Guaraní who have ended their relationship of servitude to the boss but who still remain in a delimited sector within the estates because they lack their own land on which to establish themselves. As a form of subsistence these communities maintain incipient crops, generally located at great distances from where they live, and have some animals, such as pigs and hens, despite not having an appropriate place to raise them. “What we plant is not enough. The pigs are enclosed because if they go out they poison them or they chase them away,” a Guaraní woman told the IACHR. Not having their own demarcated and titled territory means that their crops and animals are subject to appropriation by third parties. A Guaraní woman from Itacuatía told the IACHR:

We continue suffering as you see. We do not live with peace of mind, we do not have land ... to produce to be able to eat, only a tiny garden for planting some little thing. But that cannot supply us for many days; now we don’t have anything....<sup>155</sup>

116. According to information collected by the IACHR during the visit, such situations have been on the rise in recent years. This is likely due to the fact that when the program to clear title to the lands was first implemented some bosses had put an end to the relationship of servitude with some Guaraní, while in other cases it was the Guaraní who decided to do so. It has also been reported that some Guaraní families who proposed their desire to leave the estate or to end the

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<sup>153</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>154</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>155</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

relationship of bondage with their boss were told in response that in order to leave they first had to pay the “debt” they were said to have contracted with him for food, clothes, and services.<sup>156</sup>

117. The situation described resulted in many Guaraní families dividing, with some members living in free territories and others on estates. A Guaraní woman explained to the IACHR that she was expelled from the estate by the boss for having attended a meeting of the APG:

I worked from six in the morning until nightfall every day of the week, and I had one free week each year. When I got sick I still had to work just the same, because they don't believe us when we get sick. They would pay me 10 and at times 12 bolivianos per day.... I left to go to the meeting [of the APG] and he [the boss] thinks that at that meeting I had gone to speak against him. He threw me out of the estate and now my husband works with the boss, and doesn't want to be with me anymore. They now pay him 20 bolivianos per day, since one month ago. Before they paid him 15. I am living with my son in the community of Yaití, my son is 19 years old.<sup>157</sup>

118. The IACHR observes that the situation of systematic violation of human rights in the Bolivian Chaco is the result of the almost total absence of the national State in the region. The lack of institutional capacity is reflected in the lack of labor enforcement staff, such as labor inspectors, labor prosecutors, and judges, which generates an erroneous perception that the situation is “normal.” It is imperative that the State urgently adopt the measures needed to ensure that the Guaraní people have access to a dignified life free of servitude. In this respect, the IACHR takes note of the state initiatives designed to overcome this situation, such as the 2007-2009 Transitory Inter-Ministerial Plan for the Guaraní People.<sup>158</sup>

### C. Situation of women and children in the captive communities

119. The Commission considers that the rights of Guaraní women and children in the captive communities are especially vulnerable, as they have no protection whatsoever, and are entirely at the will of the boss or estate owner.

120. The women perform “domestic” work on the estates and work in activities such as shelling peanuts and combing wool, and suffer discrimination because they receive less than half the wage received by a man, which in reality is a nominal payment in both cases because it is not made in cash, but rather is only registered in the notebook in which the boss keeps the accounts. Many women work more than 12 hours a day, some as of 4 a.m., every day of the week throughout the year, without any weekly rest or holidays.<sup>159</sup> The IACHR received testimony from several persons indicating that many of them are subject to abuse, humiliation, and physical and psychological violence meted out by their bosses. One woman from the community of Itacuatía reported: “... they pay us an herb, five kilos of sugar, and one bar of soap every six days ... [for workdays that went] from

<sup>156</sup> Information received by the IACHR during a meeting with the director of the nongovernmental organization Empoder, June 8, 2008.

<sup>157</sup> Testimony received during the visit of the IACHR to Itacuatía, June 11, 2008.

<sup>158</sup> Observations of the Bolivian State, November 11, 2009.

<sup>159</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, pp. 46-48.

3 in the morning until 6 or 7 at night, six days a week.”<sup>160</sup> The following testimony, by another Guaraní woman, describes her prior experience as a captive person as well as her current situation off the estate:

When I was just becoming a young woman, I began to work as a cook and to I made *chicha*, food. In the *fondo* [a kind of large pot], in a frying pan they made me cook, when there are a lot.... [On the estates of] Ibilleca and also at Yabapoa, I cooked for all the laborers. I would start at 4 in the morning, I would bring this much corn to make the *chicha* and the food [she gestures showing a height above the knee], and then I would harvest peanuts.

[I received as payment]... one peso per *lata* of corn harvested. In a day some 5 *latas*, perhaps 8 *latas* per day I would make. For cooking, they would give me five kilos of sugar per week, and a small package of *yerba mate*, less than a half kilo.

Now we only have corn and beans to eat. The animals that I had, I don't have them anymore because the owners of the estate don't like me to have animals. The fields are far away, an hour from here.<sup>161</sup>

121. During that visit, the Commission also obtained information and verified the existence of child labor and exploitation in the Alto Parapetí, which are prohibited by domestic statute and international treaties ratified by the Bolivian State. Guaraní children and adolescents, depending on their age, work in exchange for food, shelter, or schooling. If the children are of school age some can attend school, yet in the afternoon they work alongside their parents performing certain tasks.<sup>162</sup> Guaraní adolescents have to contribute to the family work performing daily tasks entailed in caring for the smaller animals or crops. The boys and girls must help out in the preparation of food and carrying water to the “*casa grande*” (owner's house) from the nearby river.

122. A Guaraní man from the community of Itacuatía gave the following testimony on his experience as a young man:

They didn't allow us to go to school, they told us why are you going to study, you have to work. Due to the bosses, we haven't been able to learn, and education would have been very important.... I carried stones and water to build this school, when I was a little boy, nonetheless we haven't studied here, they didn't let us. That's why we haven't studied well, and that's why, I say, one must tell the truth.<sup>163</sup>

123. The Commission found that in the Alto Parapetí education is imparted by the boss, who in some cases is paid by the State. The Public Ministry informed the IACHR as follows: “The estate owners themselves have built schools for them. The municipal government is almost absent in

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<sup>160</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>161</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>162</sup> Ministry of Justice, Human Rights Ombudsman, Consejo de Capitanes Guaraníes de Chuquisaca, *Aipota Aiko chepiaguive cheyambe (Quiero ser libre, sin dueño), Servidumbre y Empatronamiento en el Chaco: La desprotección y ausencia del Estado como la indefensión, la explotación laboral y el trabajo sin dignidad de las familias cautivas guaraníes en el departamento de Chuquisaca*. April 2006, p. 49.

<sup>163</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

the area, there is no infrastructure. The children only go up to fifth grade.”<sup>164</sup> The schools bear the name of the boss, are situated on his estate, and do not offer bilingual instruction. The boys and girls of the captive communities who are born and grow up on the estates are “educated” during their childhood and adolescence in a process of penetrating and rigorous conditioning that places emphasis on their subordinate status, carefully indicating to them their roles of servitude and their social position, with a series of beliefs, norms, and rules of conduct that shore up the operation of the estate. These processes are part of the learning and domestication of the young people to ensure perpetration of the estate as a structure of dependence and exploitation.<sup>165</sup>

#### D. Access to land and conflictiveness in the Bolivian Chaco

124. As described above, the situation of bondage and forced labor in the Bolivian Chaco has its roots in the history of territorial dispossession, violence, and discrimination against the Guaraní indigenous people and its members. In the Chaco region, and in Bolivia in general, there is great inequality in the land tenure, which is the main motive of social and political conflict. According to publicly known figures, nationally 70% of the land belongs to just 7% of the population,<sup>166</sup> which means that the indigenous and *campesino* peoples in general do not have enough land for their own sustenance. In the Guaraní territory (or Community Land of Origin, Tierra Comunitaria de Origen or “TCO”) of the Alto Parapetí in Santa Cruz, non-indigenous third parties hold most of the lands. According to INRA estimates, of a total of 98,875 hectares in the Alto Parapetí, 14 properties categorized as enterprises account for 52% of the land; 28 medium properties account for 34.6% of the land, and 40 small properties add up to 7.8% of the land.<sup>167</sup>

125. The implementation of a state policy geared to greater recognition of the rights of indigenous peoples and a better redistribution of lands to roll back a historical injustice, as well as the implementation of initiatives to resolve the situation of servitude and forced labor in the Chaco, has mobilized numerous sectors of the country and generated a conflictive social and political scenario. The Commission observes that in the eastern region of Bolivia, where the captive Guaraní communities are found, this sociopolitical scenario has become more complex in the context of demands for autonomy.

126. The most recent conflictive situation in the Chaco has occurred as the result of the efforts of the Guaraní to reconstitute their territory through the procedure of clearing title provided for by the agrarian laws. In 1996, the Asociación del Pueblo Guaraní (APG) demanded a total

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<sup>164</sup> Information received in meeting with the Public Ministry of Bolivia held in Sucre, June 10, 2008.

<sup>165</sup> Kevin Healy, (1987) 3<sup>rd</sup> edition, *Caciques y Patronos*, Editorial CERES, p. 134. Cochabamba, Bolivia, 1987.

<sup>166</sup> Committee on Economic, Social and Cultural Rights. Concluding observations/comments. Bolivia. E/C.12/BOL/CO/2. May 16, 2008. Para. 23. To see figures that are further broken down by region see: United Nations Special Rapporteur on the Right to Food, Jean Ziegler. Report on Mission to Bolivia, A/HCR/7/5/Add.2. January 30, 2008. Para. 14. Citing: Of the 8 million hectares classified as arable, only 2.5 million are currently being cultivated. World Bank, 2007; FAO, *Perfiles nutricionales por países: Bolivia*, (2001). The global Gini coefficient corresponding to disparities in land tenure was 0.768 in 1989 (Klasen et al., 2004); World Bank, “Bolivia, hacia un nuevo contrato social: opciones para la Asamblea Constituyente” (2006). Available at <http://go.worldbank.org/HLCQOGBTM0>.

<sup>167</sup> Figures from the National Agrarian Reform Institute (INRA) cited in Vice-Ministry of Lands, *La Lucha por la Tierra y la libertad en el Alto Parapetí*, November 26, 2008, p. 5. Available at: [http://www.bancotematico.org/archivos/primerMano/archivos/alto\\_parapeti.pdf](http://www.bancotematico.org/archivos/primerMano/archivos/alto_parapeti.pdf).



area of 10,385,945 hectares, which represented 81.3% of the Bolivian Chaco.<sup>168</sup> That demand claimed to address several problems related to the high concentration of third-party private owners, the need to oversee the procedure of redistributing lands to prevent fraud and to seek sufficient territory to benefit 80,000 Guaraní.<sup>169</sup>

127. The Commission observes that the conflict related to access to land, the political influence exercised by the estate owners in the zone, and the incidents of violence that have accompanied the process of clearing title have been serious obstacles to responding to the demands of the Guaraní people.

128. In this respect, the Commission has observed with concern the violent events brought about by estate owners against the process of clearing title carried out on behalf of the Guaraní people. The estate owners and ranchers in the zone, armed and organized in "defense committees," have carried out actions to impede the entry of agrarian authorities, thus paralyzing the work of clearing title.<sup>170</sup> On February 28, 2008, estate owners who are members of a federation of ranchers organized a march of approximately 100 persons to the city of Camiri and violently expelled INRA staff who were present to begin the process of clearing title for the TCO of Alto Parapetí.<sup>171</sup> The next day, a group of 25 armed men at the command of local estate owners kidnapped and threatened a commission made up of the Vice-Minister of Lands, INRA staff, and the president of the Asamblea del Pueblo Guaraní (APG), who were present in the Alto Parapetí zone to supervise the beginning of the clearing of title for the TCO.<sup>172</sup> The estate owners intimidated the authorities with their deployment of arms and shot at the tires of the vehicles being used by the special commission.<sup>173</sup>

129. According to the information received by the IACHR during its working visit, as well as information available in the media, on April 4, 2008, another violent incident occurred against state officials who entered the Alto Parapetí area at the request of the APG to perform certain tasks relating to the clearing of title. That day, in the locality of Ipati, approximately 80 kilometers from the city of Camiri, the Vice-Minister of Lands, 40 government employees, 36 police agents, and approximately 50 Guaraní indigenous persons were attacked with stones, petards, and bullets by ranchers and estate owners with ties to the political and business elite in Santa Cruz.<sup>174</sup> According to

<sup>168</sup> Ismael Guzmán et al., *Saneamiento de la tierra en seis regiones de Bolivia 1996-2007*, Publication of the Centro de Investigación y Promoción del Campesinado, 2008, p. 103.

<sup>169</sup> Ismael Guzmán et al., *Saneamiento de la tierra en seis regiones de Bolivia 1996-2007*, p. 103.

<sup>170</sup> See, "Noticia: Bolivia: hacendado norteamericano arma grupos de choque," Choike.org, a portal on civil society of the South, April 7, 2008. Available at: <http://www.choike.org/nuevo/informes/6169.html>.

<sup>171</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 2.

<sup>172</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 2.

<sup>173</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 2.

<sup>174</sup> Information received by the IACHR, June 2008; see also, "Noticia: Bolivia: hacendado norteamericano arma grupos de choque," Choike.org, a portal on civil society of the South, April 7, 2008. Available at: <http://www.choike.org/nuevo/informes/6169.html>.

the information received, the police resorted to the use of tear gas to control the aggressive acts and then had to go to Camiri to forestall larger-scale confrontations.<sup>175</sup>

130. In addition, information was received on what happened in Camiri on April 10, 2008, where the Minister of Rural and Agricultural Development and the Environment called a meeting for building consensus among the parties to the process of clearing title, yet the ranchers and estate owners did not turn out. That night, 300 persons under the command of the estate owners and ranchers along with members of the Unión Juvenil Cruceñista surrounded the hotel where the Minister and Vice-Minister of Lands were staying and threatened to “remove them by blows” if they did not leave the city immediately.<sup>176</sup> The hotel was under siege for 10 hours, racist threats and insults were proffered, and local mayors also participated in the demonstration; they reiterated the ultimatum to the authorities and refused to engage in any dialogue.<sup>177</sup>

131. On April 13, 2008, an official commission headed up by the Vice-Minister of Lands together with a group of Guaraní were on their way to the community of Itacuatía to meet with Guaraní community members for the purpose of reporting on the status of the process of clearing title when they were ambushed near the locality of Cuevo by armed persons under the command of ranchers and estate owners in the zone.<sup>178</sup> The armed persons made threats, fired their weapons into the air, and stoned and beat with sticks the Guaraní women, men, and children present, resulting in a total of 43 persons injured, 11 with serious injuries. On that occasion, as a result of the acts of violence, approximately 11 persons were reported to have sought refuge; initially their whereabouts were unknown.<sup>179</sup>

132. The Commission learned during its visit that the Guaraní lawyer who was part of the above-mentioned delegation was beaten unconscious with sticks and belts, his feet and hands were bound, and he was taken to the public plaza in Cuevo, where he was lashed, and then tied to a

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<sup>175</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 2.

<sup>176</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 3.

<sup>177</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 3.

<sup>178</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 3.

According to the information provided, the official commission was not accompanied by members of the army or police, and did not bear arms, just like the Guaraní present. The Guaraní community members who awaited the delegation were isolated and had no foodstuffs due to the blockade of the access roads to the community and from Cuevo by the ranchers.

<sup>179</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, p. 3.

The Vice-Minister of Lands was not wounded in this incident; however, the National Director and six technical personnel from the INRA did suffer wounds.

post where he remained for two hours and continued to be subjected to physical punishment.<sup>180</sup> During that time, the attorney was subjected to racial insults, and told that due to his activities he would be educated by "*cinturonazos*" (lashings of the belt).<sup>181</sup> The attorney identified one of the local estate owners as the person responsible for his lashings and for having headed up the organizations that committed those attacks."<sup>182</sup> In the lawyer's own words:

I was captive for two-and-a-half hours ... the mayor herself was there. I told the commander of that division to move me for my security, and the commander told me, "I'm waiting for orders from the mayor and from the authority from the Comité Cívico" for my release.<sup>183</sup>

133. During the events of that same day, a Guaraní journalist who was accompanying the delegation was removed from the vehicle in which she was travelling, bound by her feet and hands, beaten with stones all about her body, and tied to a post in the public plaza of Cuevo, where she remained in the rain while her assailants molested and threatened her with sexual violence.<sup>184</sup> According to the journalist's complaints, she was then taken to a hotel and locked up, and was held incommunicado for 24 hours. The mayor of Cuevo said in statements to Bolivian television that she had locked up the journalist in the hotel for her own safety, and that "she must have been treated well, and she was in a hotel and not in a prison cell."<sup>185</sup>

134. In testimony before the IACHR, the journalist said that since the events described above, she had received threats and feared for her safety and her daughter's safety:

I have a three-year-old daughter and I don't have any assurances for my safety or hers, just because of the support I have given. My whole life I lived in Guaraní communities and I have given support working as a journalist, and this has led me to be attacked. I accompanied the delegation because I know the people and I thought I could get footage for a documentary, because I am a journalist and they

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<sup>180</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 3; Information and testimony received by the IACHR during a meeting with the Minister of Rural and Agricultural Development and the Environment, the Vice-Minister of Lands, and the Director of Lands, June 9, 2008.

<sup>181</sup> Information and testimony received by the IACHR during a meeting with the Minister of Rural and Agricultural Development and the Environment, the Vice-Minister of Lands, and the Director of Lands, June 9, 2008.

<sup>182</sup> Information and testimony received by the IACHR during a meeting with the Minister of Rural and Agricultural Development and the Environment, the Vice-Minister of Lands, and the Director of Lands, June 9, 2008; see also "*Cordilleranos exigen retirada de Almaraz y marchan por la tierra*," *El Deber*, April 16, 2008.

<sup>183</sup> Testimony received by the IACHR in a meeting held in Camiri on June 12, 2008.

<sup>184</sup> Ministry of Rural and Agricultural Development and the Environment, Preliminary report presented by the Vice-Minister of Lands to the Inter-American Commission on Human Rights in the case of the attacks suffered by the Guaraní people, June 2008, p. 3; Information and testimony received by the IACHR during meeting with the Minister of Rural and Agricultural Development and the Environment, the Vice-Minister of Lands, and the Director of Lands, June 9, 2008.

<sup>185</sup> Information and testimony received by the IACHR during meeting with the Minister of Rural and Agricultural Development and the Environment, the Vice-Minister of Lands, and the Director of Lands, June 9, 2008; see also "*Cordilleranos exigen retirada de Almaraz y marchan por la tierra*," *El Deber*, April 16, 2008.

know me and they're not going to be afraid to talk to me. And we need to show the rest of the country that there are captive communities. But they told me I was a MAS supporter, that I worked for the government, and they attacked me. They threaten me by telephone. I can't walk down the street alone, because I don't feel safe. I have lodged complaints, I have gone to La Paz to file all those complaints but there's no response. My life changed completely, I don't have work and I am afraid for my family. There are no assurances for me.<sup>186</sup>

135. The Commission learned that on November 25, 2008, the Vice-Minister of Lands headed up a commission with the presence of members of the police to return to the Alto Parapetí to begin the work of clearing title on the estates of Caraparacito, Buena Vista, and Huaraca.<sup>187</sup> According to available information, officers of the law were used to enter the Caraparacito estate and in that process firearms belonging to the estate owners were seized.<sup>188</sup> The Vice-Minister justified the use of the police due to the acts of violence that occurred in April 2008.<sup>189</sup> The media also reported that the estate owners denounced the INRA for alleged abuses committed by state officials and police during the operation.<sup>190</sup>

136. With respect to these events, the IACHR observed with concern the acts of racism and violence that accompany these actions, whose objective is to impede the implementation of the policies aimed at clearing title and to benefit the indigenous peoples. The Commission reminds the State that it is its duty to investigate, prosecute, and punish the persons responsible for these acts of violence, in the framework of the law and respect for human rights. In addition, despite the ensuing conflictiveness, it is a duty of the State to resolve the situation faced by the Guaraní people in terms of their claim for their ancestral territory and the need for the families and communities belonging to this people to have sufficient territory for their reproduction in social, cultural, economic, political, and legal terms.

#### **E. Access to justice for members of the Guaraní people**

137. The Commission considers worrisome the information received during its working and observation visit with respect to the lack of access to justice for the members of the Guaraní indigenous people, and, in particular, the shortcomings of the legal system that stand in the way of justice being done in cases having to do with the captive communities in the Bolivian Chaco. It is observed that despite slavery or a condition similar to slavery being a crime defined as such in the

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<sup>186</sup> Testimony received by the IACHR in meeting held in Camiri, June 12, 2008.

<sup>187</sup> "Los hacendados denuncian al INRA," La Razón, November 26, 2008. Available at: [http://www.la-razon.com/versiones/20081126\\_006468/nota\\_250\\_718244.htm](http://www.la-razon.com/versiones/20081126_006468/nota_250_718244.htm).

<sup>188</sup> "Los hacendados denuncian al INRA," La Razón, November 26 2008. Available at: [http://www.la-razon.com/versiones/20081126\\_006468/nota\\_250\\_718244.htm](http://www.la-razon.com/versiones/20081126_006468/nota_250_718244.htm). See also, "Empresarios creen que uso de la fuerza pública inviabiliza saneamiento de tierras," Agencia Boliviana de Información, November 25, 2008. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20081125202520&l=200811210007](http://abi.bo/index.php?i=noticias_texto_paleta&j=20081125202520&l=200811210007).

<sup>189</sup> "Empresarios creen que uso de la fuerza pública inviabiliza saneamiento de tierras," Agencia Boliviana de Información, November 25, 2008. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20081125202520&l=200811210007](http://abi.bo/index.php?i=noticias_texto_paleta&j=20081125202520&l=200811210007).

<sup>190</sup> "Los hacendados denuncian al INRA," La Razón, November 26, 2008. Available at: [http://www.la-razon.com/versiones/20081126\\_006468/nota\\_250\\_718244.htm](http://www.la-razon.com/versiones/20081126_006468/nota_250_718244.htm). See also, "Empresarios creen que uso de la fuerza pública inviabiliza saneamiento de tierras," Agencia Boliviana de Información, November 25, 2008. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20081125202520&l=200811210007](http://abi.bo/index.php?i=noticias_texto_paleta&j=20081125202520&l=200811210007).

Criminal Code,<sup>191</sup> despite the situation of the captive communities being widely known, despite a decree having been issued by the Executive,<sup>192</sup> and despite the Human Rights Ombudsman (Defensor del Pueblo) of Bolivia having issued resolutions<sup>193</sup> urging various government institutions of the State to resolve the matter, sufficient and effective actions have yet to be taken to prosecute and punish the persons responsible for these criminal acts in the criminal courts.

138. The resolution of the Human Rights Ombudsman of November 21, 2005, confirms the information received by the Commission relating to the almost total absence of state institutions to safeguard the human rights of the Guaraní people. The lack of state institutions, together with their lack of knowledge of their rights as a consequence of their captivity, results in the members of the Guaraní captive communities being in a situation of greater defenselessness and vulnerability than other sectors of the population in the Bolivian Chaco.<sup>194</sup> The absence of labor and judicial authorities in the region means that the estate owners do not feel supervised or monitored, which enables them to continue their criminal activities in a framework of supposed “normalcy.”<sup>195</sup> The above-mentioned resolution by the Human Rights Ombudsman urged the Vice-Ministry of Justice to offer legal assistance for the legal actions needed by the captive families and communities and to coordinate with other state institutions to facilitate their right of access to justice.<sup>196</sup>

139. As noted above, the conditions faced by the Guaraní captive communities in the Bolivian Chaco are not isolated events in the world context; rather, they also exist elsewhere in places where there are practices similar to slavery. The International Labour Organization (ILO) has found that internationally, and in Latin America in particular, the weak presence of the State and the situation of discrimination, poverty, and marginality affecting indigenous peoples in isolated areas generate conditions propitious for the continuation of practices of servitude and forced labor. The IACHR believes it is important to note that in addition to such conditions, there are also other barriers

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<sup>191</sup> Bolivian Criminal Code, Decree-Law No. 10426 of August 23, 1972, Article 291.

Article 291 – (reduction to slavery or a similar condition): One who reduces a person to slavery or a similar condition shall be punished by deprivation of liberty of two to eight years.

<sup>192</sup> Supreme Decree No. 28159 of May 17, 2005.

<sup>193</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/00002/DII of November 21, 2005.

<sup>194</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/00002/DII, p. 6.

<sup>195</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/00002/DII, p. 7:

... the absence of the State in the region is expressed in:

- The lack of authorities competent in labor matters: labor inspectors and labor judges, and the assignment of personnel in different public institutions. As this vacuum exists, the employers do not feel that they are overseen by the competent authority and, therefore, their illegal activities can unfold in a context of supposed “normalcy,” in the face of the impotence and lack of access to justice in equal conditions for the victims, who, given their legal defenselessness, end up negotiating their rights or simply fail to exercise them.

<sup>196</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/00002/DII, p. 13:

The Vice-Ministry of Justice [is urged],

... to order legal assistance by government-paid attorneys to handle the complaints required by the captive families and communities of the Bolivian Chaco. In addition, to promote coordination with other state agencies to see to it that the right of access to justice is afforded with impartiality, independence, and timeliness by the competent authorities.

that the indigenous peoples face as they attempt to gain access to national justice systems, such as the lack of knowledge by indigenous persons of the official language used by the courts and the lack of interpreters of indigenous languages in the courts. As the ILO states:

A weak state presence, together with low investment in educational services and other facilities (not to mention culturally biased curricula) means that, with poor literacy and numeracy, they are usually ill equipped to deal with outsiders, who can easily deceive them into debt bondage. Another important source of indigenous vulnerability is the lack of official identity documents, rendering them “invisible” to national authorities, and making it virtually impossible for them to denounce forced labour abuse and seek remedial action.<sup>197</sup>

140. In the Chaco region, as well as other regions where there are conditions of bondage and forced labor, the state institutions in charge of enforcing labor laws lack sufficient technical and economic support, which contributes to the fragility of these institutions and the susceptibility to state employees not performing their functions with due diligence and impartiality. As regards the Santa Cruz zone, where sugar is harvested by the use of servitude, a study by the ILO on the specific situation of Bolivia has found: “Institutionally, the Bolivian State is relatively fragile and, in economic terms in the Andean region, is one of those with the most meager economic and human resources.... This is clearly observed in the Ministry of Labor’s inspectors’ offices in charge of supervising and seeing to enforcement of the labor laws ... [where] there are no immediate resources for installing the state agencies that recruit labor during the previous periods of the zafra (sugar harvest)....”<sup>198</sup>

141. With respect to the case of the Chaco, the weakness of state institutions is added to the political influence that has been exercised by the local and regional power groups. The ILO study notes for example that in Monteagudo, an area where bondage has been found to exist, “the powerful people of that place have succeeded in inserting themselves in various offices and institutions of the State, imposing their conditions and demands ... the local landowners have public functions and many are simultaneously estate owners and the political authorities of the place (deputy-governor, presidents of civic committees, mayors, etc.); some have even become national authorities.... [Consequently] the current institutional weakness of the national State has made possible the development of local *caciquismo*. In that sense, forced labor in the Chaco is not only an economic phenomenon, but is also markedly political and social, as the estate owners are an important part of a complex and hermetic local power network.”<sup>199</sup>

142. The weak presence of the State, the fragility of its institutions, and the political influence brought to bear by the estate owners in the Chaco region were verified by the Commission during its visit to Bolivia and in its meetings with officials of the State and with persons who have been subject to conditions of servitude. The Commission observes with concern that those factors have limited the effectiveness of the action of institutions such as the Public Ministry – an entity that includes the Attorney General of the Republic and the relevant regional prosecutors – in charge of

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<sup>197</sup> International Labour Organization, *A Global Alliance against Forced Labour*. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 93<sup>rd</sup> meeting, 2005, para. 181.

<sup>198</sup> Eduardo Bedoya Garland and Álvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, International Labour Organization, DECLARATION/WP/41/2004, January 2005, p. 17.

<sup>199</sup> Eduardo Bedoya Garland and Álvaro Bedoya Silva-Santisteban, *Enganche y Servidumbre por Deudas en Bolivia*, p. 58.

“bringing criminal actions, on their own initiative, whenever they learn of a punishable act and there are sufficient factual elements to verify that it was committed.”<sup>200</sup>

143. During the meeting with the Public Ministry of Bolivia, the IACHR was informed that there are only two prosecutors in the city of Camiri, which is the jurisdiction that corresponds to the Alto Parapetí. In addition, it was informed that on April 14, 2008, a prosecutor from Camiri began an investigation on his own initiative for the purpose of investigating whether there were captive families, considering what was being publicly reported by some sectors.

144. Regarding the steps taken, the Commission was informed by the prosecutor in charge of the investigation that the staff of the Public Ministry went, together with “the brigade from Santa Cruz, who are mostly opposition legislators,” and that the estate owners voluntarily agreed to the visit: “It was all voluntary, we entered with their consent. We even stayed to sleep at some estates there.”<sup>201</sup>

145. The prosecutor reported that there was a tour of 10 estates that were identified by the Asamblea del Pueblo Guaraní as places where there were captive families, and that: “All uniformly indicated that they are paid a wage, that they receive 12 monthly wages per year, and that they receive the year-end bonus, that they have vacation,” although later on he stated: “On the best estates they have indicated to us that the workers receive a wage.”<sup>202</sup>

146. In response to the question from the Commission as to the possibility of the persons interviewed having been fearful of making statements to a person who arrived in the company of the political leaders of the opposition and agrarian leaders, the Public Ministry answered:

We had our own vehicle and we have gone to the places we considered advisable, not where the legislators said; we were independent and we interviewed the people separately.<sup>203</sup>

147. In addition, the IACHR received the testimony from a Guaraní *capitán* with respect to the investigative steps taken by the Public Ministry, who stated that the legislators who were part of the investigative commission did not allow the Guaraní workers to speak with the public officials, and that the legislators were the ones who stated that there were no conditions of servitude.<sup>204</sup>

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<sup>200</sup> Law No. 2175, Organic Law of the Public Ministry, Articles 6 and 44. According to this law, the Attorney General of the Republic may “designate one or more prosecutors to proceed in a given matter ... to form teams that work together or directly assume the conduct of a case.” In addition, the Attorney General has the authority to “Contract specialized advisers for specific cases as well as to request the directors or managers of public entities to commission an official to cooperate in the investigation of a specific case,” Law No. 2175, Article 36.

<sup>201</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>202</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>203</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>204</sup> Information received during the interview with members of the community of Itacuatía, June 11, 2008. Testimony of the captain (*capitán*) of the Guaraní community of Yaiti.

According to the captain: “the deputies... wouldn’t let [the Guaraní] speak, only the deputies could speak, and they said there’s no slavery, there’s no captive, now we’re all afraid to speak because the bosses find out about everything and I have told [the investigative commission] that there is slavery, because they forcibly take us to work.”

148. The Public Ministry also told the IACHR of the need to perform more investigations in the field in other parts of the Chaco, because up to that time it was not possible to affirm conclusively whether there is or is not a situation of servitude in the part of the Chaco corresponding to Santa Cruz.

149. The IACHR was also informed of other difficulties that the Public Ministry faces when it comes to performing the functions assigned by the national legislation. It was indicated that the Public Ministry, on not considering that it is its function to seek out criminal activity, should first carry out field investigations once it comes to learn there is a situation such as the presence of captive communities.<sup>205</sup> Carrying out such an investigation requires the participation of the national police, which serves as expert investigator. Nonetheless, the Public Ministry confirmed for the IACHR that the presence of the police in the provinces and districts of Santa Cruz is almost null.<sup>206</sup> The scant police presence, therefore, makes it difficult to carry out the investigations the prosecutors need in the zone, which, as the Public Ministry explained, are necessary before taking a case to trial.<sup>207</sup>

150. The Public Ministry also reported that its capacity to act on its own initiative and pursue criminal proceedings in relation to the matter of the captive communities is limited by the lack of any formal complaint lodged with the Public Ministry by the Human Rights Ombudsman, the Vice-Minister of Lands, the Asamblea del Pueblo Guaraní, or any other organization, indigenous people, group, or entity. Therefore, at the institutional level for the Public Ministry, the situation of bondage and forced labor is not a confirmed fact.

151. The IACHR was also informed by the Public Ministry that there has been no progress in the investigation into the acts of violence perpetrated against members of the Guaraní people during the violent events caused by sectors of estate owners against the process of clearing title. For example, there has been no progress in the investigation into the events that occurred in Cuevo on April 13, 2008, in which a male attorney and a female Guaraní journalist were attacked. The IACHR considers that the Public Ministry should make progress in the investigation and punish those responsible for such acts of violence; otherwise, a climate of racism and impunity will be fostered that impedes access to justice for the members of the indigenous peoples for the violation of their human rights.

152. The Commission considers it relevant to mention also the role of the National Agrarian Tribunal, which according to legislation has the function, through the various chambers that constitute it, of resolving cases related to the implementation of the agrarian laws, which includes ruling on regular motions to reconsider final judgments in the oral agrarian proceedings, and to take cognizance of the contentious-administrative proceedings related to agrarian, forestry, and water matters.<sup>208</sup> Regarding the process of clearing title in the Chaco, representatives of this Tribunal explained to the IACHR that the Tribunal does not define agrarian policy, but rather reviews the acts of the National Agrarian Reform Institute (INRA) for legality.<sup>209</sup>

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<sup>205</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>206</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>207</sup> Information received by the IACHR in a meeting with the Public Ministry of Bolivia, June 10, 2008.

<sup>208</sup> Law No. 3545, Article 34-36. This Court is made up of 10 members (including its president) who are divided into three chambers, made up of three members each. The president only participates when the court sits *en banc*, Article 34.

<sup>209</sup> Information received by the IACHR in a meeting with the National Agrarian Tribunal of Bolivia, June 10, 2008.



153. The representatives of this Tribunal indicated that they do not have jurisdiction to hear cases on bondage, and could only take up such a case if it is related to a case on agrarian property rights.<sup>210</sup> Therefore, the Tribunal cannot hear cases that allege only the crime of practices similar to slavery, for it is a criminal matter under the jurisdiction of the Office of the Attorney General. Nonetheless, they indicate that the issue of bondage has arisen in the case of two resolutions on reversion handed down as part of the process of clearing title ordered by the agrarian legislation in the province of Hernando Siles on two estates where the existence of bondage was found, and whose owners have filed a challenge before the Agrarian Tribunal.

154. According to what was reported to the IACHR during its visit and subsequently, to date the challenges of the two resolutions on reversion mentioned above have not been resolved. In addition, the Commission observes that the Agrarian Tribunal is an independent organ subject only to the Political Constitution and statute law of Bolivia.<sup>211</sup> This means that the rulings of this Tribunal may be appealed before the Constitutional Court established by law. Nonetheless, the IACHR has observed that the Constitutional Court has yet to begin to operate. Therefore, the IACHR expresses its concern about additional delays in access to justice for the indigenous peoples as a result of the challenges to the reversion resolutions that may be filed by non-indigenous owners, or due to the delays that would result from appeals of the judgments of the National Agrarian Tribunal before a Constitutional Court that has yet to start up its operations.

155. The IACHR values the functions that have been performed by the Agrarian Tribunal and points out to the State the need to provide the economic, technical, and human resources support needed to strengthen that Tribunal as well as the Public Ministry. Strengthening these and other state institutions is essential to ensure the Guaraní people in the Chaco and the other indigenous peoples in Bolivia the right to access justice through effective mechanisms of judicial protection and due process of law. Guaranteeing these human rights is fundamental for taking on the situation experienced by the captive communities in the Bolivian Chaco, since: "Combating impunity, through a sound legal framework and vigorous law enforcement, is always essential for effective action against forced labour."<sup>212</sup>

#### **F. Other difficulties faced by the Guaraní people**

156. The Commission considers that in addition to the grave situation of servitude and forced labor, the situation of lack of access to ancestral lands, and the lack of access to justice in which the captive communities find themselves, it is important to make special mention of other grave problems faced by the Guaraní indigenous people. These problems are related to health, education, political rights, and the rights to movement and travel. These problems, together with the scant state presence, help perpetuate the practices of bondage and forced labor to which the captive communities have been subjected since they were dispossessed of their ancestral lands in the 19<sup>th</sup> century.

157. The current situation of the captive communities of the Guaraní people is characterized by the scant attention the State has given the areas of education and health. The high rate of illiteracy among the members of these communities is part of their inability to keep tabs of

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<sup>210</sup> Information received by the IACHR in a meeting with the National Agrarian Tribunal of Bolivia, June 10, 2008.

<sup>211</sup> Law No. 3545, Article 31, with respect to the Agrarian Jurisdiction, which is made up of the National Agrarian Tribunal and the agrarian courts.

<sup>212</sup> International Labour Organization, *A Global Alliance against Forced Labour*, para. 68.

the accounts and books kept by the bosses.<sup>213</sup> The education of Guaraní children and adolescents is limited, as they have to work on the estates in exchange for food, shelter, and education, which is often given by the boss himself. This situation highlights the need for the State to allocate the budget necessary to provide teaching materials to the schools in the region and ensure that education is intercultural and bilingual, as ordered by Bolivian legislation on education.<sup>214</sup>

158. The State also has to allocate the budget necessary for ensuring access to health for the Guaraní in the Chaco. The health posts and health centers in the region lack personnel and are often abandoned. In addition, they are far from the Guaraní communities, which means that the sick need to travel several kilometers on foot or horseback to receive care at these health centers.<sup>215</sup> These conditions generate even more indebtedness for Guaraní families, for when one falls ill with disease or suffers an accident while working, in some cases the only way to gain access to health services is through loans or advances that the boss gives the person affected, which is entered in the ledger against him or her.<sup>216</sup>

159. Another considerable difficulty in the exercise of political rights faced by most Guaraní in captivity is their lack of identification papers and the difficulties they face obtaining such documents. This limitation affects the right of members of the captive communities to their identity, to access their own property title to the land, to access education and health services, or the allowance provided by the State to persons of retirement age.<sup>217</sup>

160. Also indicative of the absence of the State in the Chaco is the inaccessibility of the estates due to the lack of public roads or highways. The estates are accessible only by the banks of the rivers or by the roads that the estate owners themselves have built, which they consider private.

161. Information from both governmental sources and the Guaraní people indicate that there is no free transit in this part of the Chaco. The testimony taken from members of the Guaraní communities indicates that they are not permitted to move from one place to another, given that the only roads in the area for gaining access to the public way are kept under lock (“*trancados con candados*”) by the bosses. They also reported that they are prohibited from organizing and that if they participate in community meetings they are later denied entry to the estate whether to access their own parcels or to visit family members who are working for the estate owner.

162. In addition, several estate owners stated that this problem does not exist. “There is no lock or chain to get in. There are five ways by which one can enter the zone. All are clear,” one estate owner from the Alto Parapetí told the IACHR.<sup>218</sup>

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<sup>213</sup> Human Rights Ombudsman, *Servidumbre y Empatronamiento en el Chaco*, Derechos Humanos y Acción Defensorial, Specialized magazine of the Human Rights Ombudsman of Bolivia. Year 2/No. 2/ 2007, p. 227.

<sup>214</sup> Human Rights Ombudsman, *Servidumbre y Empatronamiento en el Chaco*, p. 227.

<sup>215</sup> Human Rights Ombudsman, *Servidumbre y Empatronamiento en el Chaco*, p. 227.

<sup>216</sup> Human Rights Ombudsman, *Servidumbre y Empatronamiento en el Chaco*, pp. 227-28.

<sup>217</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/2/2005/DH, p. 7.

<sup>218</sup> Testimony of estate owner of Alto Parapetí received by the IACHR in a meeting with rancher and farmer leaders of the area, held at the Office of the Mayor of Camiri, June 12, 2008.

163. The IACHR delegation corroborated the lack of free access when it traveled from Camiri to Itacuatía. During the trip, it was necessary to open gates every few kilometers in order to continue along the road, and on one occasion there was a gate shut with lock and chain, and it was necessary to request access from the estate owner to be able to speak with the inhabitants of that estate. One of those inhabitants told the IACHR: "... we don't have good roads, therefore we have no way to leave.... As you can see, the gate is shut with a lock, [accordingly] we can't enter easily."<sup>219</sup>

164. On this matter, the prosecutor assigned to the province of Cordillera in the town of Camiri told the IACHR of the difficulties he faces when it comes to going into that area:

We have gone to the place with the Commission of Legislators, which was the only way to get into the zone, because there is a conflictive situation [in connection with which] the estate owners have organized and don't let just anyone enter.... It was the only way to enter, with the authorization of the estate owners, because they are on the defensive, they see a suspicious vehicle and immediately they get in touch with one another by telephone, and then the only road becomes inaccessible.<sup>220</sup>

165. In this context, the Commission learned that the State has also been kept from circulating along the roads of the estates by the blockade imposed by some estate owners and the lack of effective state actions to ensure free transit. This results in the State not performing its functions of carrying out the process of clearing title or verifying the working conditions of the members of the indigenous communities on the estates. The situation described results in serious violations of various rights of indigenous peoples. The IACHR urges the State to adopt the appropriate measures to ensure freedom of movement in the Chaco.

#### **G. Conclusions**

166. Based on the information received by the IACHR through the reports, studies, and testimonies gathered during its visit, the Commission finds the existence of debt bondage and forced labor, which are practices that constitute contemporary forms of slavery. Guaraní families and communities clearly are subjected to a labor regime in which they do not have the right to define the conditions of employment, such as the working hours and wages; they work excessive hours for meager pay, in violation of the domestic labor laws; and they live under the threat of violence, which also leads to a situation of fear and absolute dependency on the employer. The Commission highlights the importance of the fact that these are individuals, families, and communities who belong to an indigenous people, who find themselves in those deplorable conditions due to the involuntary loss of their ancestral lands, as a result of actions and policies taken by the State over more than a century, and who at present find it impossible to enjoy their fundamental rights, as an indigenous people, to collective communal property, access to justice, a dignified life, and the development of their own self-government and their own social, cultural, and political institutions.

167. As these conditions continue to exist, the State of Bolivia is in breach of the American Convention on Human Rights, for they entail violations of the articles on the prohibition of slavery and servitude (Article 6); life and humane treatment (Articles 4 and 5); property (Article 21); judicial guarantees and judicial protection (Articles 8 and 25); and equal protection of the law (Article 24). In addition, this situation violates other international instruments ratified by Bolivia such as the

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<sup>219</sup> Testimony received by the IACHR during its visit to Itacuatía, June 11, 2008.

<sup>220</sup> Information received during the meeting with the Public Ministry of Bolivia, held at Sucre, June 10, 2008.

International Covenant on Civil and Political Rights; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and ILO Convention 29 on forced or compulsory labor. As Guaraní indigenous children are exploited, the State is also violating the Convention on the Rights of the Child<sup>221</sup> and ILO Convention 182 on the prohibition of the worst forms of child labor.<sup>222</sup> On affecting the enjoyment of the rights of indigenous peoples, this situation represents violations of ILO Convention 169 on indigenous peoples and the United Nations Declaration on the Rights of Indigenous Peoples.

168. Therefore, pursuant to the obligations imposed by those international instruments, and the provisions of its own domestic law, the State of Bolivia has the obligation to eradicate the practices similar to slavery primarily by investigating, prosecuting, and punishing the persons responsible for committing those crimes. Moreover, the State should resolve the underlying problem of the lack of access to land that the members of the captive communities and of the Guaraní indigenous people in general face, in keeping with the standards established in ILO Convention 169 on indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples, and the case law of the inter-American human rights system, which interprets the obligations arising from the American Convention.

**V. DOMESTIC LEGISLATION AND INITIATIVES TAKEN BY THE STATE IN RELATION TO THE GUARANÍ CAPTIVE COMMUNITIES**

**A. Prohibition on practices analogous to slavery in the national legislation**

169. Slavery, servitude, and forced labor have been prohibited in Bolivia's national legislation.<sup>223</sup> The Political Constitution in force up until February 2009 established at its Article 5: "No type of servitude is recognized and no one may be obligated to provide personal work without his or her full consent and fair compensation. Personal service may only be demandable when so established by law."<sup>224</sup> In addition, Article 7(j) recognized the fundamental right of the person to "fair remuneration for his or her work so as to assure for oneself and one's family a dignified existence as human beings." It also provided that the State would regulate labor relations and would establish rules on individual contracts, minimum wage, maximum daily working hours, and social benefits.<sup>225</sup>

170. The Constitution now in force stipulates at Article 15 that no person may be subjected to servitude or slavery, and Article 46 indicates that all forms of forced labor and any analogous mode of exploitation requiring a person to perform work without his or her consent and

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<sup>221</sup> Convention on the Rights of the Child, Article 32.

<sup>222</sup> ILO Convention 182 on the worst forms of child labor, Articles 3, 38.

<sup>223</sup> Bolivia's agrarian legislation of the 1950s prohibited situations similar to slavery, on prohibiting all forms of labor for free or as compensation. Law on Agrarian Reform, Decree-Law No. 3464 of August 2, 1953, Article 144.

Article 144.- The system of *colonato* is hereby abolished, as well as any other form of rendering of personal services free or as compensation. Peasant workers are incorporated to the legal-social regime of the Nation, with all rights recognized by law.

<sup>224</sup> 2005 Political Constitution of the State.

<sup>225</sup> 2005 Political Constitution of the State, Article 157.

without fair remuneration are banned. Article 398 defines as latifundium the exploitation of the land that applies a system of bondage, semi-slavery, or slavery in the labor relationship.<sup>226</sup>

171. Slavery and forms similar to slavery are defined as crimes in the Bolivian Criminal Code, which establishes that a person who reduces another to slavery or a similar condition shall be deprived of liberty for two to eight years.<sup>227</sup> Similarly, the Criminal Code provides that one who deprives another person of liberty shall be imprisoned for six months to two years with a fine of 30 to 100 days.<sup>228</sup> Therefore, the Public Ministry has the obligation to investigate, prosecute, and punish the persons responsible for committing those crimes. Nonetheless, the Commission observed with concern very few advances in the actions taken by the institutions entrusted with administering justice in Bolivia.

172. Nonetheless, the IACHR values certain actions taken by the State to begin to roll back the existence of contemporary forms of slavery in the Chaco. The Commission has learned that during the 1990s, the first judgment was handed down by the court (*juzgado de instrucción*) of Monteagudo convicting an estate owner of the crime of reduction to slavery or similar condition, in violation of Article 291 of the Criminal Code.<sup>229</sup> This judgment was the result of an investigation by an inter-institutional commission made up of representatives of the Vice-Ministry of Human Rights, the Vice-Ministry of Indigenous Matters and First Nations, and the Coordinator of the Office of Human Rights for Indigenous Peoples, whose objective was to look into the reports of labor exploitation and physical and psychological abuse in the locality of Cachimayo, province of Hernando Siles.<sup>230</sup>

#### **B. Agrarian legislation and its application in the context of the captive communities**

173. The IACHR observes that Bolivia's agrarian legislation represents the main mechanism by which the indigenous peoples can vindicate their ancestral lands, particularly those

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<sup>226</sup> 2009 Political Constitution of the State, Article 398:

The latifundium and double titling are prohibited for being contrary to the collective interest and to the country's development. Latifundium is understood to refer to unproductive land tenure; land that does not perform an economic-social function; exploitation of the land that uses a system of servitude, semi-slavery, or slavery in the labor relationship; or a landholding that exceeds the maximum zoned area established by law. In no case may the maximum area exceed 5,000 hectares.

The text submitted to the referendum had two options in terms of the maximum area: Option A established the limit of 10,000 hectares as the maximum area of agrarian property, whereas option B establishes the limit of 5,000 hectares. Option B was approved by the voters.

<sup>227</sup> Bolivian Criminal Code, Decree-Law 10426 of August 23, 1972, Article 291.

Article 291 – (reduction to slavery or a similar condition): One who reduces a person to slavery or a similar condition shall be punished by deprivation of liberty of two to eight years.

<sup>228</sup> 1972 Bolivian Criminal Code, Article 292.

<sup>229</sup> Human Rights Ombudsman, *Servidumbre y empadronamiento*, p. 222.

<sup>230</sup> Human Rights Ombudsman, *Servidumbre y empadronamiento*, p. 222.

they lost involuntarily. Law No. 3545 on Community Redirection of the Agrarian Reform of 2006<sup>231</sup> makes possible the redistribution of lands, especially on unproductive latifundia, so as to benefit landless indigenous peoples and peasant communities. Law No. 3545, like the earlier Law No. 1715 on the National Agrarian Reform Service, has been the principal legal framework used by the State and the Guaraní people in their efforts to confront the situation of the captive communities in the Bolivian Chaco.

174. The state policy on redistribution of land so as to benefit indigenous peoples is also reflected in Supreme Decree No. 28733 of June 2, 2006, which provides that all available government lands and those declared as such as a result of the process of clearing title shall be earmarked exclusively to the indigenous, peasant, and first-nation peoples and communities that have no land or insufficient land.<sup>232</sup> Similarly, the regulation of Law No. 3545 provides as the purpose of the agrarian legislation “to guarantee the reliable and responsible management of the agrarian regime so as to make it possible to overcome acts of social injustice, corruption, and clientelism in the administration of the agrarian law” and also provides for “guaranteeing and prioritizing access to the land for families and communities subject to debt bondage, captivity, forced labor, and a system based on servitude.”<sup>233</sup>

175. As a phase prior to the titling of a territory, Law No. 3545 provides for the redistribution of lands by means of the processes of clearing title, reversion of title, and expropriation. The process of clearing title seeks to regularize and perfect title to agrarian property, including clearing up the rights within a given property where there could be more than one registered owner.<sup>234</sup> The clearing of title is done by the National Agrarian Reform Institute, (INRA), “the entity entrusted with directing, coordinating, and implementing agrarian policies,”<sup>235</sup> which also verifies that the agrarian property is productive, that is, that it performs its economic-social function (FES: Función Económico Social) and its social function (FS: Función Social).<sup>236</sup> The process of clearing

<sup>231</sup> Law No. 1715 of the National Agrarian Reform Service of October 18, 1996, modified by Law No. 3545 on Community Redirection of the Agrarian Reform of November 28, 2006, available at <http://www.congreso.gov.bo>.

<sup>232</sup> Supreme Decree No. 28733 of June 2, 2006, Article 1. The article refers to the process of clearing title in the context of Article 43 of Law 1715. In addition, this decree creates the Single National Registry of Government Lands and the Single National Registry of Beneficiaries in which those governments lands are to be entered “for the purpose of making the information transparent and generating an orderly process of distributing them.” First final provision.

<sup>233</sup> Supreme Decree No. 29215 of August 2, 2007, Regulation of Law No. 1715 of the National Agrarian Reform Service, modified by Law No. 3545 on Community Redirection of the Agrarian Reform, Article 4(b) and 4(c).

<sup>234</sup> The clearing of title (*saneamiento*) is defined as “the transitory technical-juridical procedure aimed at regularizing and perfecting the right to agrarian property, and it is implemented *sua sponte* or at the request of a party,” Law No. 3545, Article 64. According to Law No. 3545, clearing title is a process that should be concluded at the national level within 10 years, Article 65. Its aims, *inter alia*, are the legal cadastre of agrarian property, the titling of agrarian proceedings under way, the conciliation of conflicts related to the possession of agrarian property, and the annulment of vitiated titles, Article 66.

<sup>235</sup> Law No. 3545, Article 17.

<sup>236</sup> Law No. 3545, Article. 2:

The Economic-Social Function consists of the “sustainable use of the land in the development of agricultural, forestry, and other productive activities, as well as those of conserving and protecting biodiversity, research, and ecotourism ... so as to benefit society, the collective interest, and its owner,” Article 2(II).

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title is performed on the territories claimed by the indigenous peoples, which are known as Tierras Comunitarias de Origen (TCO),<sup>237</sup> under the modality of Clearing of Title of Community Lands of Origin (SAN-TCO: Saneamiento de Tierras Comunitarias de Origen), in which the law guarantees the participation of indigenous peoples in the implementation of that process.<sup>238</sup>

176. On the large landed estates of the Chaco on which there is bondage and forced labor, the process of clearing title could result in the reversion of lands to the State. Reversion (*la reversión*) is a process that reverts to the State those parts of the property on which the owner was not performing the economic social function, or where the collective interest is detrimentally impacted.<sup>239</sup> According to the regulation of Law No. 3545, the existence of bondage and forced labor on a property implies a failure to perform the economic social function, even in the event that there are areas that were effectively exploited on that property.<sup>240</sup> The IACHR observes that the measure<sup>241</sup> fulfills an important collective interest in eradicating the practices of bondage and forced labor on the property in question, as these activities have been criminalized by both Bolivian and international provisions.

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...continuation

The Social Function consists of “earmarking the land to achieving family well-being or the economic development of its owners, peoples, and indigenous, peasant, and first-nation communities,” Article 2(1).

<sup>237</sup>

Law No. 3545 defines the Tierras Comunitarias de Origen as “the geographic spaces that constitute the habitat of the indigenous and first-nation peoples and communities, to which they have traditionally had access and where they maintain and develop their own forms of economic, social, and cultural organization, so as to ensure their survival and development,” and those lands are also “inalienable, indivisible, irreversible, collective ... non-attachable and imprescribable,” Article 41(I)(5).

<sup>238</sup>

Law No. 3545, Article 69.

<sup>239</sup>

Law No. 3545, Article 52.

<sup>240</sup>

Supreme Decree No. 29215, Article 157 (The benefit of society and the collective interest in the performance of the economic-social function with respect to relations of servitude):

The benefit of society and the collective interest are inherent to the performance of the economic-social function; accordingly the productive activities undertaken by a landowner should not be contrary to this provision.

Where there is a system of servitude, forced labor, debt peonage and/or slavery of captive families or persons in the rural area that violate Articles 5 and 157 of the Constitution State policy, in international conventions ratified by the Bolivian State, Articles 144 and 145 of Law No. 3464, Sections 3 and 4 of Law No. 1715, and the Fourth Final Provision of Law No. 1715 are contrary to the benefit of society and the collective, consequently implies the nonperformance of the economic-social function, although there are areas effectively exploited on the property, and shall abide by the provisions of the Law and this Regulation.

Debts for personal obligations as a result of relations of servitude, forced labor, peonage, slavery, or captivity shall not be recognized.

If it is determined that in relation to the salaried personnel there is a breach of labor obligations, the National Agrarian Reform Institute shall report it to the competent authority.

<sup>241</sup> Observations of the Bolivian State, November 11, 2009.

177. In the context of the process of Clearing Title on Tierras Comunitarias de Origen, Law No. 3545 establishes that the properties of third parties that revert to the State shall be granted to the respective TCO where the properties are situated.<sup>242</sup> Reversion is a process that can be applied as of two years after the time a property has undergone the process of clearing title.<sup>243</sup> According to what the IACHR was told, to date there have been a total of two reversion resolutions by the INRA with respect to two properties in the province of Hernando Siles where there was forced labor. Both have been challenged before the National Agrarian Tribunal, and to date there has been no decision.

178. Expropriation of lands occurs for failure to perform the economic social function or for reasons of public utility.<sup>244</sup> The concept of public utility includes, *inter alia*, the redistribution of lands on behalf of indigenous peoples that don't have the sufficient quantity, quality, or geographic location of land to ensure their physical subsistence and reproduction as an ethnic group on having completed the processes of clearing title or reversion.<sup>245</sup>

### C. Other initiatives for confronting the situation of bondage and forced labor

179. The Commission also values other initiatives of the State, such as Supreme Decree No. 28159 of May 17, 2005, which recognizes and defines the situation of servitude and debt bondage of the Guaraní communities in the Chaco,<sup>246</sup> plus it has as its purpose "to establish the labor regime of the families and captive communities and/or persons in debt bondage [of the Bolivian Chaco]... and, to prioritize the distribution of government lands available as a result of the process of clearing title and the search for lines of credit for access to ownership of lands for these families and communities."<sup>247</sup> In the wake of that decree, legislation was prepared for the liberation of captive families and communities in 2005.<sup>248</sup> However, this bill was called into question by the Human Rights Ombudsman, who in a resolution issued in November 2005, identified certain weaknesses which included, among others, an approach limited only to labor aspects and the purchase of lands, but not addressing other fundamental aspects such as elimination of the system of bondage and forced labor, the criminal prosecution of the persons responsible for those violations, and the particular demand of

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<sup>242</sup> Law No. 3545, Article 72.

<sup>243</sup> Law No. 3545, Article 57(II).

<sup>244</sup> Law No. 3545, Article 59(II). Article 60 of Law No. 3545 establishes that the amount of compensation for expropriation would be based on the market value of the lands, improvements, or investments in conservation on the property in question.

<sup>245</sup> Law No. 3545, Article 59(II).

<sup>246</sup> Supreme Decree No. 28159 of May 17, 2005, Article 2:

Guaraní families and communities in debt bondage and/or captivity are those that work for another, in conditions of subordination and dependence, in tasks that are particular to agricultural activity and which are remunerated in kind, in money, mixed, and in other cases no remuneration whatsoever is established, situated within individual private properties in spaces historically and ancestrally occupied by them in the provinces of Cordillera, Luis Calvo, Hernando Siles, O'Connor, and Gran Chaco of the departments of Santa Cruz, Chuquisaca, and Tarija, and who have no landed property.

<sup>247</sup> Supreme Decree No. 28159 of May 17, 2005, Article 1.

<sup>248</sup> Human Rights Ombudsman, *Servidumbre y empadronamiento*, p. 223.



the Guaraní indigenous people for the recovery of their ancestral lands and for the recognition of their collective property rights.<sup>249</sup>

180. In the same resolution the Human Rights Ombudsman urged different entities of the State – among them the Minister of the Presidency, the Vice-Minister of Justice, the Minister of Sustainable Development, the Minister of Labor, the President of the Judicial Council, the Governor of Chuquisaca, the District Director of Education of Chuquisaca, and the Minister of Indigenous Matters and First Nations – to undertake specific actions within the mandate of their functions to address the matter.<sup>250</sup> Those recommendations encompass integrated actions in the areas of access to justice, legal assistance, investigation into possible irregularities in the process to date of clearing title, labor rights, intercultural and bilingual education, and the need for a census on the number of persons in captivity to orient the application of the strategies necessary to resolve the situation.<sup>251</sup>

181. Special mention should be made of the actions taken by civil society on behalf of the captive communities, in particular the Catholic Church, which, at the urging of the Asamblea del Pueblo Guaraní (APG) and the Consejo de Capitanes Guaraníes de Chuquisaca (CCCH) and nongovernmental organizations, since the 1990s has promoted the purchase of lands for the transfer, resettlement, and establishment of free Guaraní communities. These measures benefited 500 families in the Bolivian Chaco region in the departments of Chuquisaca and Santa Cruz.<sup>252</sup>

182. In 1996, the Asamblea del Pueblo Guaraní (APG) presented its demand for the reconstitution of its territory in 19 TCOs in the Bolivian Chaco to the State.<sup>253</sup> As a result, Law No. 1715 of 1996, in its third transitory provision, provided for the encumbrance of 16 TCOs to be subject to clearing of title under the SAN-TCO modality mentioned above, and which includes the TCOs of Avatiri Ingre, Avatiri Huacareta, Machareti-Nancaroinsa-Carandayti, and Itikaraparirenda, situated in the department of Chuquisaca; and of the Alto Parapetí in the department of Santa Cruz.<sup>254</sup> On February 26, 2008, the clearing of title of these TCOs formally began; in addition, the presence of captive communities or communities in debt bondage was identified.<sup>255</sup>

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<sup>249</sup> Human Rights Ombudsman, *Servidumbre y empadronamiento*, p. 223.

<sup>250</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/2/2005/DH, pp. 12-17.

<sup>251</sup> Human Rights Ombudsman, Resolución Defensorial No. RD/SCR/2/2005/DH, pp. 12-17.

<sup>252</sup> Human Rights Ombudsman, *Servidumbre y empadronamiento*, p. 221.

<sup>253</sup> Ismael Guzmán *et al.*, *Saneamiento de la tierra en seis regiones de Bolivia 1996-2007*, p. 102. The total area claimed was 10,385,945 hectares, i.e. 81.3% of the Bolivian Chaco.

<sup>254</sup> Law No. 1715, Law on the National Agrarian Reform Service, third transitory provision:

In relation to the sixteen (16) applications for Tierras Comunitarias de Origen, filed prior to this law, it shall be ordered that they be immobilized with respect to new applications and settlements, respecting rights legally acquired by third parties.

See also, Ismael Guzmán, *et al.*, *Saneamiento de la tierra en seis regiones de Bolivia 1996-2007*, p. 105. (Table of original claims for TCOs in the Bolivian Chaco.); and Vice-Ministry of Lands, *La lucha por la Tierra y la libertad en el Alto Parapetí*, p. 3. Available at: [http://www.bancotematico.org/archivos/primerMano/archivos/alto\\_parapeti.pdf](http://www.bancotematico.org/archivos/primerMano/archivos/alto_parapeti.pdf).

<sup>255</sup> By Resolution to Determine the Area for Clearing Title for Tierras Comunitarias de Origen No. 029/2008 of February 12, and Resolution Initiating Procedure RA-ST 0034/2008 of February 26, 2008, issued by the National Agrarian Reform Institute (INRA). According to information submitted by the Bolivian State during the Commission's 131<sup>st</sup> regular period of sessions.

183. On October 9, 2007, Supreme Decree No. 29292 was promulgated, establishing the Inter-Ministerial Council for the Eradication of Bondage, Forced Labor, and Similar Forms of Subjugation, and the 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní people was drawn up.<sup>256</sup> That plan has as its objectives to lay the bases for generating dignified living conditions for the Guaraní families in debt bondage in the Bolivian Chaco, to eradicate forced labor, and to promote the social, cultural, and economic development of the region in the context of the National Development Plan. The five components of the plan are: (i) to restore the exercise of human rights in the Bolivian Chaco; (ii) to promote the processes of clearing title and the reorganization of agrarian property, which will benefit not only the indigenous communities, but also the small and medium landowners; (iii) to implement a contingency plan to ensure dignified living conditions for the freed families while carrying out the settlement process; (iv) to execute productive infrastructure and environmental programs and projects for the freed families; and (v) to create a mechanism for implementation, monitoring, and evaluation.<sup>257</sup> On December 19, 2007, Supreme Decree 29388 was approved, by which resources were allocated in the amount of US\$2,000,000 for carrying out the Inter-Ministerial Plan.<sup>258</sup>

184. Similarly, it should be noted that Supreme Decree No. 29354 was promulgated on November 28, 2007, which makes public utility the grounds for expropriation and provides for redistribution of lands to benefit the Guaraní indigenous people of the department of Chuquisaca. This decree states the need to expropriate agrarian properties amounting to a total of 180,000 hectares in the department of Chuquisaca and instructs the INRA to carry out the expropriation of the properties that may be allocated for that purpose.<sup>259</sup> In addition, the IACHR takes note of Supreme Decree No. 29388 of December 19, 2007, which authorizes the Ministry of Treasury to transfer resources for implementing and executing the Inter-Ministerial Plan.

185. Furthermore, the IACHR takes note of the Plan for Integral Development of the Guaraní Nation (2009-2015), an effort begun in 2009 by the Ministry of Labor, Employment, and Social Security. That Plan states: "The National Government and the Assembly of the Guaraní People (APG), aware of the exploitation, servitude, and captivity of the Guaraní families, assumed responsibility for carrying out a sustainable and long-term process to abolish this system of 'slavery.'" In addition, that Plan notes as the central problem that the Guaraní people "finds itself in a situation of exclusion and high vulnerability in socioeconomic, political, and economic terms, which is determinate of a condition of extreme poverty and dependency on a socio-productive system that

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<sup>256</sup> Supreme Decree No. 29292 of October 3, 2007 – Creates the Inter-Ministerial Council for the Eradication of Servitude, Forced Labor, and Similar Forms, and approves and implements the 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní People. La Paz, Bolivia. April 2008.

<sup>257</sup> 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní People. Para. 3.

<sup>258</sup> 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní People. Annex. Slides.

<sup>259</sup> Supreme Decree No. 29354 of November 28, 2007:

Establishes the existence of the grounds for expropriation due to public utility for regrouping and redistributing the land for purposes of endowing, for the Guaraní Indigenous People of the department of Chuquisaca, which includes all the communities that are part of the Tierras Comunitarias de Origen Itikaraparirenda, Asociación Comunitaria "Zona Huacareta," Tentayapi, "Zona Machareti" Community Association, and Avatiri Ingre; and those that are part of the Guaraní zones or Capitanías of Ingre, Huacareta, Añimbo, Muyupampa, Iguembe, Machareti, Ivo, Santa Rosa, and Guacaya - Mboicobo; whose spatial needs have not yet been covered either with the clearing of title to agrarian property or with the endowment of government lands.

exploits their labor, and maintains relations of servitude and the dispossession of their land and territory.”<sup>260</sup>

186. The IACHR values these initiatives undertaken by the State to address the specific situation of the Guaraní people, and observes that those expropriation measures should have as their objective the restitution of lands that the Guaraní themselves claim as part of their ancestral territory. Nonetheless if it is not possible, the State must grant lands whose quality and legal status are the same as the lands that the indigenous peoples occupied or else those peoples must receive compensation.<sup>261</sup> Moreover, whether consideration is given to giving alternative lands or monetary compensation to the indigenous peoples, or even in the case of the lands that the State expropriates on behalf of the Guaraní, the implementation of those actions is “not subject to purely discretionary criteria of the State, but rather, pursuant to a comprehensive interpretation of ILO Convention 169 and of the American Convention, there must be a consensus with the peoples involved, in accordance with their own mechanism of consultation, values, customs, and customary law.”<sup>262</sup>

187. The IACHR reminds the State that as it takes initiatives on behalf of the Guaraní indigenous people, whether by making restitution of ancestral lands or providing alternative lands, “the area of land must be sufficient to ensure preservation and development of the Community’s own way of life.”<sup>263</sup> It is also important to reiterate the obligation of the State to respect the right of indigenous peoples to determine and draw up their own priorities and strategies for development and “to participate actively in the preparation and determination of health and housing programs, and other economic and social programs that concern them, and, to the extent possible, to administer those programs using their own institutions.”<sup>264</sup>

#### **D. Provisions of the Political Constitution of the State**

188. The IACHR considers it important to mention the current Political Constitution of the State,<sup>265</sup> approved by national referendum on January 25, 2009, which in several of its provisions affirms the principles established in the agrarian legislation and in international instruments ratified by Bolivia regarding the rights of indigenous peoples. The constitutional text provides that the rights contained in it shall be interpreted in keeping with the international human rights treaties ratified by Bolivia.<sup>266</sup>

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<sup>260</sup> Observations of the Bolivian State, November 11, 2009.

<sup>261</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 151.

<sup>262</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 151.

<sup>263</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 217; see also, *Indigenous Community Yakye Axa v. Paraguay Case*. Request for Interpretation of the Judgment on the Merits, Reparations, and Costs (Article 67, American Convention on Human Rights). Judgment of February 6, 2006. Series C No. 142, para. 26.

<sup>264</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 23.

<sup>265</sup> 2009 Political Constitution of the State.

<sup>266</sup> 2009 Political Constitution of the State, Article 13(III).

189. The Constitution conceives of Bolivia as a plurinational, communitarian State with different kinds of autonomy for departments, municipalities, and indigenous peoples. Indigenous autonomy consists of self-government as the self-determination of indigenous peoples who share territory, culture, and legal, political, social, and economic institutions.<sup>267</sup> In addition, it recognizes the languages of the “first-nation indigenous peasant nations and peoples” as official alongside Spanish.<sup>268</sup>

190. As regards the territorial organization of the State, the current Constitution recognizes the indigenous territories<sup>269</sup> and the right of autonomy of those territories.<sup>270</sup> The collective property rights of indigenous peoples are recognized, protected, and guaranteed, and

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2009 Political Constitution of the State:

Article 1: Bolivia is constituted as a Plurinational Communitarian Social Unitary State under the Rule of Law that is free, independent, sovereign, democratic, intercultural, decentralized, and with autonomies. Bolivia is based on plurality and political, economic, legal, cultural, and linguistic pluralism, within the integrative process of the country.

Article 289: First-nation peasant indigenous autonomy consists of self-government as the exercise of the self-determination of the first-nation peasant indigenous nations and peoples, whose population shares territory, culture, history, languages, and legal, political, social, and economic organization or institutions of their own.

<sup>268</sup>

2009 Political Constitution of the State, Article 5. Section II of that article also establishes: “The plurinational government and the departmental governments should use at least two official languages. One should be Spanish, and the other will be decided taking into account the use, convenience, circumstances, needs, and preferences of the population as a whole or of the territory in question.”

<sup>269</sup>

2009 Political Constitution of the State, Article 269:

I. Bolivia is organized territorially in departments, provinces, municipalities, and first-nation peasant indigenous territories.

II. The creation, modification, and delimitation of the territorial units shall be done by the democratic will of their inhabitants, in keeping with the conditions established in the Constitution and the law.

III. The regions shall be part of the territorial organization, in the terms and conditions determined by law.

<sup>270</sup>

2009 Political Constitution of the State:

Art. 291. I. The first-nation peasant indigenous territories, and the municipalities and regions that adopt that character in keeping with the provisions of this Constitution and the law, are first-nation peasant indigenous autonomies.

II. Two or more first-nation peasant indigenous peoples may constitute a single first-nation peasant indigenous autonomy.

Art. 292. Each first-nation peasant indigenous autonomy shall draw up its Statute in keeping with its own rules and procedures, in keeping with the Constitution and the law.

Art. 293. I. Indigenous autonomy based on consolidated indigenous territories and those in process, once consolidated, shall be constituted by the will of their population expressed in consultation in keeping with their own rules and procedures as the only demandable requirement.

these are recognized as inalienable, imprescribable, and unattachable.<sup>271</sup> It provides that lands will be given to indigenous communities that do not have land, or that do not have enough land.<sup>272</sup> In addition, the indigenous peoples are guaranteed participation in environmental management and use of the natural resources, respecting the right of consultation in keeping with their own norms and their own procedures.<sup>273</sup> Also recognized is the exclusive right of indigenous peoples within the forest areas for using and managing forest resources.<sup>274</sup>

**E. Observations with respect to the duty of the State to guarantee and protect the right of indigenous peoples to land, territory, natural resources, and the right to consultation**

191. Another point that is important to cover in relation to Bolivian legislation on the rights of indigenous peoples has to do with the use of and access to natural resources. The IACHR reminds the State that under international law, the concept of indigenous land and territory encompasses "the total environment of the areas which the [indigenous] peoples ... occupy or otherwise use,"<sup>275</sup> which includes the natural resources found in those territories. The Inter-

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<sup>271</sup> 2009 Political Constitution of the State, Article 394(III):

The State recognizes, protects, and guarantees communitarian or collective property, which includes the first-nation peasant indigenous territory, the first-nation intercultural communities, and the peasant communities. Collective property is declared indivisible, imprescribable, unattachable, inalienable, and not subject to reversion, and is not subject to the payment of agrarian property taxes. The communities may be titled recognizing the complementarity between collective rights and individual rights, respecting territorial unity with identity.

<sup>272</sup> 2009 Political Constitution of the State, Article 395.

I. Government lands shall be endowed to first-nation peasant indigenous communities, first-nation intercultural communities, Afro-Bolivian communities, and peasant communities that do not possess them or that possess them in insufficient quantities in keeping with a state policy that addresses the ecological and geographic realities, as well as the population, social, cultural, and economic needs. The endowment shall be performed in keeping with the policies of sustainable rural development and the right of women to access, distribution, and redistribution of the land, without any discrimination based on civil status or conjugal union.

II. Dual endowments and the purchase and sale, exchange, or donation of lands given in endowment are prohibited.

III. Obtaining land rent generated by the speculative use of the land is prohibited as it is contrary to the collective interest.

<sup>273</sup> 2009 Political Constitution of the State, Article 352:

The exploitation of natural resources in a given territory shall be subject to a process of consultation of the population affected, convoked by the State, which will be free, prior, and informed. Citizen participation is guaranteed in the process of environmental management, and the conservation of the ecosystems will be promoted, in keeping with the Constitution and the law. In the first-nation peasant indigenous nations and peoples, the consultation shall take place respecting their own rules and procedures.

<sup>274</sup> 2009 Political Constitution of the State, Article 388:

The first-nation peasant indigenous communities situated within the forest areas shall be vested with the exclusive right to their use and management, in keeping with the law.

<sup>275</sup> ILO Convention 169, Article 13(2).

American Court has affirmed that the members of the indigenous peoples “have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake.”<sup>276</sup>

192. The Political Constitution in effect in Bolivia provides that the natural resources, including mineral resources, hydrocarbons, the air, water, soil and subsoil, and the forests, are the “property and direct domain, indivisible, and imprescribable, of the Bolivian people, and it shall be up to the State to administer them mindful of the collective interest.”<sup>277</sup> The Constitution also provides that the exploitation of natural resources in a given territory would entail a process of consultation with the population affected, and in the case of indigenous peoples, the consultation process “shall take place respecting their own rules and procedures.”<sup>278</sup> In addition, it provides that the Bolivian people shall have “equitable access to the benefits from the use of all natural resources” and priority shall be given, in this type of participation, to the indigenous peoples whose territories and natural resources are used.<sup>279</sup>

193. With respect to these constitutional provisions, the IACHR considers it important that the State consider the principles that the Inter-American Court has established in its case law in relation to the rights of indigenous peoples to their territories, natural resources, and their right to consultation and to have their prior, free, and informed consent. Those principles apply to any situation in which exploitation of natural resources in the territories of indigenous peoples is to begin.

194. In the *Case of the Saramaka People v. Suriname*, the Court ruled that in situations in which the State is considering the exploitation of natural resources, whether of the soil or the subsoil, within indigenous territories, one must provide three fundamental guarantees: (1) the State must ensure the effective participation of the members of the respective indigenous people, in keeping with its customs and traditions, in relation to any plan for development, investment, exploration, or extraction that is carried out in its territory; (2) the State must guarantee that the members of the indigenous people benefit reasonably from the plan that is carried out on their territory; and (3) the State must ensure that no concession shall be given in the indigenous territory in question unless and until independent and technically capable entities, under the supervision of the State, perform a prior social and environmental impact study.<sup>280</sup> The Court specified that in those cases in which there is a development or investment plan that may have a profound impact on the property rights of an indigenous people, the guarantee of effective participation includes not only a process of consultation but also the obligation to obtain the prior, free, and informed consent of the indigenous people affected in keeping with its own customs and traditions.<sup>281</sup>

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<sup>276</sup> I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 121.

<sup>277</sup> 2009 Political Constitution of the State, Articles 348-49.

<sup>278</sup> 2009 Political Constitution of the State, Article 352.

<sup>279</sup> 2009 Political Constitution of the State, Article 353.

<sup>280</sup> I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 129.

<sup>281</sup> I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, paras. 134, 137.

195. In addition to the aspects around characteristics of the collective property rights, natural resources, and consultation that must be guaranteed for the Guaraní people within the process of restitution of their ancestral territory, the State should also take into account the guarantees of due process, speedy process, and effectiveness that are required of the procedure of judicial protection for vindicating the territories of indigenous peoples in Bolivia.

196. In this regard, the State indicated in its observations of November 11, 2009, that during the Constitutional Assembly “the representatives of the different sectors and especially of the indigenous peoples analyzed the relevance of title to the natural resources that are found” in the territory of the peasant indigenous nations, peoples, and communities [*naciones, pueblos y comunidades indígenas originarias campesinas*], “insofar as the natural resources, in particular the non-renewable ones, are the basis for the economic and financial foundation of the Bolivian State.” The State adds that “if title to them were recognized to vest in private persons, regions, or an indigenous people, the very viability of the country would be in question, and this was the conclusion reached by the peasant indigenous organizations [*organizaciones indígenas originarias campesinas*] and intercultural communities in the Constitutional Assembly....”

**F. Observations with respect to the duty of the State to guarantee due process, judicial protection, and access to justice**

197. The IACHR observes that measures such as the process of clearing title undertaken by the State in the Bolivian Chaco and, in particular, the promulgation of the above-mentioned Supreme Decree No. 29292 creating the 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní people, represent significant efforts to eradicate forced labor and at the same time address the needs for territory and generate dignified living conditions for the Guaraní families and communities in the Bolivian Chaco. Nonetheless, the Commission is concerned that various obstacles and delays have arisen in the processes of making restitution of lands in the Chaco. These obstacles prevent members of the Guaraní people from enjoying their rights to due process, judicial protection, and access to justice.

198. The Commission observes with concern that none of the TCOs titled in the Chaco has covered the area originally demanded by the APG in 1996.<sup>282</sup> The Guaraní communities of Chuquisaca, for example, reduced their demands to four TCOs: Avatiri Ingre, Avatiri Huacareta, Iti Karaparirenda, and Machareti. The original demand was for 804,452 hectares but was reduced to 206,550 hectares.<sup>283</sup> This reduction in total area was done by the State without considering the recommendations of the Study to Identify Spatial Needs (EINE: Estudio de Identificación de Necesidades Espaciales), which recommended 501,751 hectares for these TCOs, despite which the land ultimately titled came to only 36,706 hectares.<sup>284</sup> As a result, the TCOs of Ingre and Huacareta received only 3.5% and 4%, respectively, of their original claim.<sup>285</sup>

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<sup>282</sup> *Saneamiento de la tierra en seis regiones de Bolivia 1996-2007* – Ismael Guzmán (Coordinador); Eulogio Núñez; Pelagio Pati; Julio Urapotina; Miguel Valdez; Alfredo Montecinos. Centro de Investigación y Promoción del Campesinado CIPCA, pag. 105.

<sup>283</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, Territorio y Libertad*, February 2005, pp. 79-80.

<sup>284</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, Territorio y Libertad*, pp. 81.

<sup>285</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, Territorio y Libertad*, p. 81.

199. In the context of the processes of clearing title undertaken in previous years in the department of Chuquisaca, the Guaraní indigenous communities suspect that there were strong ties between the technical personnel in charge of the field work and the estate owners in those TCOs. During the expert field inspections performed in 2001 and 2002, the technical personnel did not coordinate with the indigenous and peasant organizations, reflecting the bias in favor of the estate owners, who anticipated the arrival of the technical staff, which enabled them to “prepare” their properties so as to justify their economic-social function.<sup>286</sup> In this case, the indigenous did not have institutional support for learning of their rights under Bolivian law, nor did they receive technical support during the expert field inspections, which were carried out during the process of clearing title, which resulted in the consolidation of latifundia in the area and a reduction in the spaces available to the indigenous peoples.<sup>287</sup>

200. With respect to the conflictive process of clearing title in the TCO of the Alto Parapetí, the IACHR has received information that the INRA has concluded the process of clearing title in a total area of 157,000 hectares, where there was evidence of the existence of servitude on the estates of El Recreo, San Isidro, Huaraca-Itacay, Buena Vista-Isiporenda, Caraparicito I and II, Reserva Privada del Patrimonio Natural, and Yaguapoa.<sup>288</sup> According to state information sources, in February 2009 administrative resolutions were handed down reverting 40,000 hectares that were in the hands of five landowning families.<sup>289</sup> In addition, on March 14, 2009, the State delivered 34 property titles, benefiting indigenous producers in the Alto Parapetí.<sup>290</sup>

201. Based on the information provided to the IACHR, the owners of the properties affected by the reversion resolutions will have 30 days to challenge the resolution before the National Agrarian Tribunal.<sup>291</sup> In this respect, the IACHR observes with concern that an eventual challenge of those resolutions on reversion or the actions by the owners to block implementation of that resolution may result in additional delays in the restitution of the lands claimed by the Guaraní indigenous people. This is a matter of special concern due to the delays and obstacles that have been seen in earlier processes of clearing title in the Bolivian Chaco that have resulted in a reduction of the total area titled to the indigenous peoples and in delays that have been seen in relation to the challenge of the two resolutions on reversion in the province of Hernando Siles.

202. It is for this reason that the Commission reminds the Bolivian State that under Article 25 of the American Convention the indigenous peoples have a right to prompt and speedy remedies “or any other effective recourse, to a competent court or tribunal for protection against acts that violate [their] fundamental rights.” In this regard, and in consideration of the administrative or judicial proceedings that might be entailed in the process of clearing title in Bolivia, the right to due process of law “must be respected in administrative proceedings and in any other proceedings

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<sup>286</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, Territorio y Libertad*, pp. 88-90.

<sup>287</sup> Ramiro Guerrero Peñaranda, *Huacareta: Tierra, Territorio y Libertad*, p. 87.

<sup>288</sup> “Gobierno inicia restitución de tierras al Estado en Alto Parapetí,” Agencia Boliviana de Información, February 11, 2009. Available at: <http://abi.bo>.

<sup>289</sup> “Estado revierte 40.000 hectáreas en convulso Alto Parapetí,” Agencia Boliviana de Información, February 15, 2009. Available at: <http://abi.bo>.

<sup>290</sup> “Evo entrega 34 títulos de tierras a los productores y guaraníes”: Diario La Razón, March 15, 2009. Available at <http://www.la-razon.com>.

<sup>291</sup> “Gobierno inicia restitución de tierras al Estado en Alto Parapetí,” Agencia Boliviana de Información, February 11, 2009. Available at: <http://abi.bo>.



where the decision may affect [the indigenous people's] rights" and therefore "it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs."<sup>292</sup>

203. For the indigenous peoples, celerity in the administrative, judicial, and other proceedings that affect their rights is of particular importance given that on having to wait for their territorial claims to be resolved, they cannot enjoy the right to their property, which in many cases implies that they remain in a state of vulnerability in terms of their economic situation, food and nutrition, or health, which continuously threatens their survival and integrity.<sup>293</sup> Such would be the case of the captive families and communities that would have to remain in situations of slavery or in situations of nutritional or health vulnerability, on having to wait for the restitution of their ancestral lands.

204. Due to this situation of vulnerability that the indigenous peoples face, on not having any protection for their collective property, the States should establish "[a]dequate procedures ... to resolve land claims by the [indigenous] peoples."<sup>294</sup> The Inter-American Court has ruled that under Article 1(1) of the American Convention, the procedures for claiming indigenous lands should be "accessible and simple and that the bodies in charge of them have the necessary technical and material conditions to provide a timely response to the requests made in the framework of said procedures."<sup>295</sup>

205. Accordingly, the Bolivian State has the duty to adapt its legal and administrative apparatus to provide a prompt and effective solution to indigenous territorial demands, which includes observing the time frames established in its laws and regulations to complete the process of clearing title and redistributing lands on behalf of the indigenous peoples, and to resolve any challenge against the resolutions on reversion or expropriation so as to comply with the right to due process of all interested parties, as such challenges affect the rights of the indigenous peoples to their collective property. As the Inter-American Court has established in its case law, "it is not enough for the remedies to exist formally, since they must also be effective."<sup>296</sup>

206. The Commission is aware that the process of restitution of lands has also faced resistance, often times violent, by the estate owners, which could mean continuous delays in the implementation of the resolutions on reversion affecting zones such as the TCO of the Alto Parapetí. In this respect, the Commission considers it important to make some additional observations in

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<sup>292</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, paras. 51, 62, 63.

<sup>293</sup> IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129 Doc. 4 (September 7, 2007), para. 111, citing *Case of the Sawhoyamaya Indigenous Community*, para. 111.

<sup>294</sup> ILO Convention 169, Article 14(3).

<sup>295</sup> I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, para. 102.

<sup>296</sup> I/A Court H.R., *The Mayagna (Sumo) Awajitj Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 114; *Constitutional Court v. Peru Case*. Judgment of January 31, 2001. Series C No. 71, para. 90; *Bámaca Velásquez v. Guatemala Case*. Judgment of November 25, 2000. Series C No. 70, para. 191; and *Cesti Hurtado v. Peru Case*. Judgment of September 29, 1999. Series C No. 56, para. 125.

relation to the international obligations of the State and the sociopolitical situation in the Bolivian Chaco.

**G. Observations with respect to the initiatives of the State in the sociopolitical context of the Bolivian Chaco**

207. The recent agrarian laws and policies have been geared to modifying a situation of discrimination affecting the indigenous peoples of Bolivia. The initiatives of the State, such as drafting a new constitutional text, as well as the process of clearing title and redistributing land, have faced resistance, often violent, by sectors of the national population whose interests are affected by the current state policy favoring the rights of the indigenous peoples.

208. This resistance has taken place mainly in the eastern region known as the “Media Luna” (“crescent moon”), which includes the provinces and departments where the situation of servitude is to be found. Some sectors of the population in this region<sup>297</sup> have proposed autonomy and called for resistance to the implementation of the Constitution.<sup>298</sup>

209. After the approval of the Constitution, the State created a Ministry of Autonomy, whose minister has expressed the State’s willingness to enter into pacts with the regions that seek their own autonomy, and to adapt the statutes to the new Constitution<sup>299</sup> – which recognizes the existence of autonomy for departments, regions, municipalities, and indigenous peoples.<sup>300</sup> The current Constitution provides that a Framework Law on Autonomies and Decentralization is to be established that will “regulate the procedure for drawing up Autonomy Statutes and Organic Charters, the transfer and delegation of authorities, the economic-financial regime, and coordination between the central level and the decentralized and autonomous territorial entities.”<sup>301</sup>

210. The Commission observes that the State of Bolivia is under the obligation to comply with the provisions of the American Convention on Human Rights and all other international human rights treaties signed by the State. It should be noted that according to “the rules of law

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<sup>297</sup> Observations of the Bolivian State, November 11, 2009.

<sup>298</sup> “Líderes cruceños anuncian una resistencia pacífica,” La Razón, February 11, 2009. Available at: <http://www.la-razon.com>. As this source indicates:

The legal director of the Prefectura, Vladimir Peña, said that peaceful resistance will translate into “continuing to legislate based on the Autonomy Statute ... the Government takes a series of folkloric actions with which it wishes to show that there is a Constitution in force, when the only thing it has promulgated is an organic instrument for just one sector of the country,” which does not represent the majority in Santa Cruz.

[According to the president of the Civic Committee of Santa Cruz:] “That has to be the starting point of any pact at the national level in which the decisions of this region are recognized. We want to have the No vote recognized, and we’ll see what the necessary measures are. We still don’t know, we’ll see.”

<sup>299</sup> “Nuevo Ministro de Autonomías promete buscar pactos con regiones opositoras,” La Patria, February 9, 2009. Available at <http://lapatriaenlinea.com>; “Se agilizarán las autonomías según la capacidad regional,” La Razón, February 9, 2009.

<sup>300</sup> 2009 Political Constitution of the State, Articles 269-296.

<sup>301</sup> 2009 Political Constitution of the State, Article 271. As Article 272 of the Constitution explains: “Autonomy implies the direct election of their authorities by the citizens, the administration of their economic resources, the exercise of the legislative, regulatory, oversight, and executive powers by their organs of autonomous government within the scope of their jurisdiction, authority, and powers.”

pertaining to the international responsibility of the State and applicable under International Human Rights Law, actions or omissions by any public authority, whatever its hierarchic position, are chargeable to the State which is responsible under the terms set forth in the American Convention.”<sup>302</sup> The Commission also notes that as a principle of international law, a State cannot allege that it cannot comply with its obligations under a treaty that it has signed because of provisions of its domestic law.<sup>303</sup>

211. In view of the foregoing, the State as a whole, whether as a unitary government or with departmental autonomy, has the obligation to comply with the provisions of the American Convention and all other treaties on human rights and the rights of indigenous peoples. Any failure to respect or violation of the rights in those treaties is imputable to the Bolivian State. It should be reiterated that the prohibition on slavery, bondage, forced labor, and other practices similar to slavery is a binding obligation *erga omnes* and those practices – whether practiced by agents of the State, private actors, or autonomous provincial or departmental entities – also constitute an international crime, independent of whether the State has ratified the conventions that prohibit these practices.

212. Therefore, the IACHR observes that the State has the obligation to prosecute and punish the persons responsible for committing the crimes of practices similar to slavery – such as bondage and forced labor – both in the Bolivian Chaco and in all other regions of the country, independent of the political structure the State may have.

## VI. CONCLUSIONS AND RECOMMENDATIONS

213. At this time, in the Bolivian Chaco, approximately 600 families are living in conditions that constitute contemporary forms of slavery. During its visit in June 2008 the Commission verified how members of the Guaraní indigenous people are kept in a situation of servitude whose origins date back over a century, and which has been perpetrated in the face of the passivity of the national and international community.<sup>304</sup>

214. The declarations made by the victims of such violations should suffice for the Government of Bolivia, all Bolivians, and the international community to take urgent international initiatives to bring an end to these practices, which constitute an attack on the most essential dignity of every human being.

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<sup>302</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 154; *Constitutional Court v. Peru Case*. Judgment of January 31, 2001. Series C No. 71, para. 109; *Bámaca Velásquez v. Guatemala Case*. Judgment of November 25, 2000. Series C No. 70, para. 210.

<sup>303</sup> Vienna Convention on the Law of Treaties. U.N. Doc A/CONF.39/27 (1969). 1155 U.N.T.S. 331 (January 27, 1980), Article 27.

Internal law and the observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty...

<sup>304</sup> This situation has been reflected in the statements made by Guaraní who have lived through this experience: “I have always worked since my 15 years ... with various bosses ... I have worked many years as a slave.” In testimony of Guaraní woman received by the IACHR during its visit to Itacuatía, June 11, 2008. “The work that we are doing, at times they don’t pay us for it, or they don’t pay us well, and they treat us like animals. They tell us that we are animals but they give the animals 5 hectares per head of cattle.... There are laws for the cows, but there are no laws for us”; “they deal with us with sticks and whips.... These acts of violence have always existed.” “We want to protest, there is nowhere to turn and they treat us like animals.” Testimony of a Guaraní man received by the IACHR during its visit to Itacuatía, June 11, 2008.

215. From the standpoint of international human rights law, the situation described represents violations of the American Convention on Human Rights and other international agreements signed by the Bolivian State that prohibit bondage, forced labor, and other practices similar to slavery, such as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ILO Convention 29 on forced or compulsory labor, ILO Convention 169 on indigenous and tribal peoples, and the United Nations Declaration on the Rights of Indigenous Peoples.

216. The problem of bondage and forced labor in the Bolivian Chaco has its origins in the dispossession of their territory suffered by the Guaraní indigenous people over more than a century, which resulted in the subjugation of its members to conditions of slavery, bondage, and forced labor. The solution to this problem lies not only in the elimination of contemporary forms of slavery on the estates of the Chaco, but also in measures of reparation including the restitution of the ancestral territory of the Guaraní people and integral measures that solve their needs in health, housing, education, and technical training that would arise after the “emancipation” of the Guaraní captive communities.

217. The IACHR recognizes that the efforts of the State to solve this problem face serious resistance from economically and politically powerful groups in the eastern region of the country who have strong ties to estate owners in the Bolivian Chaco. This has generated a climate of high levels of social conflict, with numerous violent incidents.

218. The Commission reiterates the need to ensure that as part of the process of social inclusion, the State develop channels of dialogue so as to reach points of consensus that make it possible to resolve the differences in interests that underlie a multiethnic and multicultural country, especially in the context of implementing the provisions of the Political Constitution of the State. Nonetheless, the IACHR also reiterates that the State cannot derogate from its international obligations regarding the prohibition and eradication of contemporary forms of slavery to comply with some provision of its domestic law; and these obligations include the duty to prevent, investigate, prosecute, and punish the persons responsible for the use of such practices, which constitute crimes under Bolivia’s domestic law and under international law.

219. The State also has the obligation, under the international instruments it has ratified, as well as the provisions of its own Constitution, to ensure the rights of the indigenous peoples to collective property, to their own forms of self-government, and to the development of their own cultural, political, social, and legal institutions, and at the same time to provide the financial and technical resources required by the members of the Guaraní people in the areas of health, housing, education, and professional training.

220. The Commission’s recommendations are aimed at helping the Bolivian State in the design of an integral state policy that takes account of the specific needs of the members of the captive communities. The recommendations have three dimensions: (1) recommendations to prevent, investigate, and punish contemporary forms of slavery; (2) recommendations to reconstitute the territory of the Guaraní indigenous people; and, (3) recommendations to guarantee access to justice for the Guaraní indigenous peoples and all other indigenous peoples in Bolivia.

221. The Commission is aware that the change in direction needed to solve the structural problems of more than a century is no easy task. Through this report, the Commission reaffirms its willingness to continue working to protect human rights in Bolivia, and, in that regard, it will follow up on each of the issues described and on the implementation of the following recommendations.

**Recommendations to prevent, investigate, and punish contemporary forms of slavery in the Bolivian Chaco**

1. Immediately investigate, prosecute, and punish all those who continue to keep persons in conditions of bondage and forced labor, pursuant to the international law obligations contracted by Bolivia and to the Bolivian Criminal Code, which defines slavery and conditions similar to slavery as crimes; and likewise adapt agrarian policy and legislation so as to provide that bondage and forced labor are punishable offenses, in addition to being grounds for the reversion of agrarian lands.
2. Adopt the measures necessary for eradicating all types of discrimination based on the indigenous condition of persons under its jurisdiction, particularly promotion campaigns to raise the awareness of the national population, and the public servants of the Bolivian State, as to the discrimination against the Guaraní communities and their subjugation to bondage and forced labor.
3. Design public policies for eradicating all forms of discrimination against the Guaraní workers in the Chaco, and in particular see to the strict enforcement of labor laws on the length of the workday and equality of pay compared to all other salaried workers.
4. Design policies for eradicating all forms of discrimination against Guaraní indigenous women in the Chaco, and in particular see to the strict enforcement of labor laws on length of the workday and equality of pay compared to men.
5. Design and implement policies for eradicating the work of children under 14 years of age in the Chaco region, and see to the strict enforcement of the standards in which work is allowed for persons under 18 years of age in terms of social rights, as well as the restriction on length of the workday and the activities performed.
6. Create spaces for inter-institutional dialogue and a greater degree of cooperation to eradicate practices similar to slavery in Bolivia.
7. Adopt the measures necessary for achieving the greatest possible coverage of judges, prosecutors, and public defenders in the Chaco region in Bolivia. These measures should include support in terms of the budget and human resources so that in addition to the physical presence of the respective authority, his or her permanence and the stability of the staff should be guaranteed.
8. Create and improve systems and records of statistical and qualitative information on the number of persons subject to bondage, forced labor, and other practices similar to slavery in the Chaco region and the rest of the country. Special attention should be given to the number of children and women in those conditions.
9. Incorporate the voices and specific needs of the indigenous peoples and of the organizations that represent them in the design of legislation and public policies aimed at eradicating the conditions of servitude and forced labor to which their members are subjected.

10. Strengthen the legal system and create mechanisms of coordination between the criminal jurisdiction and the agrarian jurisdiction to overcome gaps in the investigation, prosecution, and punishment of the persons liable for the crimes of bondage and forced labor.
11. Make a diagnosis of the problems in the Public Ministry that keep it from being able to act on its own initiative in investigating and punishing the cases of bondage and forced labor reported to this body, and to all the institutions of the State, and provide the economic, technical and human resources that the Public Ministry needs to undertake its work of investigation and punishment.
12. Strengthen the mechanisms used by the Public Ministry for receiving and responding to the complaints as to the existence of practices similar to slavery made by the indigenous peoples, the organizations that represent indigenous peoples, other government institutions, the Human Rights Ombudsman, and civil society in general.
13. Provide the economic, technical, and human resources necessary to strengthen the National Agrarian Tribunal, and facilitate the capacity of that Tribunal, in coordination with the Public Ministry and other institutions of the administration of justice and agrarian reform, to collaborate in the investigation and punishment of practices similar to slavery in the Chaco and other regions of the country. Give impetus to the resolution, by this body, of the challenges to the reversion orders or other orders as part of the process of clearing title so as to benefit the Guaraní people.
14. Promote the operation of the Constitutional Court to avoid delays in the administration of justice in the cases decided by the Agrarian Tribunal and other entities and jurisdictions involved in the process of eradicating the practices of bondage, forced labor, and other practices violative of human rights.
15. Identify and create inter-institutional indicators and systems for monitoring with a view to implementing the legislation and policies aimed at eradicating, investigating, and sanctioning contemporary forms of slavery in the Chaco region and nationally.

**Recommendations to reconstitute the territory of the Guaraní indigenous people**

16. Adopt a comprehensive plan for the territorial reconstitution of the Guaraní indigenous people with special attention to the rights to collective property, self-government, education, health, housing, and training services in the area of agriculture and other economic activities.
17. Develop channels of dialogue to reach consensus and pursue negotiations on the differences in interests and priorities that underlie the process of resolving the claims of the Guaraní people.
18. Ensure that the current measures taken by the State in this area, such as the process of clearing title under the agrarian legislation and the 2007-2008 Transitory Inter-Ministerial Plan for the Guaraní People are in line with international standards as to the scope and contents of the rights of indigenous peoples to their lands, territories, and natural resources; forms of social, political, and cultural organization; and the right to consultation and to the prior, free, and

informed consent of the indigenous peoples. In this respect, special attention should be given to the provisions contained in the international human rights instruments ratified by the State, particularly ILO Convention 169 on indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples, and the standards established in the case law of the inter-American human rights system as interpretation of the rights enshrined in the American Convention on Human Rights.

19. Ensure that all the measures taken by the State for the restitution of the territory of the Guaraní people, such as clearing title, expropriation, and reversion of lands, be taken with the consensus of the Guaraní people, in keeping with their own procedures for consultation, values, uses, and customary law.
20. Ensure that the tracts of land received by the communities belonging to the Guaraní indigenous people are sufficient to ensure the maintenance and development of their own ways of life.
21. Ensure that the Guaraní communities that receive territory as part of the process of territorial restitution obtain the political, technical, or financial support they need to exercise their rights to autonomy, self-government, and political participation guaranteed by the Political Constitution.
22. Guarantee the right of the communities of the Guaraní people, before and after obtaining legal recognition of their territories, to determine and articulate their own priorities and strategies for development and to participate actively in the design and determination of their health and housing programs and all other economic and social programs that concern them and that they administer those programs through their own institutions.
23. Adopt special measures to ensure the continuous improvement of the economic conditions in the spheres of education, employment, training and professional re-training, housing, sanitation, health, and social security for the members of the Guaraní indigenous people.
24. Ensure that the collective property rights acquired by the Guaraní communities also guarantee the rights over the natural resources in their territories.
25. In terms of other types of measures, activities, laws, or policies that affect the interests of the communities of the Guaraní people, the State should ensure the participation of those communities by means of a process of consultation that entails the obligation to obtain their prior, free, and informed consent in keeping with their own customs and traditions.
26. Identify and create inter-institutional indicators and monitoring systems so as to implement the legislation and policies aimed at resolving the situation of the communities of the Guaraní indigenous people in relation to their rights to their lands, territories, natural resources, and the development of their own institutions and the satisfaction of their needs in the areas of health, education, housing, and other social services.
27. Identify and resolve possible unmet demands of the Tierras Comunitarias de Origen, particularly in the Alto Parapetí, as a result of prior processes of clearing

title undertaken in the region. The resolution of those demands should conform to the same standards on the rights of indigenous peoples mentioned above.

**Recommendations to guarantee access to justice for the Guaraní indigenous people and all other indigenous peoples in Bolivia**

28. Adopt and reform national policies and laws so as to institute effective procedures to solve the indigenous peoples' land claims – with special attention to the situation of the Guaraní communities in the Chaco region.
29. Adopt and reform the national legislation so that the indigenous peoples can institute legal proceedings, personally or through their representative bodies, to ensure respect for their human rights. Such procedures should be fair and equitable and lead to prompt decisions with effective reparations for harm to their individual and collective rights. Particular attention should be given to the cases related to injuries suffered by indigenous individuals who have been victims of acts of violence.
30. Ensure that the administrative steps of the procedures for claiming indigenous lands are accessible and simple, and that the bodies in charge of them have the necessary technical and material conditions for providing a timely response to the requests made by the indigenous peoples in the context of those procedures. In addition, those procedures should consider the customs, traditions, norms, and legal systems of the interested indigenous peoples as well as international human rights standards. Further, in the legal procedures in which members of indigenous peoples participate, the presence of interpreters of the respective indigenous languages should be guaranteed, if those participating deem it necessary.
31. Adequately implement national legislation to ensure compliance with the time periods established in the law for resolving the actions, appeals, or other remedies pursued within the administrative, legal, or other procedures relating to the rights of the indigenous peoples.
32. Ensure that there is a sufficient presence of authorities on labor and judicial matters in the regions where indigenous peoples are found, particularly in the Chaco region.
33. Incorporate the specific voices and needs of the indigenous peoples and of the organizations that represent them in the design of legislation and public policies aimed at improving access to the national justice system by the indigenous peoples.
34. Adopt immediate measures for ensuring effective training in labor rights and indigenous rights for all public employees (including prosecutors, police, judges, public defenders, and administrative officers) who might be involved in processing cases on situations of bondage, forced labor, or acts of violence against members of indigenous peoples so that they apply the domestic and international provisions for adequately prosecuting these crimes and so that they respect the integrity and dignity of the victims and their next of kin when reporting these acts, and during their participation in the judicial proceeding.



35. Facilitate free legal assistance to address the demands the members of indigenous peoples may have, particularly in isolated areas such as the Chaco. Coordinate with other state institutions to facilitate the right of access to justice for the indigenous peoples. Implement larger sums of state resources allocated to the agencies in charge of providing legal assistance services to the indigenous peoples.
36. Increase investments in health and education. Particular attention should be given to disseminating information with respect to the labor rights, agrarian rights, and human rights of the indigenous peoples.
37. Ensure that the members of the indigenous peoples have identification papers to facilitate their participation in state assistance programs, and to gain access to the national justice system.
38. Identify and create inter-institutional indicators and monitoring systems for the implementation of the legislation and policies aimed at ensuring the right of indigenous peoples to have access to justice.