Translated from Spanish

UNITED NATIONS PERMANENT FORUM

ON INDIGENOUS ISSUES

MISSION TO BOLIVIA

REPORT AND RECOMMENDATIONS

Acronyms

APG	Assembly of the Guaraní People
FAO	Food and Agriculture Organization of the United Nations
FEGASACRUZ	*Federación de Ganaderos de Santa Cruz* [Santa Cruz Federation of Livestock Breeders]
IDH	Direct Tax on Hydrocarbons
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
INRA	National Institute for Agrarian Reform
NGO	Non-governmental organization
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OTB	*Organizaciones Territoriales de Base* [Grassroots territorial organizations]
PIT	Inter-ministerial Transition Plan for the Guaraní People
SDC	Swiss Agency for Development and Cooperation
TCO	Original community lands
UNDP	United Nations Development Programme

Note: Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses in this report have been kept anonymous. The United Nations wishes to express its appreciation of the efforts made by individuals and institutions who, by providing information, contributed to the Mission.

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Executive summary

This report, undertaken under the mandate of the United Nations Permanent Forum on Indigenous Issues and at the request of the Government of Bolivia, concludes that forced labour exists in the Chaco region, along with grave violations of international treaties ratified by Bolivia. The Mission appreciates the decision announced by Bolivian Government officials to adopt measures aimed at eradicating conditions and situations preventing the full exercise of human rights. The Mission has established failure to comply with the following instruments:

- United Nations Declaration on the Rights of Indigenous Peoples (United Nations General Assembly resolution 61/295 and Law No. 3760 of the Republic of Bolivia);
- ILO Convention concerning Indigenous and Tribal Peoples (No. 169);
- ILO Convention concerning Forced Labour (No. 29);
- Supplementary Convention concerning the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;
- ILO Convention No. 138 concerning Minimum Age for Admission to Employment;
- ILO Convention concerning the Worst Forms of Child Labour (No. 182);
- ILO Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87);
- ILO Convention concerning the Right to Organize and Collective Bargaining (No. 97);
- ILO Convention concerning Equal Remuneration (No. 100);
- ILO Convention No. 111 concerning Discrimination (Employment and Occupation);
- ILO Convention concerning Protection of Wages (No. 95);
- United Nations Convention on the Elimination of All Forms of Discrimination against Women;
- United Nations Convention on the Rights of the Child;
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- United Nations Code of Conduct for Law Enforcement Officials (United Nations General Assembly resolution 34/169);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- American Convention on Human Rights (Arts. 6, 13, 15, 16, 21, 22 and 24).

These violations, as well as violations of the old and the new Bolivian Political Constitution, the General Law on Labour and the Bolivian Criminal Code, oblige the Government to adopt urgent measures to address the situation of the Guaraní people in respect of the following issues ascertained by the Mission:

- The existence of forced labour and servitude of Guaraní men and women;
- The existence of child labour and other violations of the rights of the child, such as sexual abuse of Guaraní girls;
- Inadequate labour conditions;
- Restrictions on freedom of association and movement;
- Systematic violence against indigenous peoples;
- Inability to obtain identification documents and consequent exclusion from State allowances, such as the Dignity Income [*Renta Digna*] pension for senior citizens or the *Juancito Pinto* school vouchers, as well as other obstacles to the exercise of citizenship, particularly the right to vote;
- Discrimination, lack of access to justice and lack of impartiality of the judicial system and of regional public administration;
- Lack of legal security in respect of land ownership, be it collective or individual plots; deprivation of territory, lands and resources; inequitable land ownership;
- Weak presence of State institutions to ensure the rule of law and the indigenous self-government provided for in the Constitution;
- Little or no indigenous participation in decision-making bodies, especially at the departmental and municipal levels; and
- The current critical food security plight of Guaraní communities.

On May 28, 2009, the Mission's conclusions were formally presented to the United Nations Permanent Forum on Indigenous Issues in New York. They included recommendations in the following areas:

- Guarantees for the effective enjoyment of the right to free, prior and informed consent of the indigenous peoples and of the Guaraní people in particular;
- Strengthening of State institutions in the Chaco region with respect to administration, labour issues, security, the legal system, rural development and farming, education, heath, and other matters;
- Financing for development initiatives of indigenous peoples, particularly those of the Guaraní people, that would enable them to live in freedom;
- Strengthening measures to implement agrarian reform and guarantee rights to territory and lands for the indigenous peoples in general and the Guaraní people in particular;

- Effective execution of the Inter-ministerial Transition Plan for the Guaraní People, especially its contingency and food security plans;
- Boosting initiatives for social dialogue in the Chaco region with a view to sensitizing the entire population to the need to eradicate forced labour and servitude;
- Promotion and application of the principle of non-discrimination in all spheres of the indigenous peoples' lives, in order to guarantee the exercise of their rights;
- Regional cooperation and cross-border strategies to ensure protection of the indigenous peoples; and
- The need for the agencies of the United Nations system active in Bolivia to continue and strengthen their activities of support for the indigenous peoples of the Chaco, and the Guaraní people in particular, focusing on areas in which they can cooperate and helping public institutions to implement the recommendations of this Mission, along with those made by the Special Rapporteur and the Inter-American Commission on Human Rights.

The Mission of the United Nations Permanent Forum on Indigenous Issues confirms once again the existence of servitude, forced labour and abuses against indigenous peoples, particularly against members of the Guaraní people, on the estates of the Chaco, already denounced by the Government (Presidents Mesa and Morales), the ILO, the Office of the United Nations High Commissioner for Human Rights, by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous Peoples and by the Inter-American Commission on Human Rights of the OAS. The Mission also finds that the living conditions of the Guaraní people have deteriorated sharply, due to attacks and threats against leaders, the expulsion of leaders' families, and the division of Guaraní community organizations by using municipal and departmental resources. The Mission therefore urgently calls upon the national and departmental authorities, as well as the international community, multilateral and bilateral organizations and NGOs to work closely together to address and resolve the serious food crisis in Guaraní communities and to put an end to violations of the rights of the indigenous peoples of the Chaco.

I. Introduction

1. In response to a request from the Government of Bolivia, the United Nations Permanent Forum on Indigenous Issues organized a multi-agency mission to visit the Department of Santa Cruz and to La Paz in April-May 2009 to verify complaints regarding the practice of forced labour and servitude among communities of the Guaraní People and to draw up proposals and recommendations to ensure that the fundamental rights of persons, communities, and the indigenous peoples are respected. The Mission was comprised of the Chairperson of the United Nations Permanent Forum on Indigenous Issues, Ms. Victoria Tauli-Corpuz, members of the Permanent Forum Lars Anders Baer, Bartolomé Clavero and Carlos Mamani, and Isabel Ortiz and Carol Pollack, officials of the United Nations Department of Economic and Social Affairs in New York. Accompanying the Mission were experts from other agencies: Vilma Romero of the Office of the United Nations High Commissioner for Human Rights in Bolivia; Ian Cherrett of the Food and Agriculture Organization (subregional Office of the FAO in Panama); Rosario Baptista and Miriam Campos of the International Labour Organization in Bolivia; and Xavier Beaudonnet of the Regional Office of the International Labour Organization in Lima (Peru).

2. The Mission's mandate was set by a recommendation of the United Nations Permanent Forum during its seventh session (May 2008) and confirmed by an official invitation from the Government of Bolivia on December 12, 2008.

> "*The Permanent Forum has learned from indigenous peoples' communications, which have been corroborated by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, that in the Chaco region there are Guaraní communities in a practical state of slavery. According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, as well as the articles 17, 26 and 28 of the United Nations Declaration on the Rights of Indigenous Peoples, the Forum strongly supports the efforts of the current Government of Bolivia and the commitment of the incoming Government of Paraguay to discontinue this enslaving practice and return indigenous lands to their lawful owners, the Guaraní themselves*" (E/C.19/2008/13, para. 156).

3. This Report has been prepared by the United Nations Permanent Forum Issues, as represented by the chairperson of the Permanent Forum, Victoria Tauli-Corpuz, and members of the Permanent Forum Lars Anders Baer, Bartolomé Clavero and Carlos Mamani. The report is based on interviews conducted by the Mission; inspections; census data and information from the Prefecture of Santa Cruz and the National Government of Bolivia; official documents of the International Labour Organization, the Office of the United Nations High Commissioner for Human Rights, the United Nations Special Rapporteur on the Human Rights of Indigenous Peoples, the Inter-American Commission on Human Rights of the OAS, and the Indigenous Peoples and Empowerment Programme of the Swiss Agency for Development and Cooperation (COSUDE) in Bolivia; as well as information and documentation provided by indigenous peoples' organizations, the livestock breeders' federation, and national and international non-governmental organizations.

4. The Mission visited communities in the Chaco and met with indigenous organizations representing the Guaraní people, such as the Guaraní People's Assembly (APG); with the

Captaincies of Alto Parapetí, Chuquisaca and Tarija; with landowners in the area and the Federation of Livestock Breeders of Bolivia; with the Ministers of Justice, of Rural Development, Agriculture and Land, and of Labour, Employment and Social Security; with the Vice-Ministers of Labour and Social Security, of Autonomies and of Justice and Fundamental Rights; with the Office of the Attorney General (*Fiscalía General del Estado*), the National Agrarian Tribunal, the Acting Ombudswoman (*Defensora del Pueblo en Suplencia Legal*), the President of the Senate and that of the Chamber of Deputies with its Human Rights Committee, the Director General of Bolivia's lowlands, the office managing the Inter-ministerial Transition Plan for the Guaraní People, the National Institute of Agrarian Reform (INRA), as well as the Office of the Prefect and the District Attorney's Office of Santa Cruz de la Sierra (annex). The United Nations wishes to thank individuals, organizations and institutions for the trust they placed in the Mission.

5. On Thursday, May 28, 2009, in a plenary session of the Permanent Forum on Indigenous Issue attended by indigenous participants from around the world, States, UN agencies, NGOs and other civil society organizations, participating Permanent Forum members orally presented the recommendations contained in this report. On the basis of the presentation, the Permanent Forum issued the following recommendation:

> *The Permanent Forum notes the mission to Bolivia and Paraguay and thanks the Governments of both countries for their invitations. This mission came about following the Forum's recommendation regarding the situation of forced labour of Guarani communities at its seventh session. The Permanent Forum welcomes the mission as a good practice and decides to publish the reports of the mission as official documents. The Forum urges United Nations country teams to follow up the recommendations of these reports and suggests to the relevant Governments that they report on the implementation of these recommendations at the ninth session of the Forum in 2010.* (E/C.19/2009/14, para. 94).

II. Legal context

6. The State of Bolivia has ratified and supported a series of international treaties and declarations (table 1) and therefore has a duty to implement them. To that end, the State of Bolivia has made a major effort to incorporate these commitments in domestic law. For instance, the United Nations Declaration on the Rights of Indigenous Peoples not only became Law No. 3760; its principles have been built into the new Constitution of the Plurinational State of Bolivia.

7. The Constitution itself, the General Law on Labour of Bolivia, its implementing regulations and the Criminal Code condemn, among other things, forced labour, child labour, and labour discrimination, and they defend freedom of association, job security, observance of the minimum wage and of the maximum number of hours of work, and compliance with contributions to social security. Specifically as regards forced labour, the following domestic articles and provisions should be noted:

Table 1

International instruments supported/ratified by Bolivia

√	United Nations Declaration on the Rights of Indigenous Peoples (United Nations General Assembly resolution 61/295)
√	ILO Convention No. 169 concerning Indigenous and Tribal Peoples
√	ILO Convention No. 29 concerning Forced Labour
√	Supplementary Convention concerning the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
√	ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize
√	ILO Convention No. 182 concerning the Worst Forms of Child Labour
√	ILO Convention No. 111 concerning Discrimination (Employment and Occupation)
√	ILO Convention No. 95 concerning Protection of Wages
√	International Covenant on Civil and Political Rights
√	International Covenant on Economic, Social and Cultural Rights
√	International Convention on the Elimination of All Forms of Racial Discrimination
√	United Nations Convention on the Elimination of All Forms of Discrimination against Women
√	United Nations Convention on the Rights of the Child
√	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
√	American Convention on Human Rights

- Article 46 of the new Constitution (or Article 5 of the old Constitution): "No type of servitude is recognized and no one shall be compelled to render personal services without his full consent and due compensation";
- Articles 15.I, 15.V, 46.III and 61.II of the National Constitution establish that: "*Everyone has the right to life and physical, psychological and sexual integrity*"; "*No one may be subjected to servitude or slavery*"; and "*the trafficking and smuggling of persons are prohibited*"; "*Forced labour and the exploitation of children are prohibited. The activities of children and adolescents in the family and in society shall be directed towards their all-round training as citizens and shall have a formative function. Their rights, guarantees and institutional protection mechanisms shall be the subject of specific regulations*";
- Articles 144 and 145 of Decree Law No. 3464 of 1953, which abolished "*colonato*" [Tr. tenancy of plots in return for free labour] and any other form of provision of free or compensatory personal services and established wages, as a right that cannot be waived, in all individual or collective contracts;
- Supreme Decree No. 29215 of 2 August 2007, which establishes that the existence of relations of servitude, clearly contrary to the collective interest, is evidence of non-compliance with the

Economic and Social Function and cause to proceed to non-recognition of agrarian property rights or expropriation.

Nevertheless, as this report documents, the indigenous peoples in the Chaco are subject to grave and severe violations of both domestic laws and international treaties ratified by Bolivia.

8. International law obliges Governments to use their power to protect and give effect to human rights.[1] That entails not just ensuring that their officials comply with human rights standards, but also acting with "due diligence" to address violations committed by non-State authorities and by private persons. When a State or a legally constituted authority knows or should know that violations of human rights are being committed and fails to take appropriate steps to prevent them, it shares with the perpetrators responsibility for those violations. The principle of due diligence includes the obligation to prevent human rights violations, investigate them, punish them when they occur, and provide redress and support for victims.[2]

III. Existence of forced labour in Guaraní communities in the Bolivian Chaco: a decade of documentation

9. Historians point to the so-called battle of Kuruyuqui (1892) as the beginning systematic servitude for the Guaraní peoples in Bolivia. The Chaco region – the "last frontier" of the Americas – resisted the winds of social and political change, such as the 1952 Agrarian Reform, stirring the highlands. On the contrary, the lowlands of Eastern Bolivia were grouped together into large estates and granted in concession to landowners, along with the indigenous population inhabiting them, which remained captive inside the *haciendas*. It was only towards the end of the twentieth century that NGOs and the Catholic Church drew attention to the existence of servitude, which they attempted to alleviate through purchases of land which partly benefited a small part of the Guaraní population. Then, in 1999, came the first admission by the Government (Ministry of Justice) of the existence of such relations, although it was not until 2003 that they were made public, because the information had previously been declared "confidential" by authorities.

10. Since then, the existence of forced labour by the indigenous communities of the Chaco region has been extensively documented. The pioneering works of Stephen Kidd and *Anti-Slavery International* (1997),[3] and others, drew the attention of the International Labour Organization, which conducted an investigation in Bolivia from October 2003 to May 2004 and concluded that forced labour and debt bondage were used in the sugar cane harvest in Santa Cruz de la Sierra and in the chestnut harvest in the Departments of Beni and Pando, and that there were communities and families in conditions of servitude in the Bolivian Chaco, in the departments of Tarija, Chuquisaca and Santa Cruz, involving some 5,100 to 7,000 persons of Guaraní origin. This study was published in January 2005, entitled "*Enganche por servidumbre y*

[1] See, for example, article 2 of the International Covenant on Civil and Political Rights.
[2] See, for instance, General Comment 31 of the Human Rights Committee, the body of experts overseeing implementation by States of the International Covenant on Civil and Political Rights.
[3] Stephen Kidd (1997). "The working conditions of indigenous people in the Chaco" in *Enslaved peoples in the 1990s: indigenous peoples, debt bondage and human rights.* Copenhagen, Anti-Slavery International.

deudas en Bolivia"[4] [Servitude and Debt Bondage in Bolivia]. It estimated that some 21,000 sugar cane harvest workers were subject to forced labour in the Department of Santa Cruz de la Sierra, along with approximately 6,000 families harvesting chestnuts in Beni y Pando.

11. In July 2005, during the Presidency of Carlos Mesa, the Vice-Ministry for Lands of Bolivia, prepared a draft "Project to Liberate Captive Guaraní Families and Communities". The Vice-Ministry estimated that there were 449 captive families in the region of Alto Parapetí and 600 families in the department of Chuquisaca (table 2).

Table 2
Families in Alto Parapetí and Chuquisaca in conditions of *empatronamiento* [servitude] and forced labour

Area	*Communities*	*Number of families*
Alto Parapetí, Municipality of Lagunillas [a]	4	96
Alto Parepetí, Municipality of Cuevo [b]	16	353
Subtotal, Alto Parapetí	**20**	**449**
Chuquisaca, Municipality of Huacareta	20	500
Chuquisaca, Municipality of Muyupampa	4	100
Subtotal, Chuquisaca	**24**	**600**
Total, captive communities	**44**	**1 049**

Source: *Proyecto para la liberación de las Comunidades Cautivas y empatronadas Guaraníes, Ministry of Sustainable Development, Vice-Ministry of Lands, Guaraní Peoples Assembly*, La Paz, 2005.
[a] In Iviyeca, Tacete. Yapumbia and Yaiti.
[b] In El Recreo, Villa Mercedes, Itacuatia, Huaraca, Karapari Alto, Karapari Bajo, Kapirenda, Timboirenda, Arenal, Karayagua, Mandiyuti, Ivicuati, Tartagalito, La Colorada, Karaguatarenda and Karatindi.

12. A report entitled "*Quiero ser libre, sin dueño. Servidumbre y Empatronamiento en el Chaco*",[5] written by the Ministry of Justice in coordination with the Ombudsman and the Council of Guaraní Captains of Chuquisaca, with support from the Swiss Agency for Development and Cooperation (COSUDE), was presented to the public in November 2005 and gave rise to Ombudsman Resolution (*Resolución Defensorial*) No. RD/SCR/0002/2005/DH on

[4] Bedoya, E. and Bedoya, A. (2005). *Enganche por servidumbre y deudas en Bolivia*. Geneva, International Labour Office, Declaration/WP/41/2004.
[5] Ministry of Justice, Ombudsman (*Defensor del Pueblo*) and the Council of Guaraní Captains of Chuquisaca (2006): *Aipota aiko chepiaguive cheyambae* o *"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"* [I want to be free without a master. Servitude and Forced Labour in the Chaco. The lack of protection and absence of the State, and the defenseless, labour exploitation, and work without dignity of the captive Guaraní families in the Department of Chuquisaca].

servitude and forced labour [*servidumbre y empatronamiento*] in the Chaco, which was forwarded to national, departmental and municipal authorities.

13. On 17 May 2005, the Government issued Supreme Decree No. 28159, which applies the term "empatronados" to "landless Guaraní families and communities that work as farmhands for others, in a subordinate and dependent status" and establishes, in order to change their situation, an indissoluble bond between ownership of land and the restoration of labour rights.

14. In 2006 *Anti-Slavery International* published a new study,[6] and in 2007, the Ministry of Justice of Bolivia and the Swiss Red Cross conducted an extensive field investigation in the Chaco. Their report, entitled "*Comunidades Cautivas del Alto Parapetí: Diagnóstico Demográfico, Tenencia de Tierra y Relaciones Laborales*" [*Captive Communities in Alto Parapetí: A Demographic Diagnostic Assessment, Land Tenure and Labour Relations*], notes that 64 per cent of all the Guaraní *empatronados* interviewed were permanently *empatronados*, while 26 per cent were temporary workers in that condition. Of the latter, 64 per cent are Guaraní men, 30 per cent women and 6 per cent children.

15. Given the grave plight of the Guaraní people, on 3 October 2007 the National Council for the Eradication of Forced Labour was established and the Inter-ministerial Transition Plan for the Guaraní People (PIT) was approved (Supreme Decree No. 29292). The Inter-ministerial Transition Plan for the Guaraní People (PIT) envisages: (i) effective exercise of the rights of Guaraní families; (ii) land reorganization (*saneamiento de tierras*); (iii) contingency measures during the transition; (iv) production; (v) communication; and (vi) mechanisms for executing, monitoring and evaluation of the Plan. The Ministries of Labour, the Presidency, Justice, Development Planning, Rural Development and Production[7] are in charge of executing the Plan and its Board (component vi). These six ministries work on an equal footing with six leaders of the Guaraní People's Assembly (APG).

16. The PIT addresses a petition by the Guaraní People's Assembly (APG) for recognition of part of the land in the area as Community Lands of Origin (TCO), a demand that dates back to 2002, in such a way that communities that are captive or living in servitude can reconstitute themselves. Through its National Institute of Agrarian Reform (INRA), the Government responded to the petition in 2007. However, that initiative encountered direct opposition from the Prefecture, municipalities, stockbreeders associations, civic committees and the owners of large estates in the area. The Guaraní territory in the Chaco region contains important reserves of hydrocarbons, including the biggest gas fields in Bolivia. The existence of this vast wealth, from which the Guarani people derive no benefit, has greatly exacerbated tension and conflict in the region.

17. In December 2007, a mission by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen,[8] again underscored the existence of indigenous people subject to various forms of servitude or forced

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[6] Sharma, B (2006). *Contemporary forms of slavery in Bolivia.* London, Anti-Salvery International.
[7] Inter-ministerial Transition Plan for the Guaraní People (PIT) 2007-2008, appendix I.
[8] Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen: mission to Bolivia (25 November to 7 December, 2007).

labour in the *haciendas* of the Chaco region, in which entire communities are subjected to servile conditions on the farming and/or livestock estates in exchange for wages so low that the workers and their families are forced to rely on supplies from their employer.

18. On 10 March 2008, in the framework of the 131st period of sessions of the Inter-American Commission on Human Rights (IACHR), there was a hearing with representatives of the APG, who lodged a complaint with the Commission and Government representatives, which led to the signing by the Government, on 11 March 2008, of a Memorandum of Commitment, to adopt measures to put an end to the bondage of the Guaraní people. In that memorandum, the petitioners at the hearing and the representatives of the State concurred on the need for the Inter-American Commission to visit Bolivia "*in order to ascertain in the geographical locations affected the facts that are the object of complaint, which threaten the agrarian reform process and the security of the captive families of the Guaraní people*".

19. In June 2009, the Inter-American Commission on Human Rights of the Organization of American States (OAS) carried out that fact-finding mission regarding the situation of the captive Guaraní communities living in a state of bondage analogous to slavery in the Bolivian Chaco, Departments of Santa Cruz, Chuquisaca and Tarija. According to its report, "*The Commission has received detailed information on the case of Guaraní families living on estates in the Bolivian Chaco (…) This situation has persisted for decades and, in general terms, involves excessive physical labour for persons of all ages, including children, teenagers, and elderly adults, in some cases under the threat of corporal punishment, about which the Commission heard alarming testimony. (…) According to reports … the owners are frequently part of or are directly related with the local political power (…). This situation is of profound concern to the Commission, for it ignores the absolute prohibition against slavery, bondage and forced labour contained in the American Convention and other international instruments to which Bolivia is party*."[9]

20. The Ministry of Justice, with COSUDE support, and the Ministry of Labour, with ILO support, in coordination with the Council of Guaraní Captains of Chuquisaca, fostered processes of reconciliation between the owners of the *haciendas* and Guaraníes for all the years worked without remuneration, on numerous estates in the Department of Chuquisaca. The outcome of those reconciliations not only confirmed that the majority of the families living in bondage (*empatronadas*) had not received regular wages. It also revealed that some owners of estates had used false information in order to leave Guaraníes "in debt" for many years. The reconciliations resulted in more than 1,092,000.00 Bolivian pesos[10] being paid in order to redress violations of labour rights, such as wages below the legal minimum, and to pay compensation for years of service and other social benefits. In the course of those reconciliations, it transpired that women's work was systematically regarded as inferior to that of men, so that for equal or greater work, the remuneration they received was half that of men's.

[9] Report of the Inter-American Commission on Human Rights of the OAS on Access to Justice and Social Inclusion in Bolivia. *OAS Official Records Series* (*OEA/Ser.L/V/II*).
[10] Some US$144,455 paid to indigenous workers to redress labour rights violations.

21. However, many large estate and other landowners continue to deny the existence of servitude in the area of Alto Parapetí and they continue to have some degree of political power, as evidenced by the fact that in April 2008, they formed a Multiparty Commission of the Parliamentary Brigade of Santa Cruz,[11] which, in that same month, visited communities and *haciendas* in the region and concluded that what there was not forced labour but extreme poverty. The Government disqualified the report for lack of impartiality. The influential Cardinal Terrazas, who lives in Santa Cruz,[12] publicly denied the existence of servitude and slavery and demanded proof from those who asserted their existence, despite the fact that, at the local level, the Church had attempted to alleviate the situation by buying lands to liberate Guaraní communities. The Ombudsman (*Defensor del Pueblo*), several human rights institutions and churches (Catholic and Evangelical) also formed a commission, which visited the area to ascertain the situation of Guaraní families inside the *haciendas*. However, that commission was rejected by the President of the Agricultural and Livestock Producers Union of the South (*Unión de Productores Agropecuarios del Sur*), which said that they would only accept the report of the parliamentarians of Santa Cruz.

22. In a referendum held on 24 January 2009, Bolivia approved the new Constitution, which is consistent with the United Nations Declaration on the Rights of Indigenous Peoples as an essential part of the Plurinational State. Despite opposition in parts of eastern Bolivia (Santa Cruz, Pando, Beni, Tarija), the new Constitution was adopted a majority of votes. The Constitution guarantees rights to education and health, and access to basic services, such as water, sewage systems, gas, and electricity, as human rights. The new Constitution recognizes collective rights of indigenous peoples and cultures and contemplates indigenous self-government through the reconstitution of those peoples' territories and autonomy.[13]

23. Given the highly polarized positions taken, the Bolivian Ombudsman's Office made various attempts to initiate dialogue. However, the violence and acts of aggression continued. In July 2008, the Ombudsman prepared a report by his Office on the events of April 2008 in Alto Parapetí, as a consequence of the reorganization of lands, in which he reported that senior INRA officials, civilians and members of the Guaraní People's Assembly were kidnapped and tortured, as a result of which 46 people were injured, 35 slightly and 11 severely, including the Director of the INRA. The Ombudsman reported that those acts were followed by even more violent attacks in September 2008. In December 2008, the Government of Bolivia requested the assistance of the United Nations Permanent Forum.

IV. Findings of the Mission

"*We worked from 6 in the morning until 6 at night. There was no day of rest. We worked seven days a week. There was no school. The older children looked after the young ones or else went with their mother to the fields. Women were not paid. We were never able to complain until now. The owners threatened us. There were people who died working, but*

[11] Composed of deputies from Santa Cruz from several parties opposed to the Government (P O D E M O S, Unidad Nacional).
[12] For instance, the homily of 13 April 2008.
[13] National Congress of Bolivia (2008) *New Political Constitution of the State.*

couldn't complain. They couldn't go to Camiri to have a doctor examine them and we had no idea of what there was beyond Camiri. And if you asked how much people earned on other farms, they threw you out. Now we are outside the hacienda, but things aren't any better. The bosses hem us in; they don't let us go in or come out. They left us without shade and didn't allow the INRA people to give us seeds. One day they came and smashed everything; they hit us and stoned us. Many of us hid wherever we could. First they came with sticks and stones. Then they came with rifles and bullets."

A Guaraní man (identity not revealed for security reasons), May 2009.

24. This report contains separate analyses of the situation of the Guaraní people with respect to violations of different rights (forced labour, child labour, poor working conditions, sexual abuse, the loss of — and consequent lack of access to — lands, the non-existence of social services, restrictions on the right to freedom of association, discrimination, and judicial bias). It includes a section on the limited progress made with Agrarian Reform and the Transition Plan for the Guaraní People, for political and bureaucratic reasons, which has left entire communities in an extremely precarious state, including a severe food crisis that needs to be addressed as a matter of urgency.

25. The Mission confirmed the complex nature of the area's political economy. The Community Lands of Origin (Tierras Comunitarias de Origen) that have been recognized or are being claimed by the indigenous peoples of the Chaco are in the middle of huge ranches, sometimes crossed by gas pipelines owned by oil companies. These are key factors for understanding the difficulty of the land reorganization process and the reconstitution of indigenous territories.

26. Indigenous peoples are confronted with a particularly intractable situation due to the tensions between the Government and the local authorities in Bolivia's richest (oil and gas) departments. Those departmental local authorities, in conjunction with the big landowners, are fighting for control of the resources and looking for a high degree of autonomy from the Government. In May 2008, four Prefectures — Santa Cruz, Beni, Pando and Tarija — which are often referred to as Bolivia's eastern "Half Moon", conducted referendums on autonomy, that were ruled illegal by the National Electoral Court [Corte Nacional Electoral].[14] One vital issue is the Direct Tax on Hydrocarbons (IDH), the principal source of financing for Bolivia's National Development Plan and its programs, including the Inter-ministerial Transition Plan for the Guaraní People. Although the central Government distributes proportionately more of its oil and gas revenue to municipal and departmental governments than do other countries in the world, the "Half Moon" departments want to keep for themselves a higher share of the oil and gas royalties.[15]

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[14] National Electoral Court, Republic of Bolivia: "Resolutions of the National Electoral Court" resolution No. 014/2008, 28 July 2008.

[15] According to Ministry of Hydrocarbons and Energy data, the distribution of the IDH revenue in 2009 is: 25 per cent for prefectures where the hydrocarbons are produced; 8 per cent for prefectures that do not produce oil or gas; 30 per cent for municipal governments; 7 per cent for the Bolivian Treasury (*Tesorería General de la Nación*); 10 per cent for universities; 5 per cent for the armed forces and police; 5 per cent for the Indigenous Fund and 10 per cent for "Renta Dignidad", a non-contributory pension scheme for all Bolivians, male or

27. The tensions between the Government and the opposition have also led to paralysis of the national judicial system and to politicization of local courts. That is one of the main obstacles to the enforcement of any judicial ruling in Bolivia, including decisions related to the Agrarian Reform programme, which are addressed in greater detail below.

28. Land ownership in Bolivia is highly concentrated. Just 686 estates, or 0.22 per cent of all farming and livestock units, account for over half the land. Conversely, 86 per cent of the properties account for only 2.4 per cent of the land and there are many rural families with no land at all. This concentration of land ownership in Bolivia by a very small group is the second worst in the world, after Chile, according to FAO;[16] a handful of estate owners have everything while 91 per cent of the population cannot satisfy even basic needs. The departments of Santa Cruz, Beni and Pando encompass 77 per cent of the arable land.[17] Over half of the landowners in the departments of the "Half Moon" account for the highest concentration of land ownership and have the greatest vested interest in opposing any agrarian reform: Tarija has 60 per cent of Bolivia's natural gas reserves, followed by Santa Cruz, with 22 per cent, and they account, therefore, for 82 per cent of the country's output.[18] Some of the most prominent leaders of the opposition in Santa Cruz are major landowners; for instance, the former President of the Pro Santa Cruz Civic Committee (the powerful civic and business association of Santa Cruz) owns 12,000 hectares of land.[19]

29. Generally speaking, the owners of *haciendas* in the area have practised a low-yield, extensive type of stockbreeding. Ninety per cent of agricultural and livestock output is used for local consumption, while the remaining 10 per cent is swapped for provisions. In other words, it is not a modern, commercial agricultural and livestock economy, but, rather, an inefficient economy.[20] In general, the owners of *haciendas* in the region do not have high incomes (there are exceptions, but they are not the norm) and their haciendas operate with inexpensive indigenous labour. That fact had not mattered in political terms until quite recently, when article 157 of Supreme Decree No. 29215[21] stated that the existence of a system of servitude, forced labour, debt bondage and/or slavery of captive families or persons in rural areas was detrimental to society, against the collective interest, and an obstacle to the performance of "the economic and social function". According to the provisions of articles 28 and 29 of Law No. 3545 (the Community-based Agrarian Reform Renewal Act), lands used to the detriment of the collective interest (art. 28) shall revert to the original domain (*dominio originario*) of the nation, without any compensation, and total or partial failure to comply with the economic and

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female, that has a major impact on poverty reduction.

[16] FAO, World Census of Agriculture.

[17] IFAD, 2005. *Republic of Bolivia. Country Programme Evaluation,* International Fund for Agricultural Development, Rome.

[18] National Statistics Institute, La Paz.

[19] Centre for Economic and Policy Research, 2008: *Distribution of Bolivia's most important. natural resources and the autonomy conflicts.* CEPR, Washington.

[20] Ministry of Justice, Swiss Red Cross and the Captaincy of Alto Parapeti (2007) *Comunidades cautivas del Alto Parapeti: Diagnostico demográfico, tenencia de tierra y relaciones laborales* [Captive communities of Alto Parapeti: demographic diagnostic assessment, land tenure and labour relations].

[21] Implementing Regulation of Law No. 1715 of the National Agrarian Reform Service, amended by Law No. 3545 of 28 November 2006 on Community Renewal of the Agrarian Reform.

social function shall be grounds for such reversion (art. 29). This is ratified, moreover, in the new Bolivian Constitution, and supported by the United Nations Declaration on the Rights of Indigenous Peoples. Both instruments provide for the reconstitution of indigenous territories and self-government for these peoples.

30. Thus, the owners of the *haciendas* had two main reasons for getting organized: (i) to keep title to their lands, given the existence of oil and gas in the area; and (ii) to keep their position of authority (*patronos*). The Mission heard allegations that there is a third reason, which still needs to be proved, namely a possible partnership of the *hacienda* owners with drug traffickers, which would explain why the Alto Parapetí area is kept closed (with padlocks on the bars or gates) and monitored (using radio communication systems). In any case, reasons (i) and (ii) are inconsistent with the principle of common public good and the efforts by the Government to return lands to the indigenous communities and reconstitute the territory of the Guaraní people legitimate.

31. Faced with the new Constitution and amendments to the agrarian reform regulations, the *hacienda* owners appear to have quickly organized themselves to review the risks posed to them by the policy of returning lands to the communities and reconstituting their territories. The mission received evidence that the landowners were now focusing on improving some of the working conditions of the Guaraníes on condition that they have no ties with the Guaraní People's Assembly (APG) and were expelling from the *haciendas* and threatening indigenous persons affiliated to the APG. The mission was also shown evidence that the *hacienda* owners have obtained the support of the authorities in the area and of the Prefecture of Santa Cruz. The mission received evidence of blatant discrimination and organized violence and ascertained that the Prefecture of the department of Santa Cruz, as well as the municipal authorities, still take the line that the servitude and forced labour to which the indigenous peoples are subjected do not exist.

32. For the United Nations Permanent Forum, the lack of protection for the individual and collective bodily integrity of the Guaraníes is a serious offence to the rights of peoples, evidenced by the lack of guarantees for the free circulation of Guaraníes on the roads in Alto Parapetí; in the threats against human rights defenders and educators who promote and defend the rights of Guaraníes, by the owners of the *haciendas* in Alto Parapetí and by municipal officers and officials of the Prefecture of Santa Cruz; as well as in the imminent risk of impunity in the case of the very serious attacks on Guaraní leaders, human rights defenders, INRA authorities and the Vice-Minister of Lands in April and September 2008. In part, this is due to the scant presence of national public institutions in the El Chaco region, as well as to the limited activities of multilateral and bilateral development agencies in that region.

A. Forced labour of Guaraní men and women

"*The owner gives us sugar, noodles, rice, and two t-shirts, but we always owe more than our wage*".
Guaraní man (identity withheld for security reasons), May 2009.

"*Again and again, the cattle breeders get what they want. The people work and can never pay their debt. Every year they draw up a list ('settlements') and its gets longer and longer. Prices are much higher than in the markets. If you ask for social security, the boss says that the employee has to pay. If you say you are leaving, the boss says you are just lazy and don't want to work*."
Guaraní woman (identity withheld for security reasons), May 2009.

"*Being paid in kind is not servitude, because there are no supermarkets there*".
Official in Santa Cruz, May 2009.

33. *Definition*. Articles 15.V. and 46 of the Constitution of Bolivia (article 5 of the old Constitution) establish that no one may be subjected to servitude or slavery and they prohibit forced labour or any analogous form of exploitation that compels a person to do work against his or her consent and due compensation. The International Labour Organization's Convention No. 29 on Forced Labour defines such labour 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. *The menace of penalty* may take the form of deprivation of any right or benefit; it may take extreme forms, such as physical violence, but it may also be manifested in more subtle ways, such as the retention of identity documents, the threat of exclusion from future jobs, or threatening to denounce someone to the authorities. *Not offering oneself voluntarily* implies lack of consent; this may occur at the start of a labour relation, but it may also come about as a consequence of induced debt (by falsifying accounts, exaggerated price increases, a lowering of the value assigned to goods or services produced, the charging of excessive interest, or restricting access to markets), as well as through deceit or false promises regarding the type and conditions of work, or through the withholding or non-payment of wages. Those are ways in which a working relation freely entered into may turn via various mechanisms into forced labour.

34. *Findings* In Bolivia, there is a specific term for forced labour, namely "*empatronamiento*" (which means subjected to the "patrón" or employer). Very often, it is servitude or debt bondage ("enganche"), or the captivity of families inside the *haciendas*. Guaraní men and women grow old on the estates working as labourers in the fields, looking after cattle, or doing other work, including domestic chores, for the owner. Wages are either very low or non-existent as such, and are often not enough to satisfy basic needs. The indigenous become indebted to the owners, who advance them remuneration in the form of food and clothes, recorded at high prices in the accounts, in such a way that the debt is perpetual. Accounts are reconciled once a year, with the employers keeping the books. The situation is particularly bad for women in domestic service. The private world, in which they work long hours, usually turns into an environment of subjection, maltreatment and verbal and physical aggression. Often there is no monetary remuneration and no health-care coverage. When they fall sick, it depends on the whim of their employers whether or not they are taken to the nearest town with a health-care post.

35. When one considers the Mission's confirmation of the central importance of land and territory in Guaraní culture and its understanding of the world (*cosmovisión*) and the fundamental nature of what it means to live on the land where one's ancestors lived and died, one understands the cultural and spiritual need of Guaraní families to stay on those lands that

today are under the control of the *haciendas*. However, virtually free labour is for the *hacienda* owners a *sin qua non* for them to be able to hold on to those lands. Bearing in mind those aspects of Guaraní culture to which we have just referred, as well as their complete vulnerability if they are deprived of their land, the aforementioned expulsions constitute a penalty or punishment in the sense of article 1 of the ILO Convention mentioned above. The assertion that the impossibility of enjoying the right to land may generate situations of forced labour is taken up in ILO Recommendation 35 concerning indirect compulsion to forced labour. Likewise, in its direct request this year to the Bolivian Government in the framework of ILO Convention No. 29, the Committee of Experts on the Application of Conventions and Recommendations points out that the reversion of lands processes under way in the Bolivian Chaco constitute an appropriate means of putting an end to forced labour in that region. The mission of the United Nations Permanent Forum corroborates and confirms again the allegations of forced labour on the *haciendas* in El Chaco previously denounced by the Government (Presidents Mesa and Morales), by the International Labour Organization,[22] by the United Nations High Commissioner for Human Rights,[23] by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People[24] and by the Inter-American Commission on Human Rights of the Organization of American States.[25]

B. Child labour and other violations of the rights of the child

"*The children work without being paid and the owner says they are playing, not working*". Guaraní man (identity withheld for security reasons), May 2009.

"*The owners come and say they are taking our children to the city to be educated, but when they come back they don't know anything. Many girls are sexually abused and when they become pregnant by the owner, they send them back to the community. Some never return*." Guaraní man (identity withheld for security reasons), May 2009.

"*Everyone knows that the owner's sons have their first sex with Guaraní girls*". Interview (identity of the interviewee withheld for security reasons), May 2009.

36. *Definition*. The Convention on the Rights of the Child recognizes the following basic rights: the right to survival; to full development; to protection from violence, maltreatment and exploitation; and to full participation in family, cultural and social life. By virtue of the Convention, prohibited child labour means any activity that interferes with a child's school attendance and that is detrimental to her or his physical, psychological, social and moral development. Accordingly, by ratifying ILO Convention No. 138 concerning the minimum age

[22] Bedoya, E. and Bedoya, A. (2005). *Enganche por servidumbre y deudas en Bolivia*. Geneva, International Labour Organization, Declaration/WP/41/2004.
[23] Report of the Office of the United Nations High Commissioner for Human Rights on the activities of her Office in Bolivia, A/HRC/10/31/Add.2, 9 March 2009, paras. 55-58.
[24] Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen: Mission to Bolivia (25 November to 7 December, 2007).
[25] Report of the Inter-American Commission on Human Rights of the OAS on access to justice and social inclusion in Bolivia (*OEA/Ser.L/V/II; OAS Official Records Series*).

for admission to employment, Bolivia established 14 years of age as the minimum legal age for entering employment.

37. *Findings*: Children are used to feed hens, look after pigs, graze calves and cattle, and to separate kernels from corn. These are considered "natural", unremunerated chores. "*The Guaraní children do dirty work, wash up plates, and work until late at night*". School infrastructure in the area is deficient; only half the communities have a school and sometimes there is just one multigrade course from first to third grade of primary, although normally there are several classes up to fifth grade of primary school in which those children who have lighter work receive a rudimentary education. Most schools are private (because they are inside *haciendas*, which are private property). They are not bilingual because most of the teachers tend to be the *hacienda* owner's children or relatives, another manifestation of the complex relationship between servitude and "empatronamiento".[26] The same owner may need more labour and simply take the children out of school and put them to work. The Mission received reports that the *hacienda* owners interfere with Guaraní children's opportunities in other ways, too, as when the Alto Parapetí landowners initially objected to a trip to La Paz by a group of Guaraní children, financed by the ILO and Swiss Cooperation (COSUDE), to take part in a meeting of indigenous children called *Constructores de la paz* (*Peacebuilders*). (Later the landowners retracted and the children were able to go.)

38. The Mission also heard allegations of trafficking in persons, in which Guaraní children are separated from their families when they are quite young and taken to urban centres to work as domestics. The age-old custom known as "criadito" persists in Bolivia, whereby the "criaditos" (or "little servants") are indigenous children, of both sexes, normally between 10 and 12 years of age, who are taken to work as servants in wealthy families in exchange for education, clothing, board and lodging. That work is illegal[27] but exists to this day in Bolivia. In addition to the work done by "criaditos", there is overwhelming evidence all over the country of sexual exploitation of children. Two hundred sixty cases have been reported to the Office to Defend Children and Adolescents (*Defensor de la Niñez y Adolescencia*), and it is likely that only a minimum number of cases are denounced. Although there are no statistics specifically for the region, nationwide 45 per cent of the economically active population are minors, aged 7 to 17.[28] The Government has a programme for combating child labour and runs an information campaign to fight child prostitution in brothels or in other forms, but child labour continues to constitute a huge problem. There is particularly abundant evidence of indigenous child labour in the regions of El Chaco, Beni and Santa Cruz.

39. The Mission received reports of sexual abuse of Guaraní girls, generally while serving in the landowners' homes. If they become pregnant they are expelled from the house and returned to the community. For instance, the Mission heard of a case of a 12 year old Guaraní girl with a 7 month old son, whom the landowner refuses to recognize. The girl is staying with her family and has not filed a

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[26] Ministry of Justice, Swiss Red Cross and the Captaincy of Alto Parapeti (2007) *Comunidades cautivas del Alto Parapeti: Diagnostico demográfico, tenencia de tierra y relaciones laborales* [Captive communities of Alto Parapeti: demographic diagnostic assessment, land tenure and labour relations].

[27] The Children and Adolescents Code prohibits work by children under the age of 14 and any kind of unpaid work.

[28] La Prensa, "UNICEF asks the Government to eradicate child labour" http://www.laprensa.com.bo/noticias/13-06-09/noticias.php?nota=13_06_09_alfi6.php.

complaint. The Criminal Code establishes sexual abuse as a crime, punishable with between 15 and 20 years of imprisonment in the case of the rape of a minor of less than 14 years of age.

C. Labour conditions

"*We live in huts with roofs made of plastic noodle bags. When it's windy, the old people who can't work in the fields anymore try to hold them down but they fly away. People are dying of cold. There are no health-care services. The other day a pregnant woman died. The Church bought us a piece of land, but it's not enough. We have to work on the estate. The owner gives us corn and salt … but he does not give us meat. We live surrounded by cows, but we never eat meat*."
Guaraní woman (identity withheld for security reasons), May 2009.

"*Labour law does not apply here because we are poor employers who live simply*".
Hacienda owner in Alto Parapetí, May 2009.

"*The forced labour situation has not changed, because dependency does not change so easily; the local custom is 'if I give you more, you have to work more', so for 30 Bolivianos a day they have to work much harder than for 10 Bolivianos*".
Interview (identity withheld for security reasons), May 2009.

40. *Definition*. Labour conditions refer to a range of aspects from the minimum wage and the maximum number of hours of work per day, to social security contributions and safety in the workplace. Bolivia's General Labour Law establishes a maximum of 48 hours per week for men and 40 hours for women. It requires that employers pay the minimum wage (647 Bolivianos per month or US$ 92 in 2009), plus contributions to social security. ILO Convention No. 95, which Bolivia has ratified, guarantees reliable, prompt and full payment of wages. ILO Conventions Nos. 100 and 111 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value and Discrimination in Respect of Employment and Occupation, as well as the United Nations Convention on the Elimination of All Forms of Discrimination against Women, require equal treatment and opportunities in remuneration and the other labour conditions.

41. *Findings:* Prejudice and discrimination against women, indigenous peoples and others continue to be widespread, constituting an obstacle to Bolivia's social development. Women, especially indigenous women, often work longer hours than men, usually for lower wages and in precarious, unstable jobs. The minimum wage is low, even more so if it is received in kind, with product prices set arbitrarily and with no form of supervision, as is reportedly the case in numerous *haciendas* in El Chaco. In recent months, some *hacienda* owners, aware of the accusations of servitude and forced labour, have expelled numerous Guaraníes from their estates and reduced their workforce, while increasing wages for the few Guaraníes allowed to remain "*because they are of good character and don't want problems*". The Mission received reports that maltreatment and corporal punishment, which were frequent just a few months ago, have stopped. However, most workers are still paid in kind: in food and clothing. The Mission also received reports from Chuquisaca that elderly Guaraníes collecting *Renta Dignidad* (a non-contributive universal old age pension) were having it "kept for" them by the *hacienda* owner, who had given them some very low value kitchen utensils in return. Part of the problem

stems from the very small number of Government labour inspectors, lack of resources to carry out inspections, and the barriers that inspectors encounter if they try to enter the *haciendas*.

D. Lands

> "*We received some land from NGOs and the Church: 17 hectares for 20 families. That is not enough; it just provides us with enough for housing. We want to have both land and territories*."
> Guaraní leader (identity withheld for security reasons), May 2009.

42. *Definition*. Lately, the Guaraní people have become organized to push for a number of claims aimed at their *reconstitution* in their territory, which is known in Bolivian legislation as Community Land of Origin, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and the seventh chapter of Title I of Part III of the Bolivian Constitution. The INRA Law of 1996 had already incorporated the notion of Community Land of Origin as an ancestral territorial space.[29] The term Community Lands of Origin includes the concept of indigenous territory pursuant to ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, as those geographical spaces that constitute the habitat of indigenous and native peoples and communities, to which they have traditionally had access or are now entitled, and where they maintain and exercise self-government and their own forms of economic, social and cultural organization in such a way as to ensure their survival and development. According to the Declaration on the Rights of Indigenous Peoples and to the new Constitution of Bolivia, the Guaraní peoples have a legitimate right not only to ownership of the land and dominion over the territory they were deprived of, but also to self-government. In abiding by the Constitution of the Plurinational State with respect to the self-government and autonomy of the indigenous peoples, the Government of Bolivia's objective is to reconstitute the territory of the Guaraní nation. This reconstitution will form the basis for the autonomy of the Guaraní people in the country's institutional and political framework.

43. *Findings:* The Agrarian Reform Law is being implemented, but slowly and with interruptions, despite the Community Reorganization law (*Reconducción Comunitaria*). The reorganization of lands being carried out by the INRA, which consists of a revision of title deeds and land tenure in rural areas of Bolivia, has met with open and violent resistance from *hacienda* owners, as have the measures aimed at expropriating and regrouping lands for public utilities on behalf of indigenous communities and the Guaraní people. Since February 2008, the INRA, the Vice-Minister of Lands and numerous Guaraní leaders anxious to begin the reorganization of lands in Alto Parapetí have been beaten, harassed and kidnapped and prevented from entering the area to do their work. The attacks on them, to this day, have been led by the owners of *haciendas* themselves and by local authorities in the Cordillera Province. Government officials have not only been prevented from doing their work. Two congressional representatives of Santa Cruz even filed criminal charges with the District Attorney of Santa Cruz against the Vice-Minister of Lands for trespassing on private property. Reorganization in

[29] Law of the National Agrarian Reform Servces No. 1715, 18 October 1996.

Alto Parapetí did not resume until November 2008, when INRA officials went into the *haciendas* accompanied by police.

44. In February 2009, the INRA issued reorganization resolutions ordering the reversion to the State of 36,000 hectares of lands owned by four *hacienda* owners in the Cordillera province of Santa Cruz because of proof of the existence of relations of servitude and, therefore, of non-compliance with the economic and social function established under article 157 of the Implementing Regulation of Law No. 1715, amended by Law No. 3545 on the Community Reorganization of Agrarian Reform. In March 2009, President Evo Morales (accompanied by army and police officers) awarded the first rural property title deeds resulting from this reorganization to both Guaraní families and non-Guaraní small farmers in the area., The affected *hacienda* owners responded by challenging the decisions taken by the INRA before the National Agrarian Tribunal,[30] even though the reversion of lands ordered is constitutional. It is not yet known when the National Agrarian Tribunal will adopt a resolution. Given previous cases, this could take years, in which case the matter could be forwarded to the Plurinational Agricultural and Environmental Tribunal envisaged in the Constitution, which could be expected to perform better.

45. There are no recent land tenure data in Bolivia, as the last agricultural and livestock census was carried out in 1984.[31] That is why the INRA is beginning to investigate the reorganization of land. This process has been and still is slow, given the natural resistance of the *hacienda* owners.[32] According to INRA, in December 2008, 52 per cent of the lands still have to be reorganized and in 12 per cent the process is under way. In other words, only 35 per cent had been examined as part of the titling process. The result of this long bureaucratic process has been a severe worsening of living conditions for the Guaraníes. The disputed lands remain intact, despite the handing over of titles. Many Guaraníes were expelled from the *haciendas* just months ago and have no access to land; and those that do have access to a small amount of land lack seeds and materials. They should have been provided under the Inter-ministerial Transition Plan for the Guaraní People (PIT), which has, however, also suffered long administrative delays.

E. Freedom of association and movement

> "*Because I am trying to get ourselves organized, I cannot work, the owners don't want to see me*."
>
> Guaraní man (identity withheld for security reasons), May 2009.

[30] The Santa Cruz Federation of Livestock Breeders gave the Mission a file explaining the legal actions brought against the Government, which include challenging the decisions of the INRA, an appeal on account of actions against the Constitution, criminal charges for falsification of documents and facts (eight complaints of irregularities in surveys of Guaraníes conducted by the INRA) and the administrative law case before the National Agrarian Tribunal.

[31] The National Agricultural and Livestock Census of 1984 was the second of its kind in Bolivia; the first was conducted in 1950. The current Government granted approval for the third national agricultural and livestock census, to be held in two stages in 2008 to 2009.

[32] The Santa Cruz Federation of Livestock Breeders made statements to the Mission.

"*I have to ask permission from the hacienda owners to enter the hacienda: sometimes they do not allow it. We are used to the owners acting like that, taking arbitrary decisions and not allowing people to enter*."
Interview (identity withheld for security reasons), May 2009.

46. *Definition*. Freedom of association, including freedom to form trade unions, is a human right guaranteed by the Constitution and the General Labour Law of Bolivia, as well as by the International Covenant on Civil and Political Rights and ILO Conventions concerning Freedom of Association and Protection of the Right to Organize (No. 87) and concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), which the Bolivian State has ratified. Furthermore, freedom of movement is another fundamental human right guaranteed by domestic and international jurisprudence.

47. *Findings:* The Mission received reports of numerous violations of both freedom of association and freedom of movement. Restrictions on freedom of movement are exacerbated by geographical isolation of the Guaraní communities; in Alto Parapetí it takes several hours in a vehicle, and many more on foot, to reach the nearest town, Camiri. Access roads in Alto Parapetí cross the *haciendas*, which means that the *hacienda* owners can control the use of them. In many cases they close their properties with chains and padlocks (it was explained to the Mission that the idea was to prevent cattle from escaping, but the barriers in place appear to exceed those required to enclose cattle). There is no public right of way or observance of that right. With backing from the Parliamentary Brigade of Santa Cruz, the Santa Cruz Youths Union (Unión Juvenil Cruceñista), or the Pro-Santa Cruz Civic Committee, the cattle-breeders have blatantly prevented the entry of Government officials in the Cordillera regions. Likewise, the Mission had to ask permission from the owner of the *hacienda* for our vehicles to get through to the Itakuatiá community and there was an incident when the Mission attempted to leave because the guard in charge of one of the barriers did not allow one of the Mission's vehicles to pass.

48. The Mission also received reports of abuses of the freedom of association, in particular in relation to membership in the Guarani People's Assembly (APG). Since it was founded in 1987, the APG has been disfavored by many *hacienda* owners, especially since the INRA acceded to the request for Community Lands of Origin (TCO) for Guaraní communities. The APG's demand and INRA's land reorganization process have been rejected by the Departmental Prefecture, the municipal governments of the area, cattle-breeders' associations and regional figures, exacerbating conflict in a scenario described in greater detail below in the section on violence. Part of the *hacienda* owners' strategy has been to promote new Guaraní organizations (called OTB, or Grassroots Territorial Organizations) co-opted by the owners and working in their favour. These new organizations promoted by the *hacienda* owners are supported by the Prefecture of the department for housing improvement projects and other food for work programs, which are illegal because they invest public funds in private property (see sect. VI.G). The Mission was informed that such investment is made on condition that the *Guaraníes* renounce membership in the APG. The Mission also received reports that Guaraní workers on one estate that had renounced APG membership were now for the first time receiving medical insurance. As a result, some *Guaraníes* have abandoned the defence of their rights through the

APG, which has weakened the organization. In addition, the Mission was informed that Guaraníes associated with the APG are stigmatized as being "ungrateful", and "traitors who had been given work and food". They were expelled from the *haciendas* just a few months ago and now cannot get jobs on other farms in the area. That is a recent development that has triggered a serious food security crisis among the expelled families, which is described in the final section.

49. These threats have continued in the region and have led to drastic actions such as criminal allegations against Guaraní leaders by the *hacienda* owners in Alto Parapetí affected by the land reorganization (see sect. D).

F. Violence

"*That's how we live here in fear. In fear because we live so close to the owners. If we say bad things about the boss, they punish you*."
Guaraní man (identity withheld for security reasons), May 2009.

"*Not long ago, the owner came and burnt down our school. Now the children have no school*."
Guaraní man (identity withheld for security reasons), May 2009.

"*There never has been any servitude or slavery in this region. The Guaraníes have always been free to come and go whenever they wanted, the bars with locks across the roads are only to stop the cows from escaping. We pay wages religiously every Saturday. There has been no mistreatment, nor have there been any threats, or corporal punishment or violence. The videos you cite as proof of aggression against INRA officials and APG people are a put-up job by the Government*."
Hacienda owner in Alto Parapetí, May 2009.

50. *Findings:* Physical violence and threats against indigenous peoples violate the most elementary human rights, in particular the right to security, physical integrity and freedom of association and, if they are not brought to justice, are evidence of impunity and bias.

51. There have been numerous documented episodes of violence against indigenous peoples in the eastern region of Bolivia, including the following:

- From 9 to 15 April 2008, senior INRA officials, civilians and members of the Guaraní People's Assembly were kidnapped and tortured by local authorities from Cuevo and *hacienda* owners in the area, as a result of which 46 people were injured, including the director of the INRA;
- On 24 May 2008, leaders from Sucre (Mayor's office, Civic Committee, and the University of San Francisco Xavier) incited acts of violence against indigenous groups that had come to the city for a local celebration. The indigenous people were stripped, humiliated and tortured to cries of "*Death to Evo*", and President Morales, who was supposed to take part in a ceremony in Sucre, was prevented from landing in that city;

- On 15 August 2008, a large number of people, including officials from the Prefecture of Santa Cruz, with the support of groups from the *Unión Juvenil Cruceñista*, took over the CIDOB (Confederation of Indigenous Peoples of Eastern Bolivia) and beat and expelled its legitimately elected leaders. The same group went on to the offices of the Confederation of Ethnic Peoples of Santa Cruz [*Central de Pueblos Étnicos de Santa Cruz*] where they beat the indigenous leaders they found there, destroyed their equipment and document centre and looted the premises. The mission received abundant documentation regarding these events, as well as other attacks on institutions working in Santa Cruz to defend the social, economic, and cultural rights of the indigenous peoples and farming communities;
- On that same day, 15 August 2008, six Molotov bombs destroyed the Legal Studies and Social Research Centre (CEJIS) in Santa Cruz;
- There were attacks on that date, too, on the Government's principal regional offices, which were occupied and destroyed, including INRA where the documentation centre was looted;
- On the night of August 15, civic leaders and the Deputy Prefect of Guarayos Province captured and destroyed the offices of the Research and Promotion Center (CIPCA);
- Between 21 August and 2 September 2008 the regional offices of national public ministries/agencies in Trinidad-Beni (including the INRA), and the headquarters of social organizations such as CEJIS Trinidad, were attacked by groups related to the Prefecture of the Department, civic groups and Benianista Youth Union [Unión Juvenil Benianista]. Twenty people were injured, some seriously, including social leaders like the Secretary of the Consolidated Farm Workers Trade Union Federation of Beni [*la Federación Sindical Única de Trabajadores Campesinos del Beni*], and military police personnel who tried to defend them. Since then, CEJIS staff have received death threats, and have been forced to do their work clandestinely and not to appear in public;
- From 11 to 14 September 2008 more than 100 paramilitary organized by the Prefect of Pando fired on a peaceful march by farm workers on its way to Cobija, the capital of Pando, paradoxically to analyze the violence incited by the Civil Committee and the Prefecture. That act of violence left between 11 and 19 people dead,[33] more than 50 wounded and an unknown number of disappeared persons, most of them indigenous. During the Pando massacre, children and the elderly were killed in cold blood, teaches and students were tortured and mutilated (tongues and eyes were cut out); as for the disappeared, witnesses testify that some bodies were thrown into trucks and other corpses

[33] The number of dead varies according to different sources. For instance, the Attorney General's Office of Bolivia [Ministerio Público] identified 11 of the dead. According to the Consolidated Trade Union Federation of Farm Workers of Pando (FSUTCP), 16 of the farm workers died. According to the Ombudsman data reports by UNASUR (2008) and Amnesty Internation (2009) there were 19 dead. See: Ombudsman (2008) *Informe Pando*; UNASUR (2008): *Informe de la Comision de UNASUR para el esclarecimiento de los hechos de Pando* [Report of the UNASUR Commission investigating the events in Pando]; Amnesty International Report 2009. *The State of the World's Human Rights,* p. 81.

tossed into the river. The autopsies and forensic analyses confirmed that numerous firearms were used against farm workers and indigenous people. The Office of the Ombudsman, UNASUR, and the Office of the United Nations High Commissioner for Human Rights conducted investigations and concluded that the chief culprits included SEDCAM officials from the Prefecture in Pando. In addition, other acts of violence committed from 9 to 14 September 2008 included the capturing of airports and gas pipeline valves, as well as the destruction of government agencies in the name of departmental autonomy.[34] There were also attacks on other headquarters of indigenous and farm worker organizations, such as the CPESC (Coordinator of Ethnic Peoples of Santa Cruz), as well as assaults upon their staff. Their offices were razed to the ground and their libraries and archives burnt in bonfires.

G. Discrimination and lack of impartiality of the judicial system and public administration

"*The* hacienda *owner [name omitted] was summoned to go to Camiri to answer for the crime of using firearms but he didn't go. The* hacienda *owner [name omitted] was summoned to go to Camiri to answer for the crimes of violence against our communities and he didn't go either, and nothing was done. Now they have denounced our Guaraní brothers, who have to go to Santa Cruz. We haven't got the money needed for their trip but if they don't go they are threatened with detention pending trial*."
Guaraní leader (identity withheld for security reasons), May 2009.

"*In these areas the law and the State are barely present, and when they do exist, it is not to defend the Guaraníes. I have been asking the Armed Forces for eight months for help to protect the indigenous and the victims. This is a fascist area, where people are armed and violent. It is an area where weapons go in and drugs come out. They have discovered a ditch with seven corpses and have sent the government attorney to see it, but not even the police dare to talk about it. We need the military*."
Government official, Santa Cruz, May 2009.

52. *Findings:* The United Nations General Assembly has adopted various codes of conduct for public administration, based on the principles of jurisdiction, integrity, impartiality and independence that are to be found in the administrative rules of most countries, including Bolivia.

53. The Mission found serious cases of lack of impartiality, to the detriment of indigenous peoples, at both the judicial and administrative level. At the judicial level:

- The Cuevo case, mentioned earlier, was reported to the police and Office of the District Attorney in Camiri, by: (i) INRA, which accused the Cuevo authorities of burning

[34] The demands included: (i) elimination of the Direct Tax on Hydrocarbons (IDH), the 5 per cent corresponding the the Indigenous Fund; (ii) non-implementation of the new Political Constitution adopted by the Constituent Assembly, which incorporates the principles of the United Nations Declaration on the Rights of Indigenous Peoples; (iii) recognition of the autonomy statutes self-adopted in the departmental referendums (delcared illegal by the national Government); and (iv) the transfer of all branches of Government from La Paz to the city of Sucre, capital of the Republic, where currently only the judiciary is located.

vehicles; (ii) the Vice-Minister of Lands versus an *hacienda* owner; (iii) two Santa Cruz representatives vs. the Vice-Minister of Lands for trespassing on private property; (iv) a Guaraní journalist vs. the Cuevo authorities; and (v) a Guaraní attorney, adviser to the APG, for assault. However, "due to institutional problems", the District Attorney of Camiri was changed six times, delaying the process; in the end the Attorney's Office in Santa Cruz decided to close the case. In spit of appeals, the case remained closed. The Mission discussed its concern with the Attorney's Office in Santa Cruz, as a result of which the District Attorney ordered: (i) the immediate reopening of investigations, with the corresponding written decision, a copy of which he gave to the members of the Mission; (ii) a meeting with the attorneys of the victims bringing the charges, the deputy director of the District Attorney's Office and the OACDH, with a view to finding better ways of investigating the acts of violence in Cuevo and the denunciations brought by the victims;

- The case of the attacks against the offices of CEJIS, CIDOB and CPESC in September 2008 was reported to the authorities and three people identified as having taken part in the attacks were detained pending trial. However, the judge set them free, and there has been no further investigation of the facts. The Mission denounced this act of concealment and lack of impartiality on the part of the judicial system in Santa Cruz, to the detriment of organizations defending the social, economic, and cultural rights of the indigenous peoples;
- The denunciation of three Guaraní leaders is another demonstration of bias in the judicial system. Those filing the denunciation are five *hacienda* owners, all of whom are affected by INRA's expropriation resolution. They lodged a complaint with the Office of the District Attorney in Santa Cruz against the Guaraní leaders for falsification of documents and facts and denied the existence of servitude or slavery. The abovementioned Guaraníes, persons of very low income, were required to defray the costs of the journey to, and their stay in, the capital of Santa Cruz to attend the summons on 5 May 2009, under threat of detention pending trial. However, some of those *hacienda* owners had been summoned to the Attorney's Office in Camiri for acts of violence and maltreatment of the Guaraní population and did not appear.

These are just recent examples of lack of impartiality of the judicial system ascertained by the Mission. Surveys carried out for the 2007 Transparency International Report showed that 80 per cent of those surveyed consider the judicial system in Bolivia to be corrupt.

54. As for the administrative system, the Mission also confirmed lack of impartiality towards the indigenous peoples. The reason why the State had not built schools, health centres or public housing for Guaraní communities inside the *haciendas* is that, according to the Government Administration and Control System of Bolivia (SAFCO), it is prohibited to use public funds on private property. Nevertheless, the Mission ascertained that recently public funds were invested in private *haciendas* in Alto Parapetí; so that the *hacienda* owners have allowed benefits for co-opted Guaraníes who are loyal to the owner[35] while Guaraníes who fight for their rights have received nothing.

[35] The housing programme of the *Concern Project International*, with USAID support, which requires that 80 per cent of the investment be counterpart put up by the Prefecture.

55. The recent requirement that voters have a biometric ID by the time of the elections scheduled for 9 December 2009, as a result of pressure from the departmental prefectures and opposition political parties, is a barrier to access by the majority of the population in remote rural areas; in other words, for many indigenous peoples. The National Electoral Court (CNE) stipulates that voter registration be performed using special registration equipment; that the citizen must go to the electoral registration office in person; the electoral registration officer will fill out the information, first name, paternal and maternal family name and date of birth; the officer will also take the biometric information, a photograph, fingerprints and signature, after which the system will verify whether the information is correct. What looks at first sight to be an appropriate measure turns out de facto to be an obstacle for voting by remote and poor communities, which have to pay for the trip to the nearest capital to register, in addition to the other costs of going to vote. A biometric ID is an expensive requirement (estimated to cost US$ 35 million in a low income country) and one that is likely to discriminate against indigenous peoples. A simpler and effective system is needed.

H. Weak presence of the State, lack of political and administrative governance: the critical state of Guaraní communities

"*Evo has not done what he promised. He has done nothing to solve the problem. All we've had are decrees and bureaucrats*."
Guaraní man (identity withheld for security reasons), May 2009.

"*The results of the reorganization of lands will take a long time, but the Guaraní people need to eat now. We can't eat the land; we need more seeds and tools for ploughing …*"
Guaraní leader, May 2009.

"*I live in one of the urban integrated areas. What we earn is just enough to eat and to go on working. We lived in a weird kind of poverty from which there is no way out. On the face of it, we're free, but in reality we aren't*."
Guaraní leader in Santa Cruz, 3 May 2009.

56. *Definition*. The fundamental principle of the United Nations Declaration on the Rights of Indigenous Peoples and of ILO Convention No. 169 is that indigenous and tribal peoples have the right to maintain and strengthen their own institutions and ways of life and to determine their own development priorities. That requires State assistance. The Constitution of Bolivia recognizes a broad range of rights in respect of indigenous peoples and persons, including the rights to autonomy, to land and territory, access to natural resources and public services such as health care, education, and vocational training.

57. *Findings:* One of the reasons for the failure of agrarian reforms in countries around the world is the lack of culturally appropriate development plans to accompany them, that is to say, developments in keeping with the cultures of communities and peoples and with their participation. The Government of Bolivia is currently promoting the Community Reorganization of the Agrarian Reform (*Reconducción Comunitaria de la Reforma Agraria*). In addition, and more specifically, it has begun taking steps under the Inter-ministerial Transition Plan for the Guaraní People (PIT). However, progress has been slow and sporadic. Although it began in 2007, financed by the IDH (the fund formed with a percentage earmarked for the indigenous

peoples), the PIT has only spent 30 per cent of its budget, or US$ 2 million, practically without having begun activities in the communities. In a review taking stock of PIT implementation, both the manager and indigenous leaders have voiced concern at the obstacles that have arisen and that have to do with (i) the actions of the political authorities of the Department of Santa Cruz, the municipal authorities in Cuevo and Lagunillas, and the regional and departmental farmers and stockbreeders associations; (ii) the passive role/inactivity of the Agrarian Tribunal; (iii) Government inefficiency, including distribution of the budget and activities among five ministries in La Paz, which have been slow to administer the funds for lack of technical staff in the communities. Managing the PIT from La Paz is inappropriate. Because of resistance by the departmental authorities in Santa Cruz, there has been no coordination with them; and (iv) no or scant participation by the Guaraní peoples in implementation of the PIT.

58. The situation of the expelled and landless Guaraní families is very serious indeed, with a food crisis that needs to be alleviated as a matter of urgency. The Mission observed that numerous children in the Guaraní communities shows signs of second degree malnutrition, which has irreversible consequences in terms of child development, leading to a higher incidence of disease, stunting, and a lower adult intelligence quotient. No crops have been sown this year. This situation of food crisis, threats and lack of opportunities has induced a high percentage of Guaraníes to migrate to the city of Santa Cruz, a development that has produced uprootedness, loss of identity, and also very precarious living conditions in the so-called “integrated urban areas”, which are actually slums on the outskirts of Santa Cruz.

59. The Mission draws attention to this ineffectiveness in management of the Bolivian Government’s support for the Guaraní peoples because of the resistance put up by the owners of the *haciendas* and the departmental and municipal authorities. It urges rapidly effective implementation of the PIT, especially its contingent measures, which are needed not just to ensure effective implementation of government management but also as an emergency policy to ensure the survival of the Guaraní people.

V. RECOMMENDATIONS OF THE UN PERMANENT FORUM

A. Free, Prior and Informed Consent

1. The three branches of the government of Bolivia (Executive, Legislative and Judicial), as well as the Ombudsman Office, departmental governments and all other autonomous governments to be established, must take full responsibility for ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.

2. All recommendations included in this report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

3. Given that Autonomy Statutes were enacted prior to the Constitution, they do not incorporate the Constitution. Until the Autonomy Statutes fully adapt to the Constitution, all State institutions must ensure that departmental policies do not support or conceal in any manner forced labour practices, and that all departmental policies are implemented with the free, prior and informed consent of the indigenous peoples affected in accordance with the provisions of the Constitution.

B. Institutional Strengthening

Governance in the Chaco Region

4. In accordance with its constitutional powers, the Government of Bolivia must ensure the adequate presence of the State institutions in the zones affected by forced labour and child labour practices, including through strengthening the presence of the Ombudsman, the Public Ministry, and the Ministries of Labour, Employment and Social Welfare; Education; Health and Sports and Cultures; and the Viceministries of Decolonization and of Interculturality. This includes increasing the number of well-trained technical persons, including Guaraní peoples, under the various Ministries, ensuring that public services are provided to indigenous communities, and ensuring adequate budgetary allocations on a sustained basis.

Labour Issues

5. The Government of Bolivia must provide sufficient resources the Ministry of Labour, Employment and Social Welfare to carry out adequate and timely labour inspections within the Chaco region. Resources provided must include adequate salaries for labour inspectors, computers and internet access, training, vehicles and equipment.

6. Labour Inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the UN Declaration on the Rights of Indigenous Peoples. UN agencies in Bolivia should offer technical support and training in this regard.

7. The Ministry of Labour, Employment and Social Welfare of Bolivia must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.

8. The Government of Bolivia must ensure that the authorities of the Departments of Chuquisaca, Santa Cruz and Tarija guarantee the safety of labour inspectors and their free access to all lands.

9. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.

10. The Ministry of labour, Employment and Social Welfare must ensure that indigenous workers are not paid below the minimum wage and receive social services and benefits on an equal footing with non-indigenous workers.

11. Projects such as the Indigenous Peoples and Empowerment Project of the Ministry of Justice, which work in close collaboration and consultation with indigenous peoples of the Chaco region to protect labour rights, should be strengthened and expanded.

12. It should be considered that the final will of indigenous peoples who are submitted to forced labour may not be to become hired workers in the *haciendas*, but to recover their land and resources.

Law Enforcement: Police, Prosecutors and Judges

The Justice System must be strengthened so that the rule of law will persist in the Chaco region, including through the following measures:

13. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and human rights international law.

14. Any autonomous governments that will be confirmed or established in accordance with the Constitution must ensure their justice systems adequately address issues of forced labour and other basic human rights.

15. The Government of Bolivia must, as a matter of urgency, ensure the safety and protection of Guaraní leaders and their defenders, and take appropriate measures against those found to have threatened or committed acts of violence against them.

16. The Government of Bolivia and the authorities of the Departments of Chuquisaca, Santa Cruz and Tarija must also ensure the right of free movement and association of indigenous peoples, including by guaranteeing their free movement on access roads between communities. These authorities must respect the future autonomy of the Guaraní peoples, including their organizational structures, and should not promote the

creation of parallel organizations or encourage conflict with discriminatory promises of aid and development projects.

17. Appropriate legal action must be taken against those who threaten the freedom of association of Guaraní peoples, including in relation to APG membership.

18. The Government of Bolivia must ensure that members of the armed forces, police, prosecutors and judges in the Chaco region are provided training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the ILO Convention No 169 and UN Declaration on the Rights of Indigenous Peoples. UN local agencies should offer technical support and training in this regard.

19. In accordance with their constitutional powers, the Government of Bolivia and departmental authorities in the Chaco region must ensure that all police forces remain neutral and adhere to the rule of law in carrying out their official duties.

20. In accordance with their constitutional powers, the Government of Bolivia must ensure the integrity and independence of law enforcement agencies and the judiciary, including indigenous justice systems, through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Law enforcement officials who do not respond appropriately to human rights abuses should be accountable and be subject to disciplinary measures, to ensure constitutional guarantees.

21. Indigenous communities and, as they are established, indigenous autonomies, must have access to legal services financed by the State to protect and defend their interests on a collective basis.

22. Prosecutors should vigorously and without undue delay prosecute cases of human rights abuses against Guaraní peoples and their defenders, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case should be promptly communicated to the survivor of the abuse, who should be able to appeal the decision.

23. The Ombudsman Office should establish a *"Mesa Defensorial"* in the Chaco region to properly assist in the promotion of the rights of indigenous peoples in the region of the Chaco.

24. Independent organizations dedicated to the defence of indigenous peoples' rights should receive special attention and protection by government and prefecture authorities in the region of Chaco.

C. Financing

25. The Congress and Government of Bolivia must ensure adequate public funding to implement all recommendations contained in this report, especially with regard to the Minister of Labour, Employment and Prevision Social, the Institute for Agrarian Reform (INRA) and the various development programes and projects required to ensure successful development of the Guarani people, starting with the Interministerial Guarani Transition Plan (PIT). All funding decisions that impact the situation of Guaraní Peoples in Bolivia, including those related to the implementation of PIT, must be taken with their free, prior and informed consent.

26. To the extent possible and consistent with organizational capacity, funds should be transferred directly to indigenous people's organizations and institutions.

27. The United Nations should direct increased operation aid to indigenous issues in Bolivia, including addressing the abolition of forced labour.

28. The Mission calls for the donor community, and bilateral aid to support all efforts and initiatives towards the implementation of these recommendations in Bolivia.

D. Land Reform

29. The Permanent Forum considers the *Policy for the Re-constitution of the Territory of the Guarani Nation* of fundamental importance, and a good example of an effective application of the UN Declaration on the Rights of Indigenous Peoples. The Government of Bolivia must ensure, including through the provision of an adequate budget, the expeditious completion of the process of Saneamiento, land titling for indigenous peoples and the implementation of process of redistribution of land). This is urgent now that the new constitution is in force. UN Agencies such as FAO and the World Bank should provide, as requested by indigenous peoples, support and finance to the Government of Bolivia in this regard.

30. While the process of saneamiento remains ongoing, officials and staff of the National Institute for Agrarian Reform (INRA) should enjoy special protection while carrying out their official duties.

31. In so far as the National Agrarian Tribunal (TAN) is not replaced, it must address in an efficient and timely manner the cases under its jurisdiction, within the deadlines set by law. Additionally, it is recommended that TAN contribute towards genuine agrarian justice, ensuring the rights of access to land, including the right of indigenous peoples to their territories. The State must assure sufficient resources to enable TAN to fulfill its duties.

32. As lands were taken from indigenous peoples without consent, due process or compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

33. Land reform must take place in the context of an integrated approach to improving the situation of indigenous peoples, including through the provision of capacity development programs and by ensuring access to basic services, including food, water and education.

34. So long as Guarani autonomy has not been established, the Government of Bolivia must undertake extensive consultation with Guaraní communities regarding land use, land ownership and collective or individual titling of land for the Guaraní people. Those provided titles to their lands should also be given the adequate support needed for them to make these lands productive so their basic needs can be met. This will include technical trainings, credit assistance, provision of farm implements and technologies and farm to market roads, among others. FAO has extensive experience with a series of validated methodologies for ensuring success at this stage and is a natural partner in this process.

35. Given that, due to institutional weakness and lack of presence in the region, the Bolivian State has allowed the Guarani people to remain in a state of forced labour, it now has the responsibility to provide compensation for the harm suffered. Compensation should include appropriate measures to restore ancestral lands and ensure that communities are free, productive and self sufficient. The State must allocate adequate financial, human and institutional frameworks in the region to ensure the success of this process.

E. Inter-ministerial Transition Plan for the Guaraní Peoples (PIT), Contingency Plans and Food Security

36. The Government of Bolivia must effectively involve the Guaraní peoples, including through the APG, as established by the new constitution, in evaluating the successes and weaknesses of the PIT and in redesigning the Plan based on the evaluation results. The new structure of the PIT should ensure full and effective participation of APG representatives in the governance and management as well as programme and project level structures, thereby implying the need to decentralize the Plan so that it is locally driven and monitored.

37. The PIT must be refocused to resolve urgently the current food crisis affecting Guaraní communities in the Chaco region. The Ministries involved with the PIT must enhance their collaboration and synergy building. These Ministries can seek help from relevant UN agencies and technical and financial assistance.

38. The Government of Bolivia must determine the scale of and resolve the food and child malnutrition crisis currently affecting Guaraní peoples, a result of communities being expelled from the *haciendas* because of the recent *saneamiento.* All efforts in this regard should be undertaken in cooperation with Guaraní organizations, local NGOs and other relevant local agencies, as well as with relevant UN agencies including the FAO and WFP.

F. Development

39. The Government of Bolivia, the prefectures of the relevant Departments and the United Nations should support capacity development to strengthen and develop Guaraní Institutions and leadership. Such support should be provided alongside other development activities recommended below.

40. In accordance with the Constitution, and while land reform is not completed, the Government of Bolivia, the prefectures of the relevant Departments should support the development of viable alternatives to obtain incomes and the creation of sustainable productive and commercial activities for indigenous peoples, including women, affected by forced labour practices.

41. While carrying out land reform, the Government of Bolivia must provide intensive support and training for at least the first five years while the establishment of key infrastructure, including Guarani schools, health services, roads, housing and secure access to water, takes place. The intensive support should involve a well-prepared team of professionals who would live in the communities and provide a minimum of; organizational, managerial and financial training for all land beneficiaries (women and men). Methodologies exist for this and are based on experiential learning techniques that have proved successful in other countries of the continent.

42. In accordance with their constitutional jurisdiction and with indigenous autonomies when they are established, both the Government of Bolivia and the prefectures of the relevant Department should expand coverage of and ensure access to social services, including health care, bilingual education, and social security. Mobile brigades should be established to provide such services to indigenous communities.

43. Indigenous communities in the exercise of their autonomy must have access to legal services to protect and defend their interests on a collective basis.

44. The Government of Bolivia, in coordination with APG, must provide Guaraní communities with roads that are formally part of the national network and hence have legal protection for “rights of way”. At present the lack of clarity allows landowners to control the Guarani people, as well as anyone who travels on the roads in question, as they are considered owners of these roads because they enjoy the support of municipal authorities, who perform maintenance of them.

45. The Bolivian Government should enhance means of communication, including radio and telephones, guaranteeing access to Guaraní peoples in the Chaco region.

G. Participation and Social Dialogue

46. The Government of Bolivia should seek to establish a dialogue among the parties involved labour and land conflicts, including both workers and employers organizations.

A central goal of such dialogue should be to improve the current situation of Guaraní peoples in the Chaco region. No agreement should be adopted without the free, prior and informed consent of the indigenous peoples involved.

47. Rural development initiatives must be undertaken with the genuine participation and free, prior and informed consent of Guaraní peoples. All interventions by the Government of Bolivia or the Prefectures of the relevant departments must be demand driven, rather than top down approaches –in the context of the new Constitution, the development of Guarani people must be regarded as a responsibility of Guarani autonomies.

H. End Discrimination on the Basis of Indigenous Status

48. The Government of Bolivia should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples. This should include the design and execution of priority anti-discrimination programs, including affirmative action measures.

49. The Government of Bolivia must repeal or amend all discriminatory laws or practices. For example, the requirement that, in order to be registered with the Civil Registry, one must present a certificate of baptism.

50. Biometric accreditation excludes indigenous peoples, as many will not be able to travel to urban centers to register and may lack access to the conditions, such as electricity or identity cards, required to carry out the biometric accreditation. It is a discriminatory practice and should be amended or abandoned.

I. Regional Cooperation and Cross-Border Strategies

51. The Governments of Paraguay and Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border program for the protection of indigenous peoples of the Chaco region should be considered, with adequate financing. Such a program must be in compliance with section VII of ILO Convention Number 169 , which addresses contacts an co-operation across borders and, in particular, with Article 32, which that calls on Governments to take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields; and the right of UN Declarations on the Rights of Indigenous Peoples, especially as regards their free, prior and informed consent.

52. Given that the Ombudsman Office has authority on international issues such as the rights of Bolivian emigrants, the Mission suggests that it also address cross-border indigenous issues. This extra-territorial action should be welcomed by the Government of Paraguay because it can effectively help eradicate forced labour practices in the

Paraguayan Chaco. This must be undertaken with the agreement between the Governments of Bolivia and Paraguay, and with the free, prior and informed consent of indigenous peoples in both countries.

53. Considering that the historical lands of the Guaraní peoples and other indigenous peoples are divided between Argentina, Bolivia, Brazil and Paraguay, policies and efforts in their favor should be designed within MERCOSUR and emerging regional integration organizations. In this regard, lessons regarding the participation of indigenous peoples can be drawn from other regional cross-border institutions, such as the Andean Community of Nations and the Bolivarian Alternative for Latin America. (ALBA).

54. The UN and bilateral aid agencies should share relevant good practices from their experiences in different countries and, more importantly, should finance cross-border programs.

J. Additional Follow-Up for the United Nations

55. The recommendations contained in the report reflect the view of the Permanent Forum on Indigenous Issues with regard to addressing the situation of forced labour of indigenous peoples in the Chaco region. The Permanent Forum calls upon the UN Country Team in Bolivia and especially the Office of the High Commissioner for Human Rights to promote the human rights of indigenous peoples generally and, in particular, the implementation of the recommendations of this report. This is particularly urgent as, given the coming elections, conflict and tension are only likely to grow and the Guarani peoples are vulnerable in any situation of conflict over patrimony rights.

56. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in Bolivia. The goal of the dialogue should be the application of the UN Declaration, which has been incorporated into Bolivian law, and the implementation of the recommendations of the Permanent Forum by the relevant agencies. The Bolivian Constitution itself provides the means to achieve the implementation of the UN Declaration and, under article 42, also obliges UN agencies to work towards its implementation.

57. UN agencies in Bolivia should, as a matter of urgency, coordinate their efforts with regard to the situation of indigenous peoples' in the lowlands of Bolivia to assist in protecting their human rights in the face of the harassment to which they are subjected.

Annex: Meetings held by the Mission

Government of Bolivia

Ministry of Foreign Affairs
Ministry of Justice
Ministry of Labour, Employment and Social Security
Ministry of Rural Development and Lands
Ministry of Autonomies
Attorney General's Office
National Agrarian Tribunal
Office of the Ombudsman
The Senate
Chamber of Deputies
National Agrarian Reform Institute (INRA)
Inter-ministerial Transition Plan for the Guaraní People
Prefecture of Santa Cruz
District Attorney General's Office in Santa Cruz

Indigenous peoples' organizations and non-governmental organizations

Guaraní People's Assembly (APG)
Centre for Legal Studies and Social Research (CEJIS)
CPESC (Coordinator of Ethnic Peoples of Santa Cruz)
CIDOB (Confederation of the Indigenous Peoples of Eastern Bolivia)
Swiss Red Cross

Stockbreeders Federation of Alto Parapet
Stockbreeders Federation of Santa Cruz (FEGASACRUZ)
Movimiento Sin Tierra (Movement of Landless Rural Workers)

United Nations

United Nations Department of Political Affairs
United Nations Department of Safety and Security
Office of the United Nations High Commissioner for Human Rights (OHCHR)
United Nations Development Programme (UNDP)
United Nations Children's Fund (UNICEF)
United Nations Population Fund (UNFPA)