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This paper is presented by C.I.D.O.B. (Center of In-
digenous People and Communities of Eastern Bolivia),
which represents the majority of Indigenous people;
to the International Human Rights Commission.

Truly yours,

Cecilio Gomez Tambuyo
General Secretary CIDOB

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OFFICIAL POLICY OF BOLIVIA WITH REGARD TO THE INDIGENOUS
VILLAGES AND COMMUNITIES OF EASTERN BOLIVIA

I. BACKGROUND

It is necessary to clarify that this document will present the situation of the indigenous people, the ethnolinguistic groups of eastern Bolivia; a zone consisting of tropical forest, alluvial plains and the semi desert chaco area. Not only is the situation of these groups unknown, but the popular impression of eastern Bolivia is distorted. This is so, even at official and academic levels that supposedly should be aware of the problem. The image is of a region that is very extensive with many natural resources and uninhabited with the exception of the existence of some tribes of wild barbarians and savages. These groups are considered as part of the forest or jungle; at worst as animals, dangerous people who should be eliminated, or at best, humanely speaking, to be treated as children who need guidance in order to be integrated into the bolivian society (civilization).

II. OFFICIAL CONCEPT

The ideas or outstanding concepts about eastern Bolivia as a barren land - made up of natural resources yet to be exploited - have served as a basis for a development scheme of occupation and colonization of eastern Bolivia, and also in the development of productive activities from exploitation (rubber, wood, precious stones and large investment ventures such as petroleum and gas) to the transformation of productive areas with a permanent use of the land (agriculture, cattle breeding, urban establishments, etc.).

It is worth noting that, from the formation of the Republic of Bolivia to the present , the different governments, including the period of more or less radical reformation initiated by the M.N.R. in the 1950's - have shared the same basic concepts.

III. OFFICIAL POLICIES

There has never been an official policy written into the constitution or in structural projects of the Bolivian State or its successive governments, with respect to the indigenous people. However, there have been common and constant factors that have given certain continuity to the policies of successive Bolivian governments. In this sense, the common factors would be:

- 1) Neither acknowledgement nor identification of the indigenous people of eastern Bolivia , of their organizations, recoveries and fundamental requirements. With this, guidelines (public and ecclesiastic) have been formulated to integrate the natives and have them at hand as a source of needed labour.
- 2) Legitimate and aggressive policies for the occupation of the indigenous villages of eastern Bolivia in favor of, above all private companies and individuals who initiated and consolidated themselves during the Agricultural Reform of 1953, the largest process of land concentration amongst the few, ever known in the history of Bolivia. This includes incentives for colonization by Japanese , Mennonite and Andean colonists in the 1950's to alleviate the problem of land in the Andean zone -

of Bolivia.

IV. DEVELOPMENT MODEL

- a) Territorial Problem - the initial concept is that the land belongs by right to the State, to the Nation. This is where the problem evolves to which nation are we referring? In the case of eastern Bolivia in relation to the process of distribution of lands and the actual structure of territorial tenancies, we find that more than 70% of the land is in private hands with holdings of over 500 Hectares. The rest is distributed amongst Japanese, Mennonite and Andean colonists and landowners; and finally in the case of Santa Cruz, the indigenous people occupy less than 1% of the total land distributed and that being the marginal soils, the worst there is. The eastern part of the Bolivian nation is thus made up of large - owners, foreign and Andean colonists and marginalized indigenous people.
- b) Forestry Problem - According to law the soil is separate from the vegetation, to the extent that even when an eastern indigenous community has legal possession of the land-soil it can and does occur that the trees on that soil be turned over in a forestry concession to some private company for exploitation. 70% of the eastern territory is in the hands of large forestry concessions. In regard to what is termed exploitation, it should more correctly be called destruction of the forest resource.
- c) The Fauna - This too, is regulated on the basis of a

special law, issued under the dictatorship of General Banzer. It regulates the handing over of animal resources to private enterprise, multinationals that exploit them. This is subject to contraband and indiscriminate hunting.

- d) The Subsoil - Belongs to the State. The same as mentioned above, with some variations of exploitation; gold, precious stones, minerals, petroleum and gas are in the hands of large industries which have priority over any indigenous settlement. All income - or royalties due to exploitation of the subsoil go to support the process of development described above.
- e) Finally, there is a system of credit and institutional support that is given to all sectors, with the exception of the indigenous people.

We conclude that the policies of the different governments of Bolivia to the present, have mainly been prejudicial to the essential principles of existence and development of the indigenous people of eastern Bolivia. Nevertheless, - and this gives testimony of the strength, tenacity and - flexibility of the indigenous groups of eastern Bolivia - even though the cost of this process is very high, they - have been able to make use of it and create fissures in the system, utilizing all possible legal means and pressures . They have preserved all the territory possible, together - with their own traditional organizations that enable them to continue onward with their alternatives. At present , the indigenous people of eastern Bolivia are in the process of unifying themselves, elaborating a common project based on their territorial rights, language, culture, economic development and autonomous organizations.

V. BOLIVIAN LEGISLATION IN RESPECT TO THE NATIVE

1. Civil Code

Within the Bolivian Civil Code, from the legal point of view, the bolivian natives are in a situation of equality before the law. The native is considered equal to any citizen. In this sense the Civil Code, inspired by liberal ideology, omits any specific reference to the collective nature of the interests of the native communities and their natural rights.

2. Penal Code

The Bolivian Penal Code establishes the native as exempted from responsibility for crimes committed. This assumes that the native is isolated from the national society. It refers to a,

"jungle indian who has not had any contact with civilization" (Title II, Chap.IV, Art.17).

as a reason for immunity from punishment.

In another article it is recognised as extenuating the guilt of the crime,

"when the agent is a native with no education and it can be proved that he is ignorant of the law" (Title II, Chap.IV, Art.40).

The Bolivian legislation does not recognize the indigenious society as a cultural organization in possession of a territory, a language and social organization. -

There exists no law that expressly refers to the native communities and defends their right to territory, organizational autonomy, their right to the exploitation of natural resources, economic production and cultural particularities.

Due to this, the native communities do not constitute recognised institutions according to the Bolivian law. The native communities do not have juridical personality because this is not regarded in the legislation prevailing in the country.

3. Law of Agricultural Property

The Law of Agricultural Property 03464 of 1963 issued during the government of the Movimiento Nacionalista Revolucionario (M.N.R.) and the creation of the Ministry of Rural Affairs set up for the first time the legal bases and operations for the treatment of the social and economic problem of the rural Bolivian. However, this law mainly referred to the peasant of the Altiplano and valleys, sidestepping both the problem of the indigenous nationalities and situation of the native communities of the eastern zone of Bolivia. The law of agricultural property referred to the native of the Andean zone as a peasant or agricultural worker.

As with the Penal Code, the law of Agricultural Property legislates in favour of the native of eastern Bolivia. On the other hand, it leaves open the legal channels for the establishment of vast rural properties in the zone, disregarding the rights to territorial property and natural resources of the indigenous populations.

The actual agricultural legislation establishes that,

"The savages of the tropical and subtropical plains that are wild and have a primitive organization are under the protection of the State" and allows that "properly authorized private institutions be in charge of the incorporation of the savages into the national society" (Title IX, Chap.III, Art.129).

The law gives these individual institutions the right to make use of the territories belonging to the indigenous communities of the eastern zone once it is established that they have available,

"sufficient lands to settle the reduced number of families and convert them into independant farmers" (Title IX, Chap.III, Art.129).

The Law of Agricultural Property ignores any possibility of autonomy and self-determination by the eastern natives, regulating their representation by means of private institutions under the guidance of the governments in charge. It also determines the form of productive organization they should adopt, with total disregard for the real situation of the eastern indigenous groups. It is established that,

"collective property is inalienable. The institutions of wilderness reduction will at all times be under the control of the government" (Title IX, Chap.II, Art.130).

and states that,

"without prejudicing the form of savage family property, the organizations in charge of their incorporation will encourage the system of cooperative work".

As may be seen, the actual agricultural legislation is totally out-dated and prejudicial to the fundamental rights of the indigenous communities and peoples of eastern Bolivia. Although there are relatively isolated minor indigenous groups under the protection of private institutions propitiated by the State and the actual laws, the social and economic reality of the major portion of the native population is something else. The indigenous Chiquitanos, Matacos, Guarayos, Guaraní-Izoceños, Ava-Guaraní amongst other indigenous groups of the tropical and subtropical zones, constitute ample populations with solid organizations that demand their rights to self-determination and the defense of their culture. Their reality is far removed from the naive and ethnocentric image that the prevailing Law of Agricultural Property has of the natives. Their processes of social and economic development within the national society, the maintenance of their ethnic identification and their power of self-determination confront legal obstacles that diminish their social, political, economic and cultural rights and threatens the rights of their own indigenous nationalities.

4. General Forestry Law and Law of Wild Life , National Reserves, Hunting and Fishing

The Law of Wild Life, National Reserves, Hunting and Fishing No.12301 was issued in March,1975 and the National General Forestry Law 11686 in August,1974 the -

regulations of the latter having been aproved by a Supreme Decree 14459 in February, 1977. These laws were issued during the government of General Banzer Suárez. To this day there does not exist an aproved regulation for wildlife. The General Forestry Law contains a title dedicated to the "Savage Tribes" that apparently - attempts to protect them in their relations with the - public offices of society,

"the Forestry Development Center, through their specialized organizations, is responsible for - the protection of the country's savage tribes " (Art.119, Title II, Chap.XXIV).

The law contains criteria that delimit the indigenous territory, but only partially, since it does not consider all the territorial resources, clearly omitting - timber-producing forests. That is why in another article it states that,

"the Forestry Development Center will delimitate - appropriate areas of the national territory for - the survival of the savage tribes, guaranteeing their sources of hunting and fishing" (Title 13, Chap.XXIV, Art.120).

It is evident that the content of this law aims to favor the private forestry industry and intentionally omits legislation on the rights the indigenous have over the timber producing forests. The article of the law clearly indicates its intention to open the necessary channels to permit the exploitation of forests - in indigineous community territories. Also, the law - directly assumes the virtually unemployed condition of the native population when it establishes that,

"the Forestry Development Center will give priority to the different savage groups in contracting them for work in the forest, and at the same time select from these groups personnel for training at the school for forest rangers" (Title II, Chap.XXIV, Art.121).

The regulations of the General Forestry Law permit the utilization of the forests and woodlands by persons who are not the owners of that territory; a fact that is allowing the intense and continuous depredation of the territories of the low zones and affecting the rights of the natives.

The regulation establishes that,

"in accordance with Art.2 of Decree N° 11686 (General Forestry Law) the State is owner of the forests and woodlands, which are resources for public use, irrespective of the tenancy".

Therefore, the ancestral territory of the indigenous is subject to free access by the timber companies which obtain forestry concessions from the State. The regulation also establishes, in the case of colonies that,

"forests on lands conceded for colonization are fiscal property, their profit remaining subject to what has been established in Title VI of the present regulation, the owner of the land having the sole right to exploit them under the supervision of the Forestry Development Center" (Art. 47).

"the existing forests are also fiscal property when on lands conceded by agricultural reform, - their exploitation remaining subject to that established in Title VI of the present regulation (Art.58).

Referring to the Law of Wild Life, National Reserves, Hunting and Fishing, it can be said that the natural - resources of the country and specifically of the tropical and subtropical zone are in a serious state of depredation. Despite the existence of Decree 12201, this has occurred because it lacks force, and has permitted the intense exploitation of wild species with consequent damage to the zone and to its inhabitants.

The form by which private companies operate has been - by

"right of exception"

dictated by the governments in control. In this way , six companies have been exploiting the resources in - eastern Bolivia , having exclusive authorization for - hunting and exploiting the wild life.

Recently in 1983, the exploitation and exportation of wild fauna has been discussed at a parliamentary level . Nevertheless, the interested power groups are so strong that they are able to change state resolutions. In this - way, the Minister of Agriculture and Rural Affairs modified the Resolution N° 538/83 that declared the 31st of December as the final date for the exportation of wild life, extending the limit to the 31st of March of the present year.

The law of wild life is not applied in practice. It also refers to the indigenous in recognising their hunting rights, but does not establish sufficient limits to protect their resources. The articles of this law which refer to the indigenous are the following:

"domestic hunting can be carried out by natives living permanently in wild or natural areas, whose subsistence depends on hunting, excepting those species in danger of extinction or those expressly protected by this law and its regulations.

It can also be performed by any person who has the corresponding license or by people under age and accompanied by another responsible person" (Chap. I, Art.42).

" domestic or subsistence hunting is defined as that practiced to directly cover nutritional, and family needs. Under this definition, native tribes and permanent inhabitants are included but not spontaneous or directed colonists nor seasonal workers hired by companies of any type, who would be subject to special regulation" (Chap I, Art.47).

5. Labour Legislation

An aspect that seriously affects the rights of the indians, is the current labour legislation which permits the temporary employment of agricultural workers in unhealthy conditions, denies them the right to a decent life and a dignified form of employment. We refer particularly to the employment of seasonal workers for

the sugar cane and cotton harvests, where a large proportion of the indigenous population is hired for this work. The cotton and sugar cane harvesters do not have permanent work contracts, which they have been requesting for some years. Neither are they included in the Labour Law and do not have Health Social Security. Under the pressure of the only Confederated Union of Native Workers of Bolivia, in April 1983, the government authorised the incorporation of sugar cane and cotton harvesters into the Labour Law, but this has not yet been put into practice.

VI. ACTUAL LEGAL SITUATION OF THE INDIGENOUS TERRITORY OF EASTERN BOLIVIA ORGANIZED AS THE CENTER OF INDIGENOUS PEOPLE AND COMMUNITIES OF EASTERN BOLIVIA (C.I.D.O.B.)

The indigenous groups of eastern Bolivia grouped in the CIDOB organization are located in the Department of Santa Cruz. These groups include Chiquitanos from the Lomería zone, Izozeños of the southern zone of the Department, Guayayos of the NE zone of the Department, Ayoreos located in the SE sector and Ave-Guaraní in the SW part of the Department.

Izozeños

The population of the Izozeños is estimated at 7,000 inhabitants located in the south of the Department of Santa Cruz, in the Cordillera Province. The legal situation of the Izozeño territory is as follows: in 1948 while Gualberto Villarroel was president of Bolivia, the natives decided to go to La Paz to negotiate their territorial titles. They were represented by Bonifacio Barrientos, actual Great Chief of the Izozeños. At the time that the Izozeños obtained their titles, there were approximately 20 communities in that zone. They obtained titles for 5 of them:

Aguaraiguá, Yooví and Coropó located in Low Izozog and Gui rayohasa and Coperé of High Izozog. In other words they - obtained titles for a portion of their villages located along the River Parapetí.

The fact that the Izozeños had obtained at that time, the - property titles for their communities, was something really exceptional. The rest of the indigenous groups of eastern Bolivia would obtain their titles at a much later date, many of them with help from missionaries or private institutions; some still do not have the titles from their ancestral territories.

At present in Izozog there are 16 communities, 4 of which do not have property titles. These are Rancho Viejo, Aguaratí, San Silvestre and Cuarirenda. At the moment three - of these are seeking their titles. The case of Rancho Viejo is critical because it is located on land where a cattle breeding property also demands its rights. This situation exists due to the fact that the villagers moved from their original territory due to floodings. On the other hand, it is opportune to mention that the existing properties of the Izozeños are surrounded by cattle ranches whose owners are putting pressure on their original territories.

The titles of property that the Izozeños have obtained are collective; the communities internally distribute their - territory for the use of their members.

Ava-Guaraní

The population of Ava-Guaraní is calculated at 37,000 inhabitants, located in the Cordillera Province. They live in dispersed communities and they have no unifying organi-

zation. Their local authorities are mayors and magistrates, having put aside the representative form and traditional authorities.

The legal situation of the territories of the Ava-Guaraní is as follows: Some communities obtained their titles together with the Guaraní of Izozog in 1948, and the rest do not have titles protected by the law. Furthermore, the area of the Ava-Guaraní is a zone of many conflicts of interest between the traditional owners of the territory and the cattle ranches that have been established over the years.

Chiquitanos

The Chiquitanos, inhabitants of the zone of Lomerío, Ñuflo de Chávez Province are approximately 30,000 in number and live in 23 communities, recently grouped into an Intercomunal Center for Commercialization.

The territorial property of the Chiquitanos is also unsecured. Some communities are in the process of obtaining their titles. Some of them already have the first resolution obtained from the National Service of Agricultural Reform, a document that does not guarantee them their right to property. Nevertheless, they are working plots distributed within their own communities. The comunal authorities are mayors and magistrates.

Guarayos

Located in the northwest of the Department of Santa Cruz, Ñuflo de Chavez province. They have an approximate population of 7,000 inhabitants living in five communities.

The legal situation of the territory of the Guarayo communities is as follows: recently in 1975, the Agricultural Reform was present in the zone to apportion the territory. Previously the titles were in the name of the Mission of Franciscan Priests. The apportioning of territory by the Agricultural Reform initiated the distribution of the land at a personal level. The result was that to date the documentation is still pending and this has contributed to a conflict of interests between the people of the community due to permanent pressure from outsiders who are seeking to take over their territories.

Since 1975 with the participation of the Guarayos in CIDOB, the process to obtain titles has been reinitiated, this time in a collective manner.

Ayoreos

They live predominantly in the Province Nuflo de Chávez. They are in dispersed communities with a total population of approximate 3,000 inhabitants.

Given that the Ayoreos were incorporated into evangelical and catholic missions in the 1940's and 50's, their situation is that of communities whose territorial titles have been processed by these missions or private institutions. They have obtained the titles in the names of the natives in order to transfer those titles when they consider them to be organized; a situation which is possible due to the current law which permits guidance of indigenous communities.