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STATEMENT TO THE UNITED NATIONS WORKING
GROUP ON INDIGENOUS POPULATIONS

THE LAW REFORM PROCESS FOR INDIGENOUS RIGHTS
IN THE INTER-AMERICAN SYSTEM

July 15, 1992

The Organization of American States (OAS) has established its own process to develop international law for the protection of the rights of indigenous people. Although the states of North, Central and South America that are members of the OAS are also members of the United Nations, the OAS is a separate and independent inter-governmental organization with authority to make its own international human rights law in the Americas. The most important human rights instruments of the OAS are the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

Although there are similarities between the OAS law reform process for the rights of indigenous peoples and the UN law reform process through the Working Group on Indigenous Populations, there are also clear differences. The OAS did not begin its work until 1989, and so far few indigenous people have been involved. In contrast, the UN Working Group on Indigenous Populations has been engaged in an open dialogue with many indigenous representatives for ten years.

Indigenous peoples from the Americas should be informed about the OAS law reform work in order to decide whether they wish to participate and, perhaps, to urge changes in the process that is now underway.

In 1989 the OAS General Assembly resolved: "To request the Inter-American Commission on Human Rights to prepare a juridical instrument relative to the rights of indigenous peoples, for adoption in 1992." ("Solicitar a la Comision Interamericana de Derechos Humanos la preparacion de un instrumento juridico con miras a que pueda ser adoptado en 1992, relativo a los derechos de las poblaciones indigenas.")

The Inter-American Commission on Human Rights is an institution of the OAS whose work on human rights is supposed to be autonomous and non-political. However,

a proposed new legal instrument on indigenous rights prepared by the Inter-American Commission would need to be referred to the OAS General Assembly for its approval, modification, or disapproval. Similarly, a Declaration on the Rights of Indigenous Peoples prepared by the UN Working Group on Indigenous Populations will have no legal effect unless it is approved by the UN General Assembly.

Although the 1989 resolution of the OAS General Assembly set 1992 as the date for completion of the new legal instrument on indigenous rights, it soon became apparent that more time would be needed. The President of the Inter-American Commission held a preliminary planning meeting with a few indigenous rights experts in Mexico City in January 1991. The participants in that meeting recommended that the Commission should establish a very open and democratic process, including public meetings and consultations with indigenous peoples and indigenous leaders throughout the Americas.

After reviewing this recommendation, the Commission decided on a different course. It commissioned studies on indigenous rights by anthropologists Rudolfo Stavenhagen of Mexico and Augusto Willemson-Diaz of Costa Rica. In October 1991, the Commission approved a questionnaire about indigenous rights for distribution to governments and to organizations representing indigenous peoples. Copies of the questionnaire, in English, Spanish, Portuguese and French, were widely distributed. The Commission has urged governments to consult with Indian leaders about the questionnaire. Responses are due August 31, 1992. So far, only a few responses have been sent to the Commission.

The Commission plans to prepare a draft legal instrument on the basis of the questionnaire responses, the two studies it has already commissioned, and its independent review of the law. It also plans to consult with some non-governmental organizations, such as the Inter-American Institute of Human Rights in Costa Rica. The Commission's object is to prepare a final proposed instrument by the end of 1993 or 1994 for submission to the OAS Permanent Council and the OAS General Assembly.

The Commission has no other plans for public meetings and direct consultations with indigenous peoples. The Indian Law Resource Center, the Assembly of First Nations, the Indigenous Bar Association in Canada and others have strongly urged that the Commission open up its process to facilitate involvement of Indian peoples who will not be satisfied by questionnaires and by consultations with governments and groups that may be seen as intermediaries. Although the Commission has adopted a much more restricted methodology at this time, and although it has very limited financial resources at its disposal, it may still be possible for indigenous peoples to have a more effective voice in the OAS law reform process. There are several steps for indigenous peoples of the Americas to consider:

1. There is still time to respond to the questionnaire. The official due date is August 31, 1992, but that deadline may be extended. We can provide copies of the

Spanish, Portuguese and English versions of the questionnaire for indigenous representatives to study and take back to their home communities for further review and analysis.

2. All indigenous representatives are free to communicate directly with the Inter-American Commission on Human Rights, and to present directly their own comments and criticisms about the ongoing law reform process. Indigenous representatives can also request permission to speak to the Commission at its regular meetings that are held in the fall and spring of each year:

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3. Indigenous representatives could invite members of the Commission to participate in local or regional meetings of indigenous people to discuss the process of developing a new legal instrument on the rights of indigenous peoples. Such invitations might help convince the Commission of the importance of expanding indigenous participation.

We strongly believe that the work of the Inter-American Commission on Human Rights will result in positive new legal protections only if there is an opportunity to develop a clear understanding of the problems, needs and aspirations of the indigenous peoples of the Americas. That requires serious participation by indigenous peoples. Indigenous peoples will need to carefully decide what they can or should do to help advance their human rights in the inter-American system.

For further information contact the Washington, D.C. Office of the Indian Law Resource Center.