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Presentation to the UN Permanent Forum on Indigenous Peoples

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I would very much like to thank the Permanent Forum for inviting me to participate in this opening session, in my dual roles as President of the Inter-American Human Rights Commission and as the rapporteur on the rights of indigenous peoples. I look forward to increased collaboration between the Inter-American system and the Permanent Forum, as well as between us and the UN Special Rapporteur on the Rights of Indigenous Peoples.

Indigenous peoples in the Americas are currently facing severe threats to their very existence, posed by external factors that include armed conflict and political violence, poverty, dispossession of their lands and territories, social exclusion and marginalization, structural discrimination, and environmental degradation stemming from large development projects and extractive industries.

The Commission has expressed in its reports that indigenous people, individually and as groups, continue to be systematically excluded from the social, economic and political life of their countries, to the detriment of their well-being and development. Marginalization and exclusion are reflected in much lower levels of participation and representation in public institutions and decision-making bodies, lower levels of access to employment and education, geographical and socio-political distance from the decision-making centers and from state authorities, and racism within society and the government.

The indigenous peoples of the Americas often live in conditions of poverty or extreme poverty. The IACHR has noted that indigenous peoples and communities face alarming levels of territorial dispossession, and of consequent deprivation or insufficiency in access to the natural resources on which they depend for subsistence and well-being, as well as lack of access to basic needs such as food, water, health and housing. The sum of these conditions exposes indigenous peoples and their members to situations of extreme

vulnerability and defenselessness, which obstruct the exercise of their individual and collective human rights, and with a particularly strong impact upon the preservation of their ancestral cultures.

The generalized patterns of poverty and exclusion often lead to situations of contemporary slavery, in which entire indigenous communities are forced to live in conditions of servitude, working to pay progressively-acquired debts to landowners who provide them with some food and other basic goods in exchange for inhumane working conditions. In some national contexts, labor exploitation including underpayment, mistreatment and lack of social benefits are the general rule. A recently-published report the IACHR assessed the situation of the so-called "captive communities," comprising approximately 600 of families of the Guaraní Indigenous Peoples subjected to conditions of debt bondage in Bolivia. The Government of Bolivia has been working with the Inter-American Commission since the publication in order to put an end to this unacceptable situation, but the obstacles have been many, and the problem persists.

The integrity of ancestral indigenous territories is under massive threat from economic and strategic interests seeking the immense natural resources that these lands hold. Powerful transnational enterprises invade with the support of national governments, overriding indigenous peoples' will and their capacity to resist and protect their ancestral legacy. Despite formal recognition of indigenous peoples' territorial rights in domestic law, they have been and are being progressively deprived of their ancestral lands and prevented from having access to the natural resources from which they derive their livelihoods. In other instances they are exposed to environmental degradation that further thrusts them into situations of poverty and need.

The enjoyment of human rights is further limited by the lack of prior, full and informed consultation before activities are undertaken, including those of extractive industries and hydroelectric projects; by inter-community conflicts over property and access to lands and resources; and by generalized violence or armed conflict in or surrounding indigenous areas.

Cases dealt with by the Commission, and in some cases submitted to the Inter-American Court, over the last five years have dealt with arbitrary executions, arrests, forced disappearances, massacres, forced displacement and other serious crimes. Social exclusion and marginalization also become evident in indigenous peoples lack of access to justice, and in the prevailing patterns of impunity for violations of their human rights. Compensation for victims remains unfulfilled.

On the positive side, there has been a trend to adopt favorable legislation and constitutional provisions during the past two decades to recognize and protect indigenous rights. In practice, however, these reforms have not resulted in effective enjoyment of rights because of the lack of enforcement and implementation.

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THE INTER-AMERICAN SYSTEM'S ROLE IN THE
PROMOTION AND PROTECTION OF INDIGENOUS PEOPLES'
HUMAN RIGHTS

Since its creation, the IACHR has paid special attention to the protection of indigenous peoples in the Americas. In 1971, the Commission declared that indigenous peoples have a right to special legal protection because they have historically endured severe discrimination. In 1972, the Commission declared that States have a "sacred obligation" to protect indigenous peoples in their territories, for historical reasons and because of moral and humanitarian principles. Since then, the IACHR has dealt with dozens of cases related to the protection of individual and collective rights of indigenous groups throughout the Americas.

In 1990, the IACHR created the Rapporteurship on the Rights of Indigenous Peoples as a specialized section of the IACHR. The rapporteurship is charged with developing, systematizing, reinforcing and consolidating the Commission's work for the protection of

indigenous peoples' rights, reflecting the special status and importance given to indigenous peoples within the inter-American human rights system.

The IACHR protects and promotes indigenous peoples' rights through its different instruments and functions, which include:

a. The individual petition system, which deals with specific cases presented to the IACHR whenever there appears to be a violation of the individual or collective human rights established in the American Declaration of the Rights and Duties of Man, in the American Convention on Human Rights, or other treaties concluded in the region.

b. Granting of precautionary measures in urgent and serious cases where the life or integrity of persons appears to be threatened imminently.

c. Producing special reports on specific situations or cases, usually preceded by in-loco visits or special thematic hearings. Examples of these reports include the Report on the Situation of the Miskito Population in Nicaragua; Report on the Situation of Communities of

Peoples in Resistance in Guatemala; Report on the Situation of “Captive Communities” under Contemporary Forms of Slavery in the Bolivian Chaco.

d. Producing specialized in-depth studies and reports on particular topics dealing with indigenous peoples’ rights, such as the recently-published report on Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources. The report compiles and comments on the norms and jurisprudence of the Inter-American system on this topic.

e. Producing comprehensive assessments of the situation of indigenous peoples in specific countries, that are included in the Commission’s country reports. Examples include the Reports on Bolivia (2007), Colombia (1999), Guatemala (2003, 2001), Ecuador (1997), Paraguay (2001), Brazil (1997), Venezuela (2009), Peru (2000), Mexico (1998).

f. Litigating before the inter-American Court of Human Rights.

g. General monitoring of the situation of human rights of indigenous peoples in the Americas, which may involve requests for information and press communiques.

h. Acting as a specialized consulting body for States and OAS organs.

i. Participating in the elaboration of new legal instruments, including the proposed American Declaration on the Rights of Indigenous Peoples.

j. Organizing or taking part in national or regional specialized seminars, courses and training programs aimed at indigenous leaders, lawyers and activists, and public officers.

The IACHR currently has nearly one hundred individual petitions at different procedural stages, and approximately one hundred requests for precautionary measures, coming from OAS Member States with indigenous populations. Petitions deal with many of the individual and collective rights protected by international human rights law; but at present a substantial proportion of the

petitions deal with the obligations of states to protect indigenous territories and natural resources.

The international protection of indigenous peoples' human rights generates changes on the ground, in the real lives of indigenous individuals and families. Some of the outstanding achievements of the inter-American system include the adoption of final reports or judgments on individual cases that have led states to compensate victims of serious human rights violations, cease such violations and modify their legal systems so as to adapt them to international law; the provision of effective protective measures for indigenous leaders and activists at risk due to their work as human rights defenders; the subscription of friendly settlement agreements which have resulted in the granting and demarcation of indigenous lands; the production of legal guidelines to generate legal certainty around complex issues; and the progressive development of international law on the rights of indigenous peoples.

The achievements in the 20 years of the rapporteurship have been many. A memorable moment was when on December 14, 2008, the

government of Nicaragua conveyed to the Awas Tingni Community the property title to 73,000 hectares of its ancestral lands. This marked a critical step forward in the resolution of a case that the Inter-American Commission had taken to the Inter-American Court on Human Rights in 1998. It was the first case on indigenous peoples' collective property rights that the Commission had asked the Court to hear and the judgment handed down in 2001 was a historic milestone in the recognition and protection of the rights of indigenous peoples.

The IACHR also works for the protection of the lives and integrity of indigenous peoples through concrete requests to the States to take specific measures. On October 27, 2010, the Commission requested the State of Suriname to protect the lives of the members of the Maho Indigenous Community, after information was received alleging that third parties were encroaching upon the 65 hectares of land reserved in 1971 for the Maho Community, at times destroying their crops and endangering their ability to sustain themselves.

One of the main current challenges is for indigenous leaders, lawyers and activists, particularly in North America, to become more

familiarized with the inter-American human rights system, to become aware of its potential for marking real differences on the ground, and actually using it for the purposes it was designed to fulfill. We look forward to assisting in making the system more transparent and collaboration with the permanent forum to address the issues of highest priority to the indigenous peoples of the hemisphere.

Thank you for your attention.