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**INDIGENOUS ISSUES**

**Human rights and indigenous issues**

**Report of the Special Rapporteur on the situation of human rights and  
fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

**Addendum**

**Analysis of country situations and other activities of the Special Rapporteur\* \*\***

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\* This addendum is being circulated in the language of submission and in Spanish only.

\*\* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

## CONTENTS

|  | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| Introduction .....   | 1 - 6             | 3           |
| <b>I. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED .....</b>                                      | <b>7 - 78</b>     | <b>4</b>    |
| Argentina .....  | 7 - 8             | 4           |
| Bangladesh .....   | 9 - 11            | 4           |
| Bolivia .....  | 12 - 21           | 5           |
| Chile .....  | 22 - 23           | 7           |
| Colombia .....   | 24 - 32           | 7           |
| Democratic Republic of the Congo .....   | 33 - 34           | 9           |
| Guatemala .....  | 35 - 42           | 9           |
| Honduras .....   | 43 - 45           | 11          |
| India .....  | 46 - 54           | 12          |
| Mexico .....   | 55 - 66           | 14          |
| Nepal .....  | 67 - 68           | 16          |
| Panama .....   | 69 - 70           | 17          |
| Philippines .....  | 71 - 72           | 17          |
| Thailand .....   | 73 - 74           | 18          |
| Other communications and information received .....  | 75 - 78           | 18          |
| <b>II. MANDATE, PROCEDURES AND HUMAN RIGHTS FRAMEWORK FOR THE WORK OF THE SPECIAL RAPPORTEUR .....</b> | <b>79 - 101</b>   | <b>20</b>   |
| <b>III. RELATED AND FUTURE ACTIVITIES .....</b>  | <b>102 - 126</b>  | <b>26</b>   |
| Visit to Copenhagen .....  | 102 - 107         | 26          |
| Visit to Norway (Finnmark) and Finland .....   | 108 - 118         | 28          |
| Visit to Canada .....  | 119 - 126         | 30          |
| <b>Tables</b>  |                   |             |
| 1. Summary table of communications sent to and received from Governments .....                         |                   | 19          |
| 2. Statistics on joint communications .....  |                   | 20          |

## Introduction

1. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people receives a large number of communications providing him with information about allegations of violations of the human rights and fundamental freedoms of indigenous peoples. The main sources of these communications are non-governmental organizations (NGOs), indigenous organizations, intergovernmental organizations and other United Nations procedures concerned with the protection of human rights. The Special Rapporteur pays particular attention to the individual and collective complaints he receives as they offer a crucial channel for victims, their families and communities to have their voices heard.
2. The period under review has shown an increase in the number and substance of the communications received by the Special Rapporteur, partially as a result of the strategy designed to make the mechanism better known to the communities, which involved the launching of an information note on the mandate including a model for submitting information for the Special Rapporteur's attention. This note has helped indigenous peoples to understand the possible scope and limitations of the mandate.
3. The information received over the three years of the mandate reveals important gaps in the promotion and protection of the human rights and fundamental freedoms of indigenous peoples in all regions of the world. The situations described in the communications reveal the severity of some of the human rights violations against indigenous peoples and the devastating effects that they have, not only on the victims but also on their families and often on their entire communities.
4. Section I of the present report gives information on urgent appeals, allegations and the replies received from Governments to the Special Rapporteur's letters, as well as observations by the Special Rapporteur where considered appropriate. In cases where the replies were not received or incomplete at the time of the preparation of the present report, the Special Rapporteur addressed follow-up letters to relevant Governments recalling the deadline for the incorporation of such responses in the report. It should be emphasized that the summary of communications with Governments discussed in the present report in no way reflects the total extent of the human rights problems that indigenous peoples face the world over; some of these are dealt with in the main report (E/CN.4/2003/80).
5. The Special Rapporteur remains particularly concerned about the status of indigenous women and children around the world. He points out that the cases reported on in the present document do not fully represent either the full scope of the problem or nature of the human rights violations they face. Section I also refers to other information received by the Special Rapporteur. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to reduce considerably the details of communication sent and received. As a result, requests from Governments to have their replies published in their totality could, regrettably, not be met.
6. Section II comprises an overview of the provisions of the main human rights instruments and conventions that have been particularly relevant to the issues before the Special Rapporteur over the past three years. Section III covers other and future activities of the Special Rapporteur, such as visits to specific communities.

## **I. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED**

### **Argentina**

#### **Government reply to previous communication**

7. On 29 July 2003, the Special Rapporteur received a reply from the Government of Argentina to a joint letter of allegation, sent on 3 October 2002, concerning an attack reportedly carried out on 16 August 2002 against members of the indigenous Toba-Qom, members of the Nam Qom community in the town of Formosa, allegedly by the police of Formosa Province. In its reply, the Government stated that all necessary measures to investigate the cases had been taken.

#### **Observations**

8. The Special Rapporteur is grateful for the reply provided by the Government of Argentina and its demonstrated will to cooperate with his mandate. In this context, the Special Rapporteur would like to request that the Government provide him with the final results of the investigations, as well as the measures adopted to redress the situation.

### **Bangladesh**

#### **Communications sent**

9. On 24 September 2003, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on torture to the Government of Bangladesh concerning the case of Reverend Kyolachai Bhikku, an indigenous Buddhist monk from Barbil Buddha Vihar, Chittagong Hill Tracts, who was severely beaten on 16 November 2002, allegedly by a group of army personnel from Doshvila army camp, Lakshnichari military zone. The Special Rapporteur requested that the Government provide detailed information on this case and take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations, and to provide an adequate remedy for the victim. The Special Rapporteur further requested the Government to adopt effective measures to prevent the recurrence of such acts.

10. On 9 December 2003, the Special Rapporteur sent a letter of urgent appeal to the Government, expressing concern over the situation of indigenous communities in Mahalchari, Khagrachori district, Chittagong Hill Tracts, following a series of attacks allegedly carried out by a group of military personnel and Bengali settlers on 26 August 2003. According to the information received, more than 400 houses in 14 indigenous villages were set ablaze, 2 indigenous people were killed, including an 8-month-old baby, and more than 50 individuals were injured. It was also alleged that nine women were raped, two abducted, and two Buddhist temples destroyed.

#### **Observations**

11. The Special Rapporteur regrets that, at the time this report was finalized, he had received no reply from the Government.

## **Bolivia**

### **Communications sent**

12. On 27 January 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on the right to freedom of opinion and expression, the Special Representative of the Secretary-General on human rights defenders and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention to the Government of Bolivia, expressing concern over the military and police interventions in the region of Chapare carried out following a series of demonstrations. According to the information received, the intervention of the police and the armed forces to repress the protests in the region led to several deaths. Reports also stated that more than 168 civilians were arbitrarily or illegally arrested and a large number of people wounded. In the letter, the Government was asked to provide information about any measures it might have taken to guarantee the protection of the right to life and physical integrity of the individuals concerned.

13. On 2 April and 7 May 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on the independence of judges and lawyers to the Government requesting information about attacks that allegedly occurred on 13 March and on 23 April 2003 against Cliver Rocha, a lawyer at the Center of Legal Studies and Social Investigation (CEJIS) in Riberalta, including on the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the right to life and physical integrity of Mr. Rocha.

14. On 19 May 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Representative of the Secretary-General on human rights defenders to the Government requesting information regarding reports of death threats received by Carlos Cuasace Surubi, President of the Indigenous Chiquitana Organization (OICH), and Juan Pinto, President of the Indigenous Centre of Communities of Concepción (CICC), on 28 April 2003, in particular concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the right to life and physical integrity of the two men.

15. On 11 August 2003, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on torture to the Government concerning allegations that demonstrations in the Department of Cochabamba held from 13 to 15 January 2003 had been violently repressed. According to the information received, 4 individuals died and many more were injured as a result of actions by the police and military, while some 165 individuals were unlawfully detained. The Government was asked to provide detailed information on these cases and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations, as well as to provide an adequate remedy for the victims of the abuses.

16. On 15 October 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture, and the Special Representative of the Secretary-General on human rights defenders to the Government, regarding the deaths of at least 50 individuals, allegedly as a consequence of attempts by the police and the military to repress demonstrations and to stop blockades in different parts of the country. The Special Rapporteur appealed to the Government to provide information about judicial investigations and measures taken to guarantee the promotion and protection of the human rights and fundamental freedoms of the persons concerned.

### **Press release**

17. On 16 October 2003 the Special Rapporteur joined the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative on human rights defenders in a press release echoing the profound concerns expressed by the Secretary-General of the United Nations and by the Acting High Commissioner for Human Rights about violence and loss of life during several protests in various parts of Bolivia, and in particular in the area of the Alto, where demonstrators urged the Government to abandon a project to sell gas and to approve a programme that would benefit the local inhabitants. The experts urged the Government to take necessary measures to ensure the full protection of the human rights of the demonstrators, including the right to assemble and protest, in the light of the international norms endorsed by Bolivia. In particular, they urged the Bolivian authorities to ensure that the law enforcement officials engaged in those operations carried out their duties in strict compliance with human rights standards.

### **Government replies**

18. On 19 May 2003, the Government of Bolivia stated that investigations into the death threats received by Carlos Cuasace Surubi and Juan Pinto were under way by the Vice Ministry of Justice and that it would inform the Special Rapporteur of the findings.

19. On 30 September 2003, the Government transmitted information from the National Police to the Special Rapporteur concerning the status of the investigations on the case of Cliver Rocha. According to the information received, an investigation had been opened by the Beni police which transmitted its report on the results of the investigations to the public prosecutor for action. The Government further stated that the investigation period had been extended for another 30 days, since additional information had been requested from the police. In its communication the Government also informed the Special Rapporteur that on 30 April 2003 Cliver Rocha Rojo had been beaten and threatened again by unidentified individuals near his office.

20. On 10 November 2003, the Government transmitted information concerning the incident in September 2003 in which 56 people had died and more than 200 injured as a consequence of the attempts by the police and the military to repress demonstrations. The Government reported that the investigations on that case were ongoing and no official information was therefore available about the circumstances and events, owing to the complexity of the case. The Government stated that injured people were still receiving medical attention and also that

medical, economic and legal assistance were being provided to the people affected. Finally, the Government stated that President Carlos D. Mesa Gisbert had taken note of the demands of the people on issues relating to a more participatory and open democracy, gas exports and the constituent assembly.

### **Observations**

21. The Special Rapporteur thanks the Government of Bolivia for the replies provided. He deeply regrets the further reported allegations of death threats and violence against Cliver Rocha despite the warnings offered by the various mechanisms. In this context, the Special Rapporteur would appreciate receiving any further information concerning the final results of the investigations, as well as the steps taken by the authorities to protect the life and the physical integrity of Mr. Rocha. The Special Rapporteur would also very much appreciate receiving any further information concerning the sad events that occurred in September, as well as the status of the investigations.

## **Chile**

### **Communication sent**

22. On 27 October 2003, the Special Rapporteur sent a letter of allegation to the Government of Chile inquiring about the detention of Rosamel Millamán Reinao, an indigenous leader with whom the Special Rapporteur had met in the course of his official visit to Chile, and who was reportedly arrested together with other Mapuches, allegedly in the context of a protest against deforestation. The Special Rapporteur appealed to the Government to provide information about the situation of the individual concerned.

### **Observations**

23. The Special Rapporteur thanks the Government of Chile for its cooperation on specific cases discussed in the course of his visit to the country in July. In this context, he would appreciate receiving information on the status of the case of Rosamel Millamán Reinao.

## **Colombia**

### **Communication sent**

24. On 4 August 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of Colombia, expressing concern over the difficult situation facing the indigenous and Afro-Colombian communities in the areas bordering the rivers Anchicayá, Raposo and Mallorquín, in the rural area of Buenaventura municipality, Department of Valle del Cauca, as a consequence of the reported activities by military and paramilitary groups operating in the area. According to the information received, in July 2003, 10 persons were killed and 5 others wounded during an alleged military incursion into Buenaventura. The Special Rapporteur appealed to the Government to provide information about these allegations and about judicial investigations undertaken in order to ensure the protection of the right to life and physical integrity of the aforementioned communities.

25. On 11 August 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders to the Government of Colombia, requesting information on the disappearance of Nhora Cecilia Velásquez Cortés, a member of the National Peasant, Black and Indigenous Women's Association of Colombia (ANMUCIC) and President of the organization for the region of Rionegro, Department of Cundinamarca, as well as on the steps taken by the competent authorities to guarantee her right to life and physical integrity.

26. On 25 August 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders, to the Government regarding death threats against Leonora Castaño, President of ANMUCIC, and the alleged disappearance of two other ANMUCIC members, Mrs. Velásquez in July and Blanca Nubia Díaz in August 2003. The Government was requested to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the right to life and physical integrity of the aforementioned persons.

27. On 30 March 2003, the Special Rapporteur sent a letter of allegation to the Government regarding the deaths of four indigenous Kuna in Panama, allegedly assassinated by members of the Colombian United Self-Defence Forces of Urabá (ACUU). The Special Rapporteur requested the Government to provide information about the situation of the persons concerned and about the measures it might have taken to prevent armed groups from crossing the border and carrying out acts such as those mentioned.

28. On 9 December 2003, the Special Rapporteur sent a letter of allegation to the Government requesting information on the reported killing of more than 150 indigenous Kankuamos in 1999 and the killing of 54 others between January and November 2003, allegedly by the armed forces operating in the region. The Special Rapporteur also expressed concern over the forced recruitment of child soldiers as well as the displacement of indigenous families in the region. The Special Rapporteur requested the Government to provide information about these cases, including judicial investigations and measures taken to prevent the recurrence of such acts.

### **Government replies**

29. On 20 August 2003, the Government of Colombia stated that the whereabouts of Mrs. Velásquez Cortés had been established and an investigation into the case was under way.

30. On 19 December 2003, the Government informed the Special Rapporteur about the case of the alleged death threats against Leonora Castaño. It stated that special measures had been adopted to protect Mrs. Castaño and the ANMUCIC offices in Santa Fe de Bogotá to allow them to continue their work. The Government also stated that it would inform the Special Rapporteur of the findings accordingly.



### **Government replies to previous communications**

31. On 7 January 2003, the Special Rapporteur received a reply from the Government of Colombia to a joint letter of urgent appeal, dated 5 June 2002, sent with the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on torture, inquiring about the alleged detention and mistreatment of Rigoberto Medina Dagua and Willinton Medina Dagua, two brothers, members of the indigenous community of Vereda La Despensa in Jamundí municipality. In its reply, the Government stated that on 28 May 2002 army personnel had captured the brothers in possession of firearms during the “*Cali Libre*” operation, and that further information on that case was requested from the Office of Human Rights of the Ministry of National Defence. The Government also stated that the Attorney-General’s Office had begun further investigations on the case and that it would inform the Special Rapporteur of the findings accordingly.

### **Observations**

32. The Special Rapporteur is grateful for the replies provided by the Government of Colombia. However, he would like to express his deep concern over the difficult situation indigenous peoples face in the country which is affecting the lives not only of an important number of indigenous individuals but also of entire communities.

## **Democratic Republic of the Congo**

### **Communication sent**

33. On 14 April 2003, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, to the Movement for the Liberation of the Congo (MLC), enquiring about allegations of cannibalism and rape committed by MLC between October and December 2002 against the indigenous Pygmies of Ituri province. MLC was requested to undertake all necessary measures to respect the ceasefire signed on 30 December 2002.

### **Observations**

34. The Special Rapporteur would like to highlight his concern over the situation of the Pygmies in the country and in particular about the cruelty of the human rights violations reported. In this context, he regrets that, at the time the present report was finalized, he had received no reply on this particular case.

## **Guatemala**

### **Communications sent**

35. On 9 January 2003, the Special Rapporteur sent a joint letter of allegation with the Special Representative of the Secretary-General on human rights defenders to the Government of Guatemala, regarding the deaths of Antonio Pop Caal, an indigenous human rights defender, and Diego Velásquez Brito, an indigenous leader and former parliamentarian. The Special Rapporteur requested the Government to provide information about these cases, judicial investigations and measures taken to prevent the recurrence of such acts.

36. On 16 April 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Representative of the Secretary-General on human rights defenders to the Government regarding death threats against Rafael Chanchavac Cux, Director of the National Coordinating Committee of Indigenous People and Farmers (CONIC) and the National Coordinating Committee of Farmers' Organizations (CNOC), whose son, Daniel Chanchavac Zet, was allegedly abducted on 4 April 2003. The Government was requested to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the right to life and physical integrity of the persons concerned.

37. On 9 October 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Representative of the Secretary-General on human rights defenders to the Government regarding death threats against Amílcar Méndez, as well as the reported death of Eusebio Macario, founding members of the indigenous rights organization Council of Ethnic Communities Runujel Junam (CEFJ). It was feared that those incidents could be connected to the work of the victims' organization, which seeks reparation for the victims of the country's civil war during the 1980s. The Special Rapporteur appealed to the Government to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments in order to guarantee the protection of the right to life and physical integrity of the aforementioned persons.

#### **Government replies**

38. On 18 February and 6 March 2003, the Government of Guatemala stated that investigations into the murders of the indigenous leader and the indigenous human rights defender were under way and that it would inform the Special Rapporteur of the findings accordingly.

39. On 13 August 2003, the Government informed the Special Rapporteur that Daniel Chanchavac Zet had returned to his father on 5 May 2003.

#### **Government replies to previous communications**

40. On 12 September 2003, the Special Rapporteur received a reply from the Government of Guatemala to a joint letter of urgent appeal, dated 22 November 2002, sent with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders, inquiring about death threats allegedly received by inhabitants of the Nueva Cabrican plantation and members of the Committee for Farmers' Development (CODECA). In its reply the Government stated that Mr. Sánchez Lapop, an inhabitant of the Nueva Cabrican plantation and a member of CODECA, had been killed by two unidentified individuals. Investigations carried out by the police led to the arrest of Geranio de León Ayalá and Julio Guillermo Juárez Castillo, who had been found guilty of the murder and, on 18 July 2003, sentenced to 30 years in prison.

41. On 4 February 2003, the Special Rapporteur received a reply from the Government to a joint letter of urgent appeal, dated 26 November 2002, sent with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders, inquiring about reports of the murder of

a 12-year-old girl and civil unrest in the town of El Estor as well as alleged death threats against the indigenous leader Jorge Mocúa Caal. In its reply the Government reported that investigations had shown that security forces of the State of Guatemala had not been implicated in the murder of the minor, and that protective measures had been undertaken for the protection of Mr. Mocúa Caal; however, in the absence of a formal complaint on his part, no criminal investigation into his case had begun.

### **Observations**

42. The Special Rapporteur is grateful for the replies provided by the Government of Guatemala and its demonstrated will to cooperate with his mandate. In particular, the Special Rapporteur wishes to thank the Government for its comprehensive comments on the report of his visit to the country (E/CN.4/2003/90/Add.2) and for its willingness to implement the recommendations included in his report. In this context, the Special Rapporteur is eager to follow-up during 2004 the implementation of the recommendations in the context of the existing dialogue with the authorities.

## **Honduras**

### **Communication sent**

43. On 8 October 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture, the Special Representative of the Secretary-General on human rights defenders, and the Special Rapporteur on the independence of judges and lawyers to the Government of Honduras, regarding the situation of Marcelino Miranda and Leonardo Miranda, two indigenous brothers, Directors of the Civic Council of Popular and Indigenous Organizations in Honduras (COPINH), and of the lawyer Marcelino Martínez Espinal, former member of the NGO Committee of the Families of the Detained and Disappeared in Honduras (COFADEH). According to the information received, Marcelino and Leonardo Miranda had allegedly been arrested on 8 February 2003 by armed policemen and subjected to torture. Marcelino Martínez Espinal had reportedly been threatened by unknown individuals when he went to visit indigenous leaders in the prison of Gracias. It was reported that these acts of intimidation affected his work and he was unable to continue visiting the detained indigenous people.

### **Government reply**

44. On 19 December 2003, the Government of Honduras transmitted information from the Special Attorney for Ethnic and Cultural Heritage of the Attorney-General's Office concerning the status of the investigations on the case of the indigenous brothers Marcelino and Leonardo Miranda. According to the information received, the Special Attorney had opened an investigation. On 29 October 2003 the Court of Appeal of Santa Rosa decided to release provisionally the 28 persons accused of torture and abuse of authority. Concerning the situation of the lawyer Marcelino Martínez Espinal, the Special Attorney reported that an investigation had begun in October and was ongoing.

## **Observations**

45. The Special Rapporteur is grateful for the reply provided by the Government of Honduras on the above-mentioned cases. In this context, he will address a letter to the Government requesting the final results of the investigations.

## **India**

### **Communication sent**

46. On 29 July 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on adequate housing, to the Government of India, requesting information about a decision taken on 14 May 2003 by the Resettlement and Rehabilitation Subgroup of the Narmada Control Authority (NCA) to allow the height of the Sardar Sarovar dam to be raised. According to the information received, this approval would result in the enlargement of the area covered by the water and thereby increase the number of dwellings that are submerged during the monsoon season, resulting in flooding of several Adivasi communities living near the reservoir. About 3,000 families in Maharashtra and around 12,000 families in Madhya Pradesh would be in danger of being affected, and no proper resettlement has been planned for them.

47. The decision of NCA reportedly appeared to be in clear violation of an order of the Supreme Court of India dated 18 October 2000 and, additionally, involved violations of several human rights contained in international human rights instruments that India is duty bound to respect, having freely ratified those instruments and thereby committed itself to respecting, protecting and fulfilling those rights. The Special Rapporteur requested the Government to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments.

48. On 19 March 2003, the Special Rapporteur sent a letter of allegation to the Government in which he referred to the situation of the Adivasis and, in particular, to the reported eviction, on 19 February 2003, of more than 1,000 Adivasis from the Muthanga Wildlife Sanctuary in Wayanad, State of Kerala, allegedly by police and forest protection staff. The Adivasis had been occupying this area since 4 January 2003, reportedly in protest against the failure of the Kerala Government to implement an agreement reached with them on 16 October 2001 concerning land allocation. The police reportedly met with resistance on the part of the Adivasis and, as a result of these clashes, 16 people were reportedly shot dead and many others, including women, children and elderly people, went missing. The Special Rapporteur appealed to the Government to take all necessary steps to ensure the physical integrity of the Adivasis and to take all necessary steps to bring those responsible to trial, as well as to guarantee the implementation of the agreement by the Government of the State of Kerala.

49. On 24 September 2003, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture to the Government, inquiring about allegations that Khemala, a 35-year-old Adivasi man from Gumdiya Khurd village, Niwali Block, Budwani district, Madhya Pradesh, and member of Adivasi Mukti Sanghatana, Sendhawa, had reportedly been beaten to death in police

custody on 14 June 2003. The Government was requested to provide detailed information on this case and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons found guilty of the alleged violations, as well as to provide an adequate remedy for these abuses. The Special Rapporteur further requested the Government to adopt effective measures to prevent the recurrence of such acts.

50. On 11 August 2003, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on torture to the Government, inquiring about allegations received concerning a number of persons from indigenous communities, including women and children, affiliated with the Adivasi Gothra Maha Sabha, an organization of indigenous organizations in Kerala, against whom police and forest protection staff reportedly used excessive force on 19 February 2003 when evicting some 1,000 indigenous people who were occupying land in the Muthanga Wildlife Sanctuary in Wayanad. It was reported that as a result of these clashes, 15 Adivasis and 1 policeman were killed and more than 50 persons injured. The Government was requested to provide detailed information on this case and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations, as well as to provide an adequate remedy for the victims of these abuses or their families. The Special Rapporteur further requested the Government to adopt effective measures to prevent the recurrence of such acts.

### **Government replies**

51. On 23 September 2003, the Government of India stated that NCA had permitted the height of the dam to be raised in accordance with the requirements stipulated in the Supreme Court's directions, as well as all necessary safety requirements such as the environmental safeguard measures taken by the NCA Environment Subgroup. The Government also informed the Special Rapporteurs about the resettlement of the 4,736 project-affected families in the States concerned (2,767 in Gujarat, 1,258 in Madhya Pradesh and 711 in Maharashtra): all civic amenities, as mandated by the Narmada Water Disputes Tribunal, were provided. According to the information received, after the submission of "Action Taken Reports" by the States Gujarat, Madhya Pradesh and Maharashtra, the Resettlement and Rehabilitation Subgroup conveyed its clearance to NCA for consideration to be given to granting permission for another raising of the height of the Sardar Sarovar dam on 13 May 2003.

52. On 26 August 2003, the Government transmitted information to the Special Rapporteur concerning the investigations on the case of the Adivasi Gothra Maha Sabha in Kerala. According to the information received, some 500-800 members of the organization trespassed onto the Muthanga Wildlife Sanctuary on 5 January 2003, where they erected their own checkpoints, posted armed guards and prevented forest officials and other people from entering the area. On 17 February they started a forest fire which seriously endangered the Sanctuary. When officials entered the area to put out the fire, the agitators kidnapped 3 forest officials, 16 casual labourers (10 of them Adivasis themselves), a driver and a photographer along with his assistant. Prolonged negotiations followed before the release of the hostages could be secured and the victims hospitalized. The Government of India held that up to this point the police had not used any force. According to the information received, on 19 February a police contingent along with forest officials tried to remove the Adivasis from the Sanctuary when they learned that another police constable and a forest official had been kidnapped. According to the Government, the Adivasi had poured kerosene over the captives and threatened to burn them. In

order to save their lives, the police opened fire. The released hostages as well as the injured people were taken to hospital where one male Adivasi died. A total of 172 persons were arrested and 113 women and 47 children were taken into custody but released later on.

### **Government reply to previous communication**

53. On 3 February 2003, the Special Rapporteur received a reply from the Government of India to a letter of allegation, dated 27 August 2002, inquiring about the alleged forced eviction of the inhabitants of Khedi-Balwari village, Dhar district, Madhya Pradesh, on 20 July 2002, as well as the reported demolition of their houses the following day. It was also reported that the event occurred as part of the undertaking of the Man Irrigation Project. In its reply the Government stated that the villagers had been resettled with their consent following the rising water level of the Maan Dam.

### **Observations**

54. The Special Rapporteur wishes to thank the Government of India for the information that it has kindly brought to his attention. However, he would like to express his deep concern over the continuing difficult situation of the families in Maharashtra and Madhya Pradesh as a result of the decision to raise the height of the Sardar Sarovar dam.

## **Mexico**

### **Communications sent**

55. On 23 January 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Representative of the Secretary-General on human rights defenders to the Government of Mexico, inquiring about repeated death threats reportedly received by Ernesto Ledesma Arronte, Director and founder of the Centre for Political Analysis and Social and Economic Research, an organization denouncing and investigating cases of human rights violations in connection with the alleged activities of the armed forces and paramilitary groups against the indigenous communities in the State of Chiapas. It was alleged that these activities reflect the general situation facing human rights defenders in Chiapas. The Special Rapporteur appealed to the Government to provide information about the case and information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the right to life and physical integrity of the persons concerned.

56. On 17 April 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders to the Government, inquiring about allegations concerning the repression suffered by the indigenous communities of Huazulco and Amilcingo, Morelos. According to the information received, on 10 April 2003 the police carried out an operation in the course of which 35 persons were arrested and 50 others injured, many of them women and children. The Special Rapporteur appealed to the Government to provide information about the case and information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments in order to guarantee the protection of the rights of the persons concerned.

57. On 23 April 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on torture, the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on the independence of judges and lawyers to the Government, inquiring about the situation of Samuel Alfonso Castellanos Piñón and other members of the regional office of Christian Action for the Abolition of Torture (ACAT) in Oaxaca, and the Indigenous Organization for Human Rights in Oaxaca (OIDHO). It was reported that these persons, who worked as legal counsels for the individuals, themselves indigenous people, accused of the massacre of 26 indigenous people in Agua Fría, had received repeated death threats. The Special Rapporteur appealed to the Government to provide information about the case and information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments in order to guarantee the protection of the right to life and physical integrity of the persons concerned.

58. On 7 May 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Representative of the Secretary-General on human rights defenders to the Government inquiring about the alleged forced disappearance of Marcelino Santiago Pacheco, an indigenous Zapotec belonging to the Organization of Zapotec Indigenous Peoples, on 28 April 2003. It was feared that his disappearance was a consequence of his work as a defender of the rights of the indigenous Zapotecs. In the letter the Government was requested to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the right to life and physical integrity of the person concerned.

59. On 15 August 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders to the Government inquiring about alleged threats received by the family of Griselda Tirado Evangelio, a lawyer and defender of the rights of the indigenous population in the State of Puebla's Sierra Norte region and member of the Independent Organization of Totonaca, and herself the victim of a fatal shooting by an unknown individual. It was reported that the family had expressed concern about the alleged lack of due process in the course of the investigation of the murder of Ms. Tirado and that the death was directly linked to her work as a defender of indigenous rights and her candidacy in the municipal elections. It was further alleged that these circumstances reflect the general situation facing indigenous human rights activists in the region. The Special Rapporteur also appealed to the Government to provide information about the investigation of the murder of Ms. Tirado and to identify and try those found responsible.

### **Government replies**

60. On 14 March 2003, the Government of Mexico stated that a complaints procedure had been initiated by the Human Rights Commission of the State of Chiapas. The Special Rapporteur learned that the investigations were ongoing and that the findings would determine any further action to be taken to guarantee the right to life and physical integrity of Ernesto Ledesma Arronte.

61. In its response of 3 July 2003 concerning indigenous peoples from the communities of Huazolco and Amilcingo in Morelos, the Government of Mexico, noting that the rights of the detainees had been guaranteed at all times, reported that criminal proceedings had begun against the detainees who had been offered legal counsel.

62. On 29 April 2003, the Government informed the Special Rapporteur that in the case of Samuel Alfonso Castellanos Piñón and the members of the regional office of ACAT in Oaxaca and OIDHO, investigations had been started and protection measures had been ordered in order to ensure the safety of the petitioners. The Government also informed the Special Rapporteur that police patrols of the offices of ACAT and OIDHO, as well as of the homes of the petitioners, had been ordered as well as police escorts for the petitioners.

63. On 26 May 2003, the Government stated that Marcelino Santiago Pacheco had benefited from the 2002 Amnesty Law of the State of Oaxaca and had been released, and that investigations of this case were ongoing.

#### **Government reply to previous communication**

64. On 18 November 2003, the Special Rapporteur received a reply from the Government of Mexico to a joint letter of allegation, dated 5 August 2002, sent with the Special Representative of the Secretary-General on human rights defenders, inquiring about the situation of Juan Anzaldo Meneses, a defender of indigenous rights, who, on 12 June 2002, was allegedly arrested by officers of the Judicial Police of the State of Mexico, taken to an unknown location, threatened and interrogated about his work. In its reply the Government stated that investigations had begun, the findings of which to date indicated that members of the State police may have been implicated in the incident.

#### **Observations**

65. The Special Rapporteur thanks the Government of Mexico for the replies provided and the willingness shown to cooperate with his mandate, and in particular for the information received in the course of his visit to the country in June 2003.

66. The Special Rapporteur reiterates his concern about the number of allegations of harassment and threats received by human rights defenders and indigenous leaders in the country. He urges the authorities to take all necessary measures to ensure that witnesses of human rights violations, and in particular indigenous peoples and their legal representatives involved in judicial proceedings, are given effective protection.

### **Nepal**

#### **Communication sent**

67. On 26 September 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on torture, the Special Rapporteur on the right to freedom of opinion and expression, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention to the Government of Nepal concerning Navin Pun, a journalist also known as Bivas, who was reportedly arrested by plain-clothes security force personnel on 21 September 2003 in Kirtipur, Kathmandu. His whereabouts have allegedly not been disclosed. It was reported that Navin Pun



is a member of the Nepal Indigenous Journalists' Association and that he had recently published a collection of essays about an incident that allegedly took place in Dang during the state of emergency in 2002. In view of his alleged detention, fears had been expressed that he may be at risk of torture or other forms of ill-treatment. The Special Rapporteur appealed to the Government, among other things, to take all necessary measures to guarantee the right of Navin Pun not to be deprived arbitrarily of his liberty and, if charged, to fair proceedings before an independent and impartial tribunal.

### **Observations**

68. The Special Rapporteur regrets that, at the time this report was finalized, he had received no reply from the Government.

## **Panama**

### **Communication sent**

69. On 30 March 2003, the Special Rapporteur sent a letter of allegation to the Government of Panama, inquiring about the alleged assassination of four indigenous Kuna leaders by members of the United Self-Defence Forces of Urabá (ACUU), allegedly after they had received accusations that the Kuna were collaborating with the Revolutionary Armed Forces of Colombia (FARC). According to the information received, 150 ACUU paramilitaries entered the indigenous community of Paya in Panamá, near the border with Colombia, and attacked the inhabitants. The Special Rapporteur appealed to the Government to provide information about the situation of the persons concerned and the steps taken to carry out an investigation of the case.

### **Observations**

70. The Special Rapporteur regrets that, at the time this report was finalized, he had received no reply from the Government.

## **Philippines**

### **Communication sent**

71. On 2 September 2003, the Special Rapporteur sent a joint letter of urgent appeal with the Special Rapporteur on adequate housing, to the Government of the Philippines, inquiring about the situation of indigenous Manobo families in the Lumintao subdistrict. According to the information received, on 16 April 2003, 115 indigenous Manobo families were forcibly evicted from their homes in the Lumintao subdistrict, Quezon City, Bukidnon province, Mindanao, in the presence of police forces and local officials. Some of the families' homes were allegedly burned down and the rest otherwise destroyed. According to the information received, no investigation took place into the eviction of the families and the demolition of their houses, and none of the 115 families received adequate compensation for the loss of their homes and possessions. The Special Rapporteur requested the Government to provide information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments and to follow-up on recommendations by human rights bodies.

## **Observations**

72. The Special Rapporteur regrets that, at the time this report was finalized, he had received no reply from the Government.

## **Thailand**

### **Government reply to previous communication**

73. On 21 February 2003, the Special Rapporteur received a reply from the Government of Thailand to a letter of allegation, dated 20 November 2002, inquiring about reports that the Government's Master Plan on Community Development, Environment and Narcotic Control in Highland Areas has since 1992 adversely affected the indigenous and tribal populations in the area, and transmitting allegations that they were being denied genuine participation in the implementation of the third phase of the Plan (2002-2006). In its reply, the Government noted that the highland peoples were not considered indigenous peoples under domestic law, and stated that they had thus far been benefiting from the development scheme and that the implementation of the third phase of the Plan had been initiated after stakeholder consultations.

## **Observations**

74. The Special Rapporteur thanks the Government of Thailand for the reply provided.

## **Other communications and information received**

75. The Special Rapporteur, in his report to the fifty-ninth session of the Commission (E/CN.4/2003/90), included a reference to information received on the situation of the Basarwa people of **Botswana** who were relocated from their traditional hunting grounds in the Central Kalahari Game Reserve to resettlement villages. A judicial appeal by the Basarwa against this action to the country's High Court was dismissed on technical grounds and the situation has raised international concern. The Special Rapporteur visited the Basarwa communities in the region in February 2002 at their invitation, following a seminar organized by the United Nations.

76. On 10 September 2003, the Government of Botswana addressed a communication to the Special Rapporteur on this matter, highlighting the reasons for the relocation, the relocation itself and relevant information concerning the mineral exploration in the area. In particular, the Government stated that there was never any forcible relocation of Baswara from the Central Kalahari Game Reserve; that there is no mining nor any plans for future mining anywhere inside the Reserve; and that the only known mineral discovery in the area, the Gope deposit, has proven not to be commercially viable. The Government stressed that, furthermore, it intends to bring the standards of living of the Baswara up to the level of the rest of the country, and to avoid land-use conflicts in the Reserve. In the communication, the Government expressed regret that the Special Rapporteur did not meet with governmental authorities in the course of his visit to the Central Kalahari Game Reserve.

77. On 27 November 2003, the Special Rapporteur transmitted a letter to the Government of Botswana thanking it for its response and stressing his view that constructive dialogue with the national authorities is the most effective way for him to contribute to an effective response to the needs of indigenous peoples. In this context, the Special Rapporteur recalled that he had

informed the authorities of his intention to visit the communities and also requested a meeting with governmental representatives. Furthermore, the Special Rapporteur expressed his ongoing interest in making an official visit to the country, and in particular to the above-mentioned region, to discuss with the authorities, indigenous communities and NGOs the situation of indigenous peoples in Botswana.

78. The Special Rapporteur's attention has been drawn to the situation of indigenous peoples of Sarayacu, **Ecuador**, who are claiming their right to their land and control over its natural resources against a consortium of the companies Chevron-Texaco (United States of America) and CGC (Argentina), which have spent the last five years trying to start exploring for petroleum in "Block 23", a concession granted by the Government of Ecuador. Most of the area is considered to be the ancestral territory of the Sarayacu and the rest belongs to other Kichwa, Achuar and Shuar communities. Between 1999 and 2001, the level of petroleum in the rivers, on which local residents depend for their daily needs, reportedly was 200-300 times higher than the limits set for human consumption. Reports have been received claiming that indigenous peoples of the region continue to suffer an exploding health crisis, recording cancer rates 30 times higher than in non-oil-producing areas of Ecuador. The Special Rapporteur wishes to express his deep concern over the situation of the Sarayacu people and calls upon the Government to take the necessary preventive steps to protect their human rights, and in particular to ensure their participation in the decision-making processes on issues affecting directly their lives.

**Table 1**

**Summary table of communications sent to and received from Governments**

|  | Africa | Asia | Eastern Europe | Western Europe and other | Latin America and the Caribbean | Total |
|--|--------|------|----------------|--------------------------|---------------------------------|-------|
| No. of countries to which UA and LA were sent          | 1      | 4    | -              | -                        | 7                               | 12    |
| No. of UA sent   | -      | 4    | -              | -                        | 16                              | 20    |
| No. of joint UA (with thematic and country mechanisms) | -      | 3    | -              | -                        | 16                              | 19    |
| No. of LA sent   | 1      | 4    | -              | -                        | 6                               | 11    |
| No. of joint LA (with thematic and country mechanisms) | 1      | 3    | -              | -                        | 2                               | 6     |
| No. of PR  | -      | -    | -              | -                        | 5                               | -     |
| No. of government replies                              | -      | 4    | -              | -                        | 18                              | 22    |

UA - urgent appeals

LA - letters of allegation

PR - press releases

**Table 2**  
**Statistics on joint communications**

|   | Letters of allegation | Urgent appeals |
|---|-----------------------|----------------|
| Number of joint communications  | 6                     | 19             |
| <b>Thematic mechanisms</b>  |                       |                |
| Special Representative of the Secretary-General on the situation of human rights defenders                                    | 1                     | 15             |
| Special Rapporteur on the question of torture   | 4                     | 4              |
| Special Rapporteur on extrajudicial, summary or arbitrary executions  | 1                     | 7              |
| Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression                          |                       | 4              |
| Special Rapporteur on the independence of judges and lawyers  |                       | 4              |
| Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health |                       | 1              |
| Special Rapporteur on adequate housing  |                       | 2              |
| Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo                                   | 1                     |                |
| Chairperson-Rapporteur of the Working Group on arbitrary detention  |                       | 3              |

## II. MANDATE, PROCEDURES AND HUMAN RIGHTS FRAMEWORK FOR THE WORK OF THE SPECIAL RAPPORTEUR

### A. Mandate

79. In conformity with his mandate contained in Commission resolution 2001/57, the Special Rapporteur is authorized by the Commission to receive and exchange information and to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people. He is also requested to pay special attention to violations of the human rights of indigenous women and children and to take into account a gender perspective, an issue that is always present, while analysing the information received.

### B. Procedures

80. The Special Rapporteur has had occasion to use each of the procedures available to him for the handling of information. In deciding which is most appropriate, he takes into consideration the nature of the human rights violation in each case, as well as practical considerations such as the availability of resources and other constraints. The main type of communication sent has been the urgent appeal in cases of imminent danger of violations of the

human rights of individuals, or even entire indigenous communities. The Special Rapporteur also transmitted letters of allegation to Governments in cases of a less urgent character. The Special Rapporteur has intensified coordination with other special procedures by, among other means, participating in joint communications with other Special Rapporteurs. Follow-up of the cases in which his intervention has been required is a matter of particular concern to the Special Rapporteur and he is therefore considering a third type of communication, which would consist of follow-up letters. In view of the need to strengthen the existing mechanism for follow-up to his communications with Governments, the Special Rapporteur is developing a procedure for this purpose in coordination with the Office of the High Commissioner for Human Rights (OHCHR).

### **C. Human rights framework**

81. The legal framework for the Special Rapporteur's mandate is, first and foremost, the Universal Declaration of Human Rights, which forms part of customary international law. Article 1 affirms that all human beings are equal in dignity and rights. The basic human rights provided for in the Universal Declaration, therefore, also have to be respected in the case of indigenous peoples. Articles 3 and 5 of the Universal Declaration allow for action to bring to justice any persons who commit violations of the human rights of indigenous peoples, such as violations of the right to life or subjection to cruel, inhuman or degrading treatment or punishment. Article 6 provides that everyone has the right to recognition everywhere as a person before the law, while article 7 states that all are equal before the law and are entitled, without any discrimination, to equal protection of the law. These guarantees offer the legal means of ensuring that indigenous peoples are given the same treatment as non-indigenous peoples.

82. Article 8 of the Universal Declaration, proclaiming that everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights, facilitates the legal and administrative protection of indigenous peoples to the extent that the domestic law incorporates such guarantees. Similarly, articles 9 to 12 are concerned respectively with the prohibition of arbitrary arrest, the right to a fair trial, the right to be presumed innocent until proven guilty according to law, and protection of the law against arbitrary interference with a person's privacy, family, home or correspondence. These provisions are pertinent insofar as indigenous peoples continue to be particularly vulnerable to such types of aggression.

83. According to article 17, everyone has the right to own property and no one shall be arbitrarily deprived of his/her possessions. Articles 18 to 20 also relate directly to the concerns of indigenous peoples, article 18 seeking to ensure that everyone is given the right to freedom of thought, conscience and religion, including the practice of religion, and article 19 ensuring everyone has the right to freedom of opinion and expression; article 20 proclaims the universal right to freedom of peaceful assembly and association.

84. The Universal Declaration also offers guarantees in the social, economic and cultural ambit, which is crucial to millions of indigenous peoples around the world. In this regard, article 22 provides for the right to social security and the realization, in accordance with the organization and resources of each State, of the individual's economic, social and cultural rights indispensable for his/her dignity and the free development of personality. As significant as this guarantee is in emphasizing the distinctiveness of the socio-economic viability of indigenous peoples' endeavours, as well as their own cultures, article 23 is no less important in protecting

the right to work (art. 23 (1)) and the right to equal pay for equal work (art. 23 (2)). Furthermore, article 25, setting out the right to a standard of living adequate for the health and well-being of the entire family, including food, clothing, housing and medical and necessary social services, and article 26, proclaiming the right to education, are of particular relevance for indigenous peoples considering their often restricted access to public services. Finally, article 27 provides for the right to freely participate in the cultural life of the community, a guarantee that may serve to complement the provision on the realization of cultural rights as contained in article 22.

85. In addition to the above, there are a number of provisions of other human rights instruments that are particularly relevant to the allegations received by the Special Rapporteur; these are briefly described below.

86. The International Covenant on Civil and Political Rights, which, at the time of writing, had been ratified by 151 States, provides for a set of civil and political rights, including collective rights, that also apply to indigenous peoples. In particular, States parties are required to extend the rights recognized in the Covenant to all individuals within their territory and subject to their jurisdiction (art. 2 (1)). Moreover, article 2 (1) broadly requests that the Covenant's rights be ensured without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 provides for the specific protection of the law without discrimination. While the Covenant itself neither defines the term "discrimination" nor indicates what constitutes discrimination, the Human Rights Committee at its thirty-seventh session in 1989 adopted general comment No. 18 in which it reiterated its belief that the term "discrimination" as employed in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

87. The Covenant expressly recognizes the following fundamental rights, which also apply to indigenous peoples: the right to life (art. 6); protection against torture and cruel, inhuman or degrading treatment or punishment (art. 7); protection against slavery (art. 8); the right to liberty and security of the person (art. 9). Furthermore, article 14 requires that all persons be equal before the courts (art. 14 (1)) and be given a fair trial (art. 14 (3)), whereas article 18 guarantees freedom of thought, conscience and religion. Most importantly, article 27 provides that ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

88. The International Covenant on Economic, Social and Cultural Rights, so far ratified by 148 States, sets out in article 1 the following rights which relate directly to indigenous peoples: all peoples have the right of self-determination and, by virtue of that right, may freely determine their political status and freely pursue their economic, social and cultural development (art. 1 (1)) and all peoples may freely dispose of their natural wealth and resources (art. 1 (2)). The same article requests States parties to promote the realization of the right of self-determination in conformity with the provisions of the Charter of the United Nations (art. 1 (3)). In this context, the Special Rapporteur, in analysing the information brought to his

attention, always bears in mind that States parties are requested to take steps in this field, individually and through international assistance and cooperation, to the extent of their available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant.

89. During his visits to their communities the Special Rapporteur noted the difficult situation indigenous peoples face in the areas of employment and education and in particular, the difficulties faced by those who must often leave their communities and travel to foreign countries in order to find work. The Covenant sets out some important provisions concerning indigenous peoples and work. These include: the right to work (art. 6); the right to just and favourable conditions of work (art. 7); the right to form and join trade unions and the right to strike (art. 8), as well as the right to education (art. 13). Furthermore, the Covenant expressly refers to a number of guarantees in the socio-economic realm, including the right to social security (art. 9), the right to an adequate standard of living (art. 11) and the right to the highest attainable standard of physical and mental health (art. 12).

90. The International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by 168 States, defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (art. 1). The Convention requires States parties to condemn racial discrimination and pursue a policy of eliminating racial discrimination in all its forms (art. 2). It condemns racial segregation and apartheid (art. 3) as well as propaganda and organizations which are based on ideas of the superiority of one race, the promotion of racial hatred and incitement to racial discrimination (art. 4). Article 5 of the Convention contains a list of specific rights which must be enjoyed without distinction as to race, colour or national or ethnic origin. This includes, but is not limited to, the right to own property; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; the right to freedom of assembly; the right to work; the right to housing; the right to public health, medical care and social security; the right to education; and the right to equal participation in cultural activities.

91. The Convention on the Elimination of All Forms of Discrimination against Women, to date ratified by 164 States, complements and reinforces existing international instruments designed to combat the continuing discrimination against women. The Convention identifies specific areas that are particularly relevant in the case of discrimination against indigenous women and girls, for example with regard to political rights, education and employment, and economic and social life. Under article 2, States parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. While articles 10 and 11 foresee the eradication of discrimination against women in the fields of education and employment, respectively, article 12 seeks to prevent unequal treatment of women in the realm of health care. Article 13 requires States parties to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life.

92. The provisions contained in this Convention are particularly relevant to addressing one of the worst forms of human rights violations and a contemporary form of slavery, namely, the trafficking of women and girls. Over the three-year period of the Special Rapporteur's mandate, information was received highlighting specific concerns about the number of indigenous and tribal women and girls who are victims of trafficking, in particular within the sex industry, in South and South-East Asia. Anecdotal information of this nature has also been received from other regions. The reports received are not based upon any rigorous research but are rather general and anecdotal in nature; they do, however, suggest that thousands of indigenous and tribal women and girls suffer gross human rights violations.

93. Finally, one other area of concern is the situation of indigenous women living in rural areas. In this context, article 14 highlights the particular problems faced by rural women and the significant roles that rural women play in the economic survival of their families, and requires States parties to take all appropriate measures to ensure that rural women participate in and benefit from rural development, particularly in the areas of health care, social security, education, employment, land and agrarian reform, and land resettlement schemes. The same article requires States parties to ensure that rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

94. The situation of indigenous children - both boys and girls - is of particular interest to the Special Rapporteur. The situations observed during the period under review included a wide variety of concerns. In this context, the Special Rapporteur received allegations that indigenous children were overrepresented in alternative care and juvenile justice systems and that indigenous children were especially vulnerable to abuse, trafficking and exploitation. The situation on the ground also revealed the relevance of cultural sensitivity when providing basic social services such as health or education to indigenous children. Despite noting some positive experiences and successes in addressing discrimination, the Special Rapporteur is particularly concerned about the persistence of discriminatory barriers, for example, to ensuring equal access to basic services. In addressing these issues, the Convention on the Rights of the Child is the mandatory reference for the Special Rapporteur.

95. The Convention on the Rights of the Child, which, at the time of writing, had been ratified by 191 States, enunciates the civil and political rights of children as well as their economic, social and cultural rights. Among the articles establishing general principles, that is provisions serving as guidelines for the interpretation of the Convention, article 2 (1) provides that States parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The Convention recognizes three further general principles as follows: the best interests of the child as a primary consideration in all actions concerning children (art. 3), the right to life, survival and development (art. 6) and the right of the child to express his or her views freely in all matters affecting the child, the views being given due weight (art. 12).



96. In view of the particular vulnerability of children, the Convention reiterates the importance of certain guarantees such as protection from all forms of physical or mental violence, maltreatment or exploitation, including sexual abuse (art. 19), the right to the highest attainable standard of health (art. 24) and the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27). With regard to indigenous peoples, due note should also be taken of the right to education (art. 28), including education on human rights, the child's own cultural identity, language and values (art. 29). Article 30 states that children of minorities or of indigenous origin shall not be denied the right to their own culture, religion or language. In this context, the Special Rapporteur wishes to highlight that indigenous communities should not only always participate in the design of services and development programmes, but should also be included among the managers and staff providing these services.

97. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to date ratified by 133 States, defines the term "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (art. 1). In addition, according to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "the term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time".

98. Article 2 of the Convention requires States parties to take effective measures to prevent acts of torture in any territory under their jurisdiction. Articles 11 to 14 are also particularly relevant for the legal protection of indigenous peoples. As such, States parties are required to systematically review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in their jurisdiction with a view to preventing cases of torture (art. 11), and to ensure that alleged acts of torture are promptly and impartially investigated (arts. 12 and 13) and that victims of torture obtain redress and have an enforceable right to fair and adequate compensation (art. 14).

99. Regrettably, during the period under review, the Special Rapporteur received an increased number of allegations of the torture of indigenous leaders. In this context, he has participated in joint communications with the Special Rapporteur on the question of torture. Considering the cases brought to his attention, the Special Rapporteur considers it crucial to request full respect for principles 11 and 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which stipulate that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority, and that a detained person shall be entitled to have the assistance of a legal counsel.

100. The Special Rapporteur is encouraged by the level of knowledge shown by the indigenous communities, from Chiapas in Mexico to the Cordillera in the Philippines, of the provisions contained in the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), ratified by 17 States and the only international legal instrument currently in force that addresses specifically the rights of indigenous and tribal peoples. This instrument provides for the protection in law and in practice of the right of indigenous and tribal peoples to preserve their own laws and customs within the national societies in which they live. The instrument is of great relevance since it makes reference to indigenous peoples' particular cultural, social and religious values (art. 5) and custom-based law (art. 8) and deals with their right to benefit from equal conditions of employment (art. 20), the right to health services (art. 25) and the right to education (art. 26). The Convention specifically protects indigenous peoples' rights of ownership and possession of the lands traditionally occupied by them (art. 14) as well as indigenous peoples' rights to the natural resources pertaining to their lands (art. 15), and seeks to ensure their protection from removal from the lands occupied by them (art. 16).

101. The Special Rapporteur continues to pay attention to a number of additional instruments and documents which were mentioned in his first report to the Commission (E/CN.4/2002/97). In this context, the "Draft United Nations declaration on the rights of indigenous peoples", adopted by the Sub-Commission on the Promotion and Protection of Human Rights and currently under review by the Commission's open-ended intersessional working group on the draft declaration, is undoubtedly one of the most important human rights documents for indigenous peoples, and it should be adopted as soon as possible. The Special Rapporteur welcomes the efforts made by several delegations, governmental and indigenous, during the last session of the working group to advance the discussions. However, he regrets that despite the efforts made, no articles were adopted, even on a provisional basis, which would have been a sign of real commitment. Governments and indigenous communities have reiterated the urgent need to adopt a text before the end of the International Decade of the World's Indigenous People in 2004.

### **III. RELATED AND FUTURE ACTIVITIES**

#### **Visit to Copenhagen**

102. The Special Rapporteur visited Copenhagen on 6 and 7 October at the invitation of the International Work Group for Indigenous Affairs (IWGIA). During the visit the Special Rapporteur discussed developments related to the mandate as well as future challenges in the promotion and protection of the human rights of indigenous peoples. In Copenhagen, the Special Rapporteur also met with the Greenland Premier, Mr. Hans Enoksen; several members of the administration of the Office of the Home Rule in Copenhagen; Ambassador Tyge Lehman, from the Human Rights Unit at the Ministry for Foreign Affairs, and his team, including members of the Danish International Development Agency (DANIDA) in charge of indigenous issues; and Supreme Court Justice Per Wahlsoe. The Special Rapporteur is pleased to report that he has received an oral invitation to visit Denmark and Greenland in the near future. He is also pleased to share with the Commission some impressions from his discussions with representatives of Greenland Home Rule.

103. The representatives of Greenland Home Rule in Copenhagen noted important achievements in recent years in terms of the promotion and protection of the rights of the indigenous people in Greenland, but recalled that some issues still needed to be addressed. In this regard, the right to return of the relocated Inughuit was a main issue of concern.

104. The Inughuit were forcibly moved from their ancestral lands in 1953 to make way for a United States air force base (known as the Thule Air Base). Although Greenlanders now have a measure of sovereignty over their country, the fate of the Inughuit still depends largely on the decision of the Danish courts and on final United States plans for its National Missile Defence Project. In 1999 the Eastern High Court of Denmark ruled that the human rights of the Inughuit had been violated when they were forced to move as they had been given no warning and the relocation took place without regard to the existing laws. The Supreme Court of Denmark has now agreed to hear the appeal of the survivors and descendants of this indigenous people. The Inughuit position is that they should be given the land back and that the plans for the National Missile Defence Project at the Thule Air Base should be stopped until the Supreme Court rules on the case. The decision of the Supreme Court is eagerly anticipated, not only for its obvious implications for the promotion and protection of the human rights of indigenous peoples, but also for the arguments to be used, which may contain important references to international instruments and thus establish an important precedent for the solution of cases of this sort.

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107. The second main issue of discussion was the legal system and the administration of justice in Greenland. The judicial system in Greenland - police, prosecution, courts, and prisons and probation - along with the relevant legislation is one of the few areas not transferred to the Home Rule administration. This means that the Danish Parliament legislates for the judicial system in Greenland and that the Danish Ministry of Justice administers the legislation. The Greenland judicial system differs significantly from the Danish system. In Greenland, the administration of justice is mainly based on lay people: district judges, lay judges and defence counsel are ordinary citizens; local police handle the prosecuting function. Only when a case is brought before the High Court in Nuuk is it dealt with by prosecutors, judges and counsel with legal training. The Greenland Administration of Justice Act and the Criminal Code were drafted after the Second World War in the light of the values and practices obtaining in Greenland

society at that time. Greenland has since changed radically and rapidly from a hunter society to an industrial one. In this context, the Government of Denmark and the Greenland Home Rule in 1994 jointly appointed the 15-member Commission on Greenland's Judicial System. The Commission, which is to review and reassess thoroughly the entire judicial system in Greenland, is expected to release its report soon.

### **Visit to Norway (Finnmark) and Finland**

108. On the occasion of his attendance at an academic conference in Tromsø, Norway, the Special Rapporteur gladly accepted an invitation from the Sami Parliament to visit, from 10 to 14 October 2003, the Parliament in Kárasjoka and some Sami communities in Finnmark. His trip included a short visit to the Sami Council in Ohcejohka, Finland, where he met with Sami representatives from Sweden, Finland and the Russian Federation. He also had extensive conversations with Mr. Ole Henrik Magga, Chairman of the Permanent Forum on Indigenous Issues and former President of the Sami Parliament. The Special Rapporteur is pleased to share his impressions of these encounters with the Commission.

109. The Sami, original indigenous inhabitants of northern Scandinavia, live in the polar region extending from Norway, Sweden and Finland to the Kola Peninsula in the Russian Federation. Norway is said to have the biggest Sami population. Over the last 200 years, local regulations governing language, agricultural policies, defence, education, communications, media and other areas have resulted in a loss of Sami language and traditions, as well as a fading perception of Sami history. In response, a Sami Committee was established in 1956 to discuss principles and concrete measures to help the Sami retain their culture.

110. During the meetings, the Special Rapporteur was informed of issues relating to the land rights, reindeer-grazing and fishing activities of Sami communities, as well as the impact of a North Atlantic Treaty Organization (NATO) bombing range in the area. Major concern was expressed about the latest developments surrounding a proposed land-management bill known as "the Finnmark Act", under consideration in the Norwegian Parliament.

111. The background for the Finnmark Act is a conflict in the 1970s, when the Norwegian Water Resources and Energy Administration, which issued plans to develop the Alta-Kautokeino water system on the Finnmark plateau, including a dam which would inundate a whole Sami community. Even after these plans had been withdrawn, a major project remained, including a 100-metre-high dam across a canyon and the construction of a road across reindeer-grazing land and calving areas.

112. In 1981, Sami leaders agreed with the Government of Norway on a list of issues, including the constitutional recognition of the rights of the Sami people, the establishment of a democratic Sami body - the Sami Parliament - and an agreement to pursue the issue of recognition of Sami land rights initially in Finnmark and then in the rest of the Sami territory in Norway, as formalized in the Sami Act in 1987. The Government also agreed to establish a Sami Rights Committee to come up with proposals on how Sami land rights should be safeguarded.

113. The Committee, in its 1997 report, outlined proposals for new land-rights management legislation, including the progressive recognition of the right to ownership and possession in traditional Sami lands; the abolition of so-called State-owned property in Finnmark, and a call for respect of international law and procedures concerning the relationship between the Sami as an indigenous people and the State. The report was transmitted to the relevant authorities for consideration in the drafting of new legislation on the matter.

114. To the disappointment of the Sami people, the Minister of Justice in 2003 presented proposed legislation - the Finnmark Act - that differed completely from the proposal originally produced by the Committee. It also avoids references to the coastal resources as well as to specific rights that Sami may have for the conservation of their traditional livelihoods, except for the reindeer-herding areas. According to the information received during the visit of the Special Rapporteur, it seems that there had been no previous consultation on the matter.

115. The complaints of the Sami people over the Finnmark Act are therefore based on the following elements: (a) it disregards 23 years of work by the Sami Rights Committee and breaches the 1981 agreement between the Government and Sami organizations; (b) the Finnmark Act itself fails to recognize that the indigenous Sami people have a particular right to land and resources compared to the non-Sami population in the region; (c) the Act also expands the rights of non-Sami people to use the Sami territory; (d) it safeguards the right to expropriate land on Sami territory for public purposes without compensation; (e) it fails to identify areas where Sami have the right to ownership and possession in accordance with international law; and (f) it fails to recognize that the Sami themselves are exclusively authorized to transfer their inherent right to any alien governing structures in accordance with international law. Moreover, there is a strong argument that the process so far has been carried out in contravention of ILO Convention No. 169.

116. Taking these elements into account, the Sami Parliament has urged the Government to withdraw the Finnmark Act and to enter into a dialogue aimed at finding solutions to this conflict. One day before the Special Rapporteur's visit to the Sami Parliament, a delegation from the Norwegian Parliamentary Committee studying the Act discussed the main issues of concern with the Sami Parliament, the first time such a meeting took place. The Norwegian Parliament asked a commission of experts to study the matter, and this commission found in November 2003 that the Finnmark Act does not comply with ILO Convention No. 169 with respect to the rights of the Sami people.

117. In Ohcejohka, Finland, the Special Rapporteur met with representatives from various Sami communities, including in the Russian Federation, as well as with the Legal Adviser of the Sami Parliament in Finland, Mr. Heikki J. Hyvarinen. According to the presentations, there are 6,500 Sami in Finland of whom 4,000 live within the Sami region bordered by Sweden, Norway and Russia. This Sami home area consists of the municipalities of Enontekiö, Inari and Utsjoki and the northern part of the municipality of Sodankylä. The area covers 35,000 km<sup>2</sup>, and includes a special region reserved for the Skolt Sami, who settled in Finland after the Second World War. Today, Sami constitute one third of the total population living in the Sami region. As recently as before the Second World War, approximately half the population was still Sami. Today, Sami are a majority in Utsjoki, but a minority in the other areas. In recent years, Sami living and social conditions have approached those of the rest of the population.

118. The Sami region in Finland is divided into private farmlands (10 per cent) and “public land” (90 per cent). On their private lands, the Sami practise agriculture, forestry and, to some extent, fishing. For reindeer herding, fishing and hunting, they use mostly “public land”, outside their own farmlands. Finnish law does not grant the Sami any special rights to use “public land” when practising their traditional livelihoods. The Finnish reindeer-herding region consists of the Sami region and certain areas to the south of it. Approximately 40 per cent (100,000) of all the reindeer live within the Sami region. Sami own 85 per cent of them. The reindeer graze throughout the year in enclosed areas called reindeer-herding districts which vary in size from 1,000 to 5,000 km<sup>2</sup>. Claims were made that the material foundation of the Sami culture is continually being destroyed. The Sami have repeatedly demanded that the State return the lands to the Sami. Complaints are expressed over the increasing presence of and ownership of land by tourists in the area.

### **Visit to Canada**

119. Since his appointment in 2001, the Special Rapporteur has received many invitations from indigenous peoples around the world to visit their communities. Unfortunately, it is impossible for the Special Rapporteur to accept all the invitations received. Therefore, he tries to combine such visits to indigenous communities with academic commitments in the country concerned. Such was the case with Canada. The Special Rapporteur accepted an invitation from First Nations to visit indigenous communities in Canada from 1 to 8 May 2003 prior to an academic conference in Halifax. The Special Rapporteur informed the Government about his intention and agreed that the information gathered during the visit could be used as part of the information on his official visit to the country scheduled for spring 2004. The Special Rapporteur is pleased to report on the agenda of his visit at this time; details of his findings will be included in his report on the visit to Canada to be carried out in spring 2004.

120. The Special Rapporteur began his visit with a legal briefing by the Union of British Columbia Indian Chiefs, organized by the Indigenous Network on Economies and Trade. He then travelled to the Sutikalh Camp in St’at’imc Territory. He met with leaders, elders and community members of the Bonaparte Indian Band and travelled on to the Skwelkwew’welt Protection Centre at the entrance to the Sun Peaks Ski Resort, the planned expansion of which, according to the First Nations, will affect the environment and the lifestyles of the local native communities.

121. The Special Rapporteur attended meetings with the Saskatchewan Justice Reform Commission and a round table of aboriginal leaders organized by the Native Law Centre of Canada in Saskatoon. The Southern Manitoba Chiefs Organization then briefed him on the First Nations Governance Act and took him on a tour of the Sagkeeng, Little Grand Rapids and Pauingassi First Nations, where the Special Rapporteur observed living conditions and the effects of the construction of a hydroelectric power plant on the local environment.

122. In Kenora, Ontario, the territory of the Grand Council of Treaty 3, the Special Rapporteur received a briefing on aboriginal governance and visited Grassy Narrows, where aboriginal peoples have been affected by extensive private logging activities on their traditional territory.

123. Finally, he travelled to the Indian Brook Mik'maq Nation in Nova Scotia and met native fishermen and loggers against whom charges have been laid for exercising their aboriginal and treaty rights to fish.

124. Country missions have become a key component of the work of the mandate and are essential to deepen understanding of the situations of thousands of indigenous communities in many countries. Through dialogue with governmental authorities, indigenous communities, civil society, the United Nations and national institutions in the countries and other international partners, including national development agencies, the Special Rapporteur has managed both to gather information about the situation of indigenous peoples and to engage in a fruitful dialogue with various relevant actors to facilitate an improved response to the plight of the indigenous.

125. Looking ahead, plans are being developed for a number of other country visits. In particular, the Special Rapporteur has expressed the wish to the Governments of Colombia and Botswana to visit their countries. The Special Rapporteur intends to visit Canada in spring 2004, following an official invitation from the Government - provided, of course, that the mandate is renewed by the Commission.

126. The Special Rapporteur is also engaged in follow-up activities arising out of his previous visits, and in particular is exploring with the countries concerned and other relevant partners ways to monitor the implementation of his recommendations.

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