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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, Mr. Rodolfo Stavenhagen,  
submitted pursuant to Commission resolution 2005/51**

**Addendum**

**Progress report on preparatory work for the study regarding best practices  
carried out to implement the recommendations contained in the annual  
reports of the Special Rapporteur\* \*\***

**Summary**

This report contains information on the work carried out by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in preparation for the study regarding best practices carried out to implement the recommendations contained in his general and country reports, pursuant to paragraph 9 of Commission on Human Rights resolution 2005/51, "Human rights and indigenous issues", as well as a preview of work planned for the final study.

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

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## Introduction

1. In its resolution 2005/51, of 20 April 2005, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, to begin preparing a study regarding best practices carried out to implement the recommendations contained in his general and country reports and to submit a progress report to the Commission at its sixty-second session and the final study at its sixty-third session. This addendum to the report of the Special Rapporteur contains relevant information on the work and activities carried out pursuant to that request.
2. Since his appointment in 2001, the Special Rapporteur has submitted four annual reports to the Commission. The first of these (E/CN.4/2002/97) contained a review of the principal international instruments on the promotion and protection of the rights of indigenous peoples and a programme of work for the preparation of annual thematic reports on some of the major issues of concern to indigenous peoples.
3. The first thematic report (E/CN.4/2003/90) focused on the impact of large-scale development projects on the human rights and fundamental freedoms of indigenous peoples and their communities. The second thematic report (E/CN.4/2004/80) looked at the question of indigenous peoples' access to the justice system and indigenous customary law, while the third (E/CN.4/2005/88) concentrated on the obstacles and disparities facing indigenous peoples in respect of access to and quality of education.
4. At the sixty-second session of the Commission, the Special Rapporteur is to present his fourth thematic report (E/CN.4/2006/78), which focuses on the challenges faced in practice by indigenous peoples in fully exercising the rights recognized to them in constitutional reforms and domestic legislation.
5. The Special Rapporteur has also submitted reports on his missions to Guatemala (E/CN.4/2003/90/Add.2), the Philippines (E/CN.4/2003/90/Add.3), Mexico (E/CN.4/2004/80/Add.2), Chile (E/CN.4/2004/80/Add.3), Colombia (E/CN.4/2005/88/Add.2) and Canada (E/CN.4/2005/88/Add.3). At the current session of the Commission, the Special Rapporteur will be presenting reports on his visits to South Africa (E/CN.4/2006/78/Add.2) and New Zealand (E/CN.4/2006/78/Add.3).
6. All these reports, whether thematic or country reports, have contained recommendations which the Special Rapporteur considers important to progress in the promotion and protection of the rights of indigenous peoples. Although addressed primarily to Governments, they also concern United Nations agencies and programmes, indigenous and civil society organizations and academic institutions.
7. In preparing his study, the Special Rapporteur has requested information from Governments and United Nations agencies and programmes. He has also taken the opportunity, at seminars and meetings organized by indigenous organizations and academic institutions, to discuss effective means of implementing and monitoring these recommendations.

8. The Special Rapporteur is most grateful for the extensive assistance provided by a number of Governments, United Nations agencies and programmes and indigenous and civil society organizations.

## **I. PRINCIPAL THEMATIC RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR**

9. What follows is a descriptive and up-to-date summary of the principal recommendations made by the Special Rapporteur. It is hoped that this will serve as a guide to Governments, United Nations agencies and programmes, indigenous and civil society organizations and academic institutions in organizing information for the study.

### **(a) Recommendations concerning the impact of major development projects on the rights of indigenous peoples**

10. **Relationship between indigenous peoples, Governments and the private sector.** In his report on the impact of major development projects on the human rights and fundamental freedoms of indigenous peoples, the Special Rapporteur recommends that the relationship between indigenous peoples, Governments and the private sector in the design and implementation of such projects must be based on the full recognition of indigenous peoples' rights to their lands, territories and natural resources. Indigenous peoples must have the right to determine their own pace of change, consistent with their own vision of development.

11. **Free, prior and informed consent.** Free, prior and informed consent is essential for the human rights of indigenous peoples in relation to major development projects, and this should involve ensuring mutually acceptable benefit sharing, and mutually acceptable independent mechanisms for resolving disputes.

12. **Participation.** Indigenous peoples are still considered in many countries as second-class citizens whose needs and aspirations are seldom taken into account. They are often denied effective political participation in government and the electoral system, and their concerns are hardly met by established political parties. If their human rights are to be effectively protected, they must be able to participate freely as equal partners and citizens in the decision-making processes that affect their future survival as peoples, and this means setting up mechanisms that will allow them to participate.

13. **International financial institutions.** It is important to ensure that development projects carried out with the support of international financial institutions respect the rights of indigenous peoples at all times and establish the necessary mechanisms to forestall adverse impacts on them, and that project benefits are tailored to the specific needs of indigenous peoples. Financial institutions' policies in this regard should strictly adhere to all international human rights standards.

14. **Corporate responsibility.** In recent years a number of companies have introduced corporate responsibility policies and measures, providing compensation, employment and services such as housing, schools or medical care in the indigenous areas where projects are

being carried out. Unfortunately companies adopting such an approach continue to be in a minority. Human rights should be central to policies and projects, and mechanisms should be established to ensure their enjoyment. The Special Rapporteur also recommends that this issue should be given priority within the Commission or the future Human Rights Council.

15. **Impact on indigenous communities' environment, cultures and ways of life.** Another cause for concern is the environmental impact of many projects run by companies in a number of countries and which ignore environmental regulations, in some cases with the connivance of the Government. The traditional environment is being irreparably damaged in many regions and non-renewable natural resources destroyed. Numerous research institutes are looking into the environmental impact of such activities and their consequences for indigenous peoples' cultures and traditions. The Special Rapporteur recommends that urgent attention should be paid to this issue.

(b) **Recommendations regarding access to justice and indigenous customary law**

16. **Obstacles preventing access to justice: the result of a historical situation of dispossession and exclusion.** The obstacles indigenous people face in the justice system are merely symptoms of a larger picture of complex social problems related to a history of discrimination, marginalization and social exclusion, including poverty and unemployment. Indigenous women are affected worse than anyone by such problems. In this regard, the Special Rapporteur points out that it is essential to attend to the root causes of human rights violations within the justice system and recommends that indigenous peoples should be involved in any changes that might be required in legal and judicial systems.

17. **Administration of justice, land claims and the incompatibility of indigenous law and sectoral legislation.** Land rights play a crucial role in the search for justice by indigenous peoples. When the laws and the courts uphold the expropriation of indigenous lands (as has happened throughout history in numerous parts of the world), then the cause of justice is not well served. The Special Rapporteur has come across situations where there appears to be incompatibility between human rights legislation pertaining to indigenous peoples and other sectoral laws (such as legislation regarding the environment or the exploitation of natural resources, or the granting of title to private land). When asked to rule on such issues, the courts may sometimes render judgements that protect the rights of indigenous communities, but just as often they may hand down rulings that are detrimental to those rights. The Special Rapporteur recommends that the rights of indigenous peoples as set out in national and international laws should have priority over any other interests and calls upon Governments to make efforts to adjust their legislation accordingly. In his report, the Special Rapporteur calls upon the justice system in all countries to attach the highest priority to the human rights of indigenous peoples and to decide court cases in accordance with the international principles of human rights.

18. **Discrimination against indigenous peoples in the administration of justice.** Discrimination against indigenous peoples in the justice system is a widespread occurrence. While it is often related to the personal prejudice and subjective attitudes of judicial officials, it is more importantly related to systemic rejection of indigenous cultures and identities. The Special Rapporteur calls upon all members of the judiciary and related institutions to take due account of the cultures and values of indigenous peoples and communities in providing and ensuring justice.

19. **The criminalization of social protest activities.** One of the most serious shortcomings in human rights protection in recent years is the trend towards the use of legislation and the justice system to penalize and criminalize social protest activities and legitimate demands made by indigenous organizations and movements in defence of their rights. The Special Rapporteur strongly urges that legitimate social protest by indigenous communities should not be penalized by the use of criminal legislation designed to punish crimes that endanger the stability of democratic societies. He also urges States to use non-judicial means to solve social conflicts through dialogue, negotiation and consensus.

20. **Violence against women and young people.** Violence against indigenous women and young people is commonplace in many countries and a judicial response is not always available. The Special Rapporteur appeals for an end to impunity in this regard and for a strengthening of the mechanisms within justice systems that make it possible to punish sexist violence.

21. **Over-representation of indigenous people in the prison system.** In certain countries it is common to find disproportionate numbers of indigenous people in correctional institutions. This has to do with indigenous peoples' socio-economic conditions, cultural and linguistic differences and the persistence of institutional discrimination against indigenous people in many countries. The Special Rapporteur has highlighted the need for appropriate judicial reforms, including training to enable judicial staff to work in a multicultural, multilingual environment in the context of indigenous communities' own regulatory systems.

22. **Prison conditions.** Reports often paint a disturbing picture of the situation of indigenous people in detention, which in many cases violates international principles for the treatment of prisoners; they are held in overcrowded prisons, in substandard conditions and with inadequate access to basic health and other services, and far from their communities, which makes it difficult for them to maintain contact with their families. Complaints have also been received about restrictions on their religious rights.

23. **Indigenous children and young people.** Indigenous children and young people in contact with the justice system, and particularly girls, are especially vulnerable to human rights violations and discrimination, and special staff training and development programmes are needed to raise awareness of and sensitivity to intercultural issues, particularly within juvenile justice systems.

24. **Indigenous customary law.** Indigenous peoples demand the recognition of their own legal systems in the administration of justice. It has been argued that the non-recognition of native customary laws is a violation of human rights which leads to abuses in the justice system. The Special Rapporteur recommends that indigenous law should be given the status of positive law within the framework of the right to self-determination, and that States should take steps, in consultation with indigenous peoples, to open their judicial systems to indigenous law.

**(c) Recommendations regarding indigenous peoples' right to education**

25. **Obstacles preventing indigenous peoples' full enjoyment of the right to education.** Although the right to education is universally recognized, indigenous peoples still do not exercise it fully. Levels of illiteracy, difficulties of access to education, especially at the middle-school level and higher, and low enrolment rates, all tend to be more problematic among

indigenous people than in the rest of the population. The Special Rapporteur recommends that Governments should attach high priority to the objectives and principles of indigenous education and provide public and private agencies and institutions involved in promoting indigenous education with sufficient material, institutional and intellectual resources.

26. **Bilingual education.** The Special Rapporteur invites Governments, in close collaboration with indigenous communities, to prepare programmes to train an adequate number of bilingual and intercultural education teachers during the Second International Decade of the World's Indigenous People. This will entail recruiting and obtaining the services of more indigenous applicants, through incentive programmes and fellowships, and increasing the number of necessary educational and research facilities. The Special Rapporteur also invites the United Nations Educational, Scientific and Cultural Organization (UNESCO) and international cooperation partners to join in this effort.

27. **The curriculum.** The Special Rapporteur recommends that universities and research centres should play a more active part in developing special multidisciplinary curricula for indigenous education and that indigenous universities should be expanded and strengthened. He also recommends that there should be greater academic content relating to indigenous peoples (including their history, philosophy, culture, art and ways of life) at all levels of national education, with an anti-racist, multicultural focus encouraging respect for cultural and ethnic diversity and, in particular, gender equality. He further recommends paying special attention to the relationship between indigenous peoples and the environment and promoting participatory scientific research in this area (with special attention to vulnerable environments such as the Arctic, boreal and tropical forests and high mountain areas).

28. **Strengthening school subjects.** The Special Rapporteur recommends that, as part of the effort to consolidate the various kinds of indigenous education, emphasis should be placed on strengthening physical education, special training for indigenous people in the criminal justice system, education in all areas for indigenous girls and women, distance learning, adult education and continuing education.

29. **Indigenous cultures in the media.** The Special Rapporteur also recommends that the mass media should regularly include content related to indigenous peoples and cultures in their programming, in a context of respect for the principles of tolerance, equity and non-discrimination established in international human rights instruments, and that indigenous peoples and communities should have the right of access to the mass media, including radio, television and the Internet, for their own use.

## II. MAIN RECOMMENDATIONS FOLLOWING COUNTRY VISITS BY THE SPECIAL RAPPORTEUR

In his respective reports, the Special Rapporteur recommends:

### (a) Mission to Guatemala

30. **Justice and full participation.** Promotion of a major national campaign on respect for cultural diversity, with a view to achieving justice and the full participation of the indigenous peoples.

31. **Peace Agreements.** The Government should carefully review the progress achieved in implementing the Peace Agreements insofar as they affect the indigenous peoples, and should take all appropriate measures to ensure full implementation.
32. **Participation.** The Government should redouble its efforts to ensure the full participation of indigenous people in public affairs, and instruct the authorities to take appropriate measures to ensure that indigenous people participate at all levels of public administration. Specifically, he recommends that steps should be taken to facilitate indigenous participation in the Development Councils, and that the necessary information and financial support should be furnished to enable indigenous representatives to participate on an equal footing.
33. **Land.** Establishment of a land register for indigenous communal land, and support for the right of the indigenous peoples to maintain and develop subsistence agriculture.
34. **Justice.** Measures to facilitate access to justice for indigenous people, and to ensure that areas predominantly inhabited by indigenous peoples are able to benefit from full access to the judicial system. The Government should continue to increase the provision of judicial officials in rural areas and training for judges and other judicial officials. The Special Rapporteur recommends that there should be legal interpreters in all jurisdictions where indigenous peoples live in order to assist them in judicial and administrative matters; that judicial officials should be familiar with the indigenous language of the region where they work; and that legislative measures should be taken to recognize and respect indigenous law and the indigenous legal authorities. The Special Rapporteur urgently calls for an end to the impunity of the perpetrators of criminal acts against human rights defenders and activists. He also joins other international observers in recommending the abolition of the death penalty.
35. **Discrimination.** Adoption of a specific law to combat ethnic, racial and gender discrimination; recognition by the Government of the competence of the Committee on the Elimination of Racial Discrimination.
36. **Education.** Education should be strengthened as a national priority. Bilingual education should be extended to all areas of the country and appropriate bilingual and intercultural teaching materials should be developed; more teacher training colleges should also be established in order to train bilingual teachers. The Special Rapporteur recommends that the Government should draw up a realistic timetable, which must be respected, to extend educational services to all the indigenous communities and develop affirmative educational programmes for indigenous adults.
37. **Health.** All health services and other basic services to be made accessible as soon as possible to all indigenous communities; fairer distribution of public resources to benefit rural, and particularly indigenous, areas.
38. **Indigenous women.** Special measures to address the triple discrimination suffered by the indigenous women of Guatemala, including greater support to the Office for the Defence of Indigenous Women. The Special Rapporteur also recommends that the Office should initiate a national dialogue in order to identify the necessary appropriate practical measures for improving the status of indigenous women.



39. **Indigenous children.** In view of the particular vulnerability of indigenous children, especially orphans and the victims of extreme poverty, the Special Rapporteur recommends that the Government should establish appropriate programmes offering alternatives to street life for indigenous children and ensure that they are able to benefit from education, health and other services.

40. **Spirituality.** The Government should respect indigenous spirituality by ensuring indigenous people's access to all sacred sites and communal forests for the collection of plants and other products used in religious ceremonies.

41. **Recommendations to the international community.** The Special Rapporteur recommends that the United Nations and the international community at large should continue to cooperate with the Government in building a just and democratic society. He also calls on the Government and the indigenous peoples to work together in drafting a special programme to help in verification, information and protection of the Peace Agreements.

42. **Indigenous peoples and civil society.** The indigenous peoples should consider developing a joint programme representing a consensus on the priorities of the Maya, Xinca and Garífuna peoples, with a view to seeking the cooperation of the international community in implementing a national action plan to promote the rights of the indigenous peoples. They should endeavour to reinforce the forums for dialogue with civil society, the mestizo communities and other sectors similarly engaged in the struggle for human rights and the strengthening of democracy. In addition, action to establish a democratically constituted body to represent them in their dealings with the State in all matters of concern to them should be stepped up.

43. **The mass media.** The mass media should institute monitoring and self-regulatory measures in order to eliminate all traces of racism and ethnic discrimination from their programmes and content, and should actively promote the vision of a multicultural and democratic society.

**(b) Mission to the Philippines**

44. **Institutionalization of the protection of the rights of the indigenous peoples.** The National Commission on Indigenous Peoples should be firmly established as the lead, coordinating agency in protecting and promoting indigenous rights and should be accorded the necessary authority.

45. **Administration of justice.** The legislative intent and spirit of the 1997 Indigenous Peoples' Rights Act should be fully respected; the Act should prevail in the event of conflict with other legislation.

46. **National Commission on Human Rights and the indigenous peoples.** The National Commission on Human Rights should expand its activities in the area of indigenous rights.

47. **Land and territory.** Resolving land rights issues should at all times take priority over commercial development.

48. **Human rights violations and efforts to combat impunity.** The Government of the Philippines should carry out a prompt and effective investigation into the numerous human rights violations committed against the indigenous peoples and take steps to prevent a recurrence; indigenous territories should be demilitarized.

49. **Access to basic social services.** Adequate basic social services, including housing, education, health, food and drinking water, should be made available to all the indigenous peoples.

50. **Opening of an office of the United Nations High Commissioner for Human Rights in the Philippines.** An office of the United Nations High Commissioner for Human Rights should be established in the Philippines.

51. **International Labour Organization (ILO) Convention No. 169.** The Philippines should ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

52. **Education.** The rights of the indigenous peoples should be made a standard component of human rights education programmes at all levels.

(c) **Mission to Mexico**

53. **Constitutional law.** The debate on constitutional reform should be reopened with a view to clearly establishing all the fundamental rights of the indigenous peoples.

54. **Peace process.** The pursuit of a negotiated peace in Chiapas should be resumed as a high-priority item on the domestic policy agenda of the Federal Government.

55. **ILO Convention No. 169.** ILO Convention No. 169 should be applied in all legislation and by all bodies concerned with the rights of the indigenous peoples.

56. **Land and environmental conflicts.** The conservation and protection of the land, territories and resources of the indigenous peoples and communities should take priority over any other interest in the solution of land disputes. The indigenous communities should take part in the management, administration and control of protected natural areas in their territories and regions.

57. **Access to natural resources.** The indigenous groups and communities should have priority access to natural resources for the purpose of direct consumption and subsistence, ahead of any economic or commercial interests.

58. **Internally displaced persons.** A national body should be established as a matter of priority to deal with internally displaced persons.

59. **Administration of justice.** The administration of justice, and particularly land justice, should be reviewed and adapted to the needs and rights of the indigenous communities.

60. **Institutional development.** The role of the National Commission for the Development of the Indigenous Peoples should be strengthened, particularly in the area of indigenous justice and the settlement of indigenous land disputes. The national system of ombudsmen should pay increased attention to indigenous human rights.

61. **Indigenous customary law.** Indigenous customary law should be acknowledged and respected in all judicial bodies where indigenous people or communities are involved and should be incorporated into a new conception of indigenous justice, in strict compliance with individual human rights and particularly women's rights.

62. **Protection for indigenous rights defenders.** Illegal armed paramilitary or civilian groups operating in indigenous regions should be disbanded, disarmed and punished.

63. **Indigenous migrants.** A special protection scheme should be devised for indigenous migrants, paying particular attention to women and children, and to indigenous people from Central American countries passing through Mexico.

64. **Education and culture.** Mexico's bilingual intercultural education system should be institutionally strengthened and provided with adequate resources to accomplish its objectives efficiently. The indigenous communities and peoples should have access to radio, television and other information systems.

65. **United Nations system.** United Nations agencies should strengthen their programmes for the indigenous peoples.

**(d) Mission to Chile**

66. **Legislation.** The Chilean Congress should adopt the proposed constitutional reform on indigenous affairs and ratify ILO Convention No. 169. The sectoral legislation on land, water, mines and other sectors that may be in conflict with the provisions of the Indigenous Peoples Act should be revised, and the principle of the protection of the human rights of the indigenous peoples should take precedence over private commercial and economic interests.

67. **Programmes to combat poverty and inequality.** A programme should be set up to reduce poverty among Chile's indigenous communities, with specific targets for indigenous women and children.

68. **Land and territory.** The Land Fund managed by the National Indigenous Development Corporation (CONADI) for the acquisition of land for indigenous people should expand and speed up its work, and its resources should be increased substantially so that it can meet the needs of indigenous families and communities. In addition to the granting of title for private land, traditional communal indigenous territories containing resources for communal use should be reclaimed and re-established. Access by indigenous communities to the water and maritime resources on which they have traditionally depended for their survival should take precedence over private commercial and economic interests.

69. **Sustainable development and respect for indigenous peoples' rights.** The indigenous communities should be actively involved in all decisions on development projects planned for their regions and territories. In indigenous areas, and particularly in the Mapuche region (Araucanía), indigenous municipalities should be established to allow indigenous people to be fully involved in decision-making and in the independent management of local affairs.

70. **Administration of justice.** Under no circumstances should legitimate protest or social demands by indigenous organizations and communities be outlawed or penalized. Charges relating to offences defined in other contexts ("terrorist threat", "criminal association") should not be brought in respect of acts relating to the social struggle for land and legitimate indigenous claims. In any judicial or administrative proceedings involving indigenous persons, the latter should be assisted by trained bilingual translators and, where necessary, a competent court-appointed defence lawyer with knowledge of indigenous cultures; and indigenous legal custom should be respected.

71. **Education and social policy.** The Government's bilingual intercultural education programme needs an adequate budget if it is to be quickly and effectively implemented in all indigenous regions. Health services for the indigenous communities should be expanded and adequately funded so that they fully meet the needs of the whole indigenous population, and the use of traditional indigenous medicine should be respected and promoted whenever possible.

72. **Recommendations to civil society.** Ongoing publicity campaigns should be organized to combat prejudice, racism, intolerance and the stigmatization of indigenous issues in public opinion.

73. **Mass media.** The indigenous communities and peoples should have the facilities and support they need for full access to the mass media (press, radio, television and Internet). It is also recommended that the media should redouble their efforts to give broad, balanced and fair coverage of the needs and situation of the indigenous peoples and of the social conflict in indigenous regions.

(e) **Mission to Colombia**

74. **Conflict, human rights and international humanitarian law.** The State and the armed groups have an obligation to comply at all times with international humanitarian law and to respect human rights. It is suggested that a broad-based independent commission should be established to ensure full compliance. Indigenous peace zones, free from all military operations, should be created as a matter of urgency, under international supervision.

75. **Internally displaced persons.** The displaced indigenous population, and women and children in particular, should be accorded priority attention by the State and international organizations. It is vital to secure food supplies for indigenous communities, and in particular for the displaced populations in conflict zones, and to ensure the free passage of food aid to the neediest groups.

76. **Legislative measures.** Regulatory legislation giving full and effective application to the constitutional provisions on the human rights of the indigenous peoples should be passed as soon as possible. The other branches of Government should fully respect the powers of the Constitutional Court, and refrain from limiting the scope of the *amparo* procedure.
77. **Indigenous women.** Existing programmes on the provision of basic social services should be extended so as to improve the situation of indigenous women and children in rural areas, particularly displaced women and children, with regard to health and education.
78. **Indigenous rights defenders and human rights defenders.** Programmes should be set up in conjunction with civil society organizations and human rights defenders active in indigenous affairs, as part of the Government's efforts to promote and protect the human rights of indigenous people.
79. **Military service.** Indigenous people should continue to be excluded from the bill on compulsory military service. Congress should not approve any law limiting or restricting the autonomy and freedoms of social and human rights NGOs. Schemes for children and youngsters such as the network of informers, the introduction of peasant soldiers and the "soldiers for a day" programme should be discontinued.
80. **Administration of justice.** Prosecution services should investigate and apply the law in all complaints concerning abuses and violations committed against members of indigenous communities by members of the armed forces or the police. The relevant State bodies should apply, with immediate effect and without exception, the precautionary measures established by the Inter-American Commission on Human Rights for the various indigenous peoples. The Anti-Terrorist Statute should under no circumstances be invoked against any indigenous people charged with an offence as a result of involvement in legitimate action to resist, oppose or protest against violations committed against them by any armed group. No indigenous people should be detained by the armed forces unless a warrant for their arrest has been issued by a competent judicial authority. The duties of the military and the judiciary should be kept strictly separate, including in conflict zones.
81. **The environment and spraying.** Except where expressly requested by an indigenous community which has been fully apprised of the implications, no aerial spraying of illicit crops should take place near indigenous settlements or sources of provisions.
82. **Sustainable development and basic social services.** The State should promote and extend the coverage of alternative sustainable development projects, under the development plans drawn up by the indigenous communities. As part of the plans for free education for all, the bilingual and intercultural education programme should be reinforced in indigenous areas. The Government's plans to provide health service coverage to the entire indigenous population should embrace and protect traditional medicine and its practitioners within the indigenous communities.
83. **Recommendations to the armed groups.** The armed groups should refrain from recruiting minors, and those already recruited should be returned to their families immediately and given appropriate care by specialist State institutions.

84. **Recommendations to the indigenous peoples.** The Special Rapporteur urges the indigenous peoples to continue to stand up to the various groups involved in the armed conflict and reaffirm their tradition of peace and mutual respect. He recommends that they should continue to try to establish forums for dialogue with civil society and other sectors campaigning for human rights and peace in Colombia.

85. **Recommendations to the international community.** The Special Rapporteur recommends that the United Nations and the international community at large should continue to provide cooperation for the construction of a peaceful, just society. He appeals in particular for special attention to continue to be paid to the situation of Colombia's indigenous peoples, applying a strong gender perspective, and for an approach aimed at ensuring respect for indigenous human rights. As a matter of particular urgency, international cooperation should be mobilized to prepare an emergency programme of aid to the indigenous communities in danger of extinction, particularly in the Amazon region.

**(f) Mission to Canada**

86. **Legislative measures.** Existing treaties between the Aboriginal peoples and the Government should be fully implemented and renewed in order to protect the rights and interests of the Aboriginal peoples. The Special Rapporteur recommends ratification of ILO Convention No. 169.

87. **Treaties and other constructive arrangements.** The Special Rapporteur stresses that the inherent and constitutional rights of the Aboriginal peoples are inalienable and cannot be relinquished, ceded or extinguished.

88. **Poverty, social services, education and health.** The Government should step up its efforts to close the human development indicator gaps between Aboriginal and non-Aboriginal Canadians in the fields of health care, housing, education, welfare and social services. Culturally relevant education in the Aboriginal languages should be promoted at all school levels.

89. **Lands and resources.** The necessary legislation should be enacted and effective measures taken to expand the existing usable lands and resources of the First Nations and Inuit and Métis communities to ensure their survival and their social, economic and cultural well-being.

90. **Promotion and protection of human rights.** The Canadian Human Rights Commission should be enabled to receive complaints of human rights violations from the First Nations, including grievances under the Indian Act.

91. **Sustainable economic development.** The Aboriginal peoples should be active participants in the design and execution of any development programme or project in their regions or territories or which may affect their living conditions. The generation of sustainable employment for the Aboriginal peoples and their education and training to that end, in their own communities and territories and also within the broader regional economies, with specific goals and time frames, should be considered a social policy objective.

92. **Aboriginal women.** The Government should address, as a matter of high priority, the lack of legislative protection regarding on-reserve matrimonial real property, which places First Nation women at a disadvantage, and particular attention should be paid to abuse and violence against Aboriginal women and girls, particularly in the urban environment.

93. **Administration of justice and related justice issues.** The Special Rapporteur recommends that efforts at all levels should be stepped up in order to reduce and eliminate the over-representation of Aboriginal men, women and children in detention. In addition, the Aboriginal communities' alternative justice institutions and mechanisms should be officially recognized.

94. **Recommendations to the international community.** The international community, and particularly the Arctic Council, should take urgent action concerning the impact of global warming and environmental pollution on the Arctic peoples.

### III. INFORMATION FROM GOVERNMENTS

95. To begin the information-gathering process in accordance with the Commission's request, and as the first step in preparing the study requested by the Commission, the Special Rapporteur wrote to the States Members of the United Nations on 21 September 2005 inviting their Governments to provide any information they considered useful in identifying best practices in the implementation of the recommendations contained in his reports.

96. The Special Rapporteur also felt it was important to ask for information on any bilateral development cooperation that might be in place to improve indigenous peoples' standard of living and human rights and he therefore invited Governments to send him details of their domestic policies or guides to international cooperation in this regard.

97. The information gathered will be vital for the development of a special questionnaire to obtain the information needed for the study. At the time of writing, the Special Rapporteur had received 12 replies, from the Governments of Argentina, Belarus, Canada, Denmark, El Salvador, Estonia, Finland, Germany, Lebanon, Mexico, Switzerland and Tunisia. The Governments of Chile, Guatemala, Mexico and the Philippines have also provided an account of measures taken over the past year to implement the Special Rapporteur's recommendations. The Special Rapporteur is grateful to those Governments that have responded to his request for information; he appreciates the care they have taken in preparing their replies and trusts that they will continue to assist him in preparing the study.

98. In their replies, the Governments provided information on progress made with regard to the participation of, and consultation with, indigenous communities and peoples, in initiatives and programmes to support the preservation of indigenous languages, and on work in the areas of education and training, science and culture, information exchange, health services and the environment. Some of them also provided information on the policies and strategies on indigenous affairs applied by national agencies for international cooperation.

99. The Special Rapporteur hopes to receive further replies before the questionnaire is finalized that will assist him in its preparation. The questionnaire will be designed to elicit information on specific action already under way or being planned, in follow-up to the recommendations contained in his reports.

#### **IV. INFORMATION FROM UNITED NATIONS AGENCIES AND PROGRAMMES**

100. The challenges facing indigenous peoples throughout the world in terms of promotion and protection of human rights cover almost the entire spectrum of the work of the United Nations. In his reports, the Special Rapporteur has also addressed specific recommendations to the various agencies and programmes of the United Nations system, and he therefore felt it was important to write, on 3 October 2005, to the heads of those programmes and agencies requesting information that would be of use in preparing his study.

101. In his letter, the Special Rapporteur asked about steps taken to implement the recommendations he had specifically addressed to these agencies and programmes, and also about their programmes and initiatives on behalf of indigenous peoples more generally. He also asked what support the agencies might be able to provide the countries he had visited in their implementation of his recommendations.

102. On 18 October 2005, the Special Rapporteur attended a meeting organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at United Nations Headquarters in New York for the representatives of all United Nations agencies and programmes, at which progress made was discussed, as well as difficulties hampering effective implementation of his recommendations by the system.

103. At the time of writing, the Special Rapporteur had received replies from the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the World Food Programme (WFP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Institute for Training and Research (UNITAR), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the World Bank.

104. In their replies, the United Nations agencies and programmes recognized the importance of implementing the Special Rapporteur's recommendations and provided some general information on their activities in relation to the subjects addressed in his first three thematic reports, as well as on their work in the countries he had visited.

105. The information received covers, inter alia, progress in adoption of the voluntary guidelines to support the progressive realization of the right to adequate food; ongoing work to promote prior, informed consent by indigenous communities in issues affecting them; work to promote culturally appropriate quality education and efforts in support of national programmes of bilingual education; and detailed information on food security and humanitarian aid programmes in a number of countries, particularly on behalf of internally displaced indigenous groups.



106. The Special Rapporteur is grateful for the information received, which will be most useful in preparing his study. A questionnaire will be sent to those agencies and programmes to which he has addressed specific recommendations, with a view to supplementing the information already received.

## **V. INFORMATION FROM INDIGENOUS AND CIVIL SOCIETY ORGANIZATIONS**

107. The Special Rapporteur's country visits, and more especially his reports on those visits, have generated much activity by indigenous and civil society organizations in all those countries. These organizations have welcomed his recommendations and have established mechanisms and projects to monitor their implementation by Governments.

108. In Chile, indigenous organizations working together have established a plan of action to follow up the recommendations made by the Special Rapporteur during his visit to the country. Indigenous representatives of the Aymara, Rapa Nui and Mapuche peoples wrote to the United Nations High Commissioner for Human Rights expressing their complete support for the Special Rapporteur's report on his visit to Chile. In their letter, the indigenous representatives informed the High Commissioner that since the presentation of the report, the indigenous organizations in the country, human rights organizations and academic institutions have been working together to disseminate the report throughout the country and to establish a plan to monitor the implementation of the recommendations it contained. In particular, the indigenous organizations informed the High Commissioner that they are ready to open a dialogue with the Government to study effective ways of implementing the recommendations and requested the support of OHCHR in organizing consultations between the Government, the indigenous peoples and other interested parties to identify ways in which the United Nations system might assist the Government in the implementation of the recommendations, in line with the recommendation included in paragraph 82 of that report. A mechanism to monitor indigenous peoples' human rights has been set up at the University of Temuco, and this will gather information on implementation of the Special Rapporteur's recommendations.

109. In the Philippines, indigenous organizations have begun following up on the Special Rapporteur's visit and are monitoring the Government's implementation of his recommendations. A number of working groups have been set up. The Special Rapporteur has also received information on developments in the Philippines from organizations such as the Tebtebba Foundation, the Cordillera Peoples' Alliance and the Assisi Development Foundation. On 11 August 2004, the Assisi Development Foundation wrote to the High Commissioner for Human Rights expressing support for the content of the Special Rapporteur's report and stressing the intention of organizations within the Philippines to continue monitoring implementation of his recommendations.

110. Several organizations in Colombia have told the Special Rapporteur of preparations now being made to follow up the recommendations contained in the report of his mission to that country. One proposal is for a visit to check on the situation in a number of small communities in the Amazon region that are in danger of extinction if regular attacks by armed groups persist.

111. Following the calls in the Special Rapporteur's annual reports for the prompt adoption of the draft declaration on the rights of indigenous peoples, several civil society organizations have told him of their work in support of that process. He has also received information concerning organizations working on the right to education and their plans for following up the recommendations in his report on that topic.

112. The Special Rapporteur trusts he will receive further information from civil society organizations on projected or ongoing work to follow up the recommendations in his thematic reports. He has drawn up a programme of work to enable him to inform such organizations of his interest in obtaining information on these topics.

## **VI. CONCLUSION AND PROJECTED ACTIVITIES IN PREPARATION FOR THE FINAL STUDY**

**113. The Special Rapporteur hopes to be able to submit his study to the Commission at its sixty-third session as requested. If it is to be of use, it will require input from Governments and from the indigenous organizations, the NGOs, the United Nations agencies and programmes and the academic institutions working in this field.**

**114. The information received to date, while extremely interesting, is still not quite what is needed in preparing a study that is supposed to make it possible to move forward on this issue in some way. The Special Rapporteur believes it is essential not only to look at information of a general nature but also to find out about specific measures taken on the basis of the recommendations made in each of his reports.**

**115. One example of particular relevance is the joint efforts being made by the Governments of Guatemala and Mexico and OHCHR to implement the recommendations in the Special Rapporteur's reports on his visits to those countries. This project has significant financial backing from the European Commission and is now well under way.**

**116. Another example is the announcement by the Canadian Government, at the Permanent Forum on Indigenous Issues in May 2005, of a grant of 5 million Canadian dollars for 2005-2010 to finance the work of the National Women's Association of Canada, in implementation of the Special Rapporteur's recommendations. These funds will be used to support the Association's work with other organizations on eradicating racial and sexual violence against Aboriginal women.**

**117. The Special Rapporteur has twice been invited by the Sami Parliament in Norway to observe the situation there, and particularly welcomes Norway's adoption of the Finnmark Act following negotiations between the Sami Council and the Norwegian Parliament.**

**118. Moreover, a number of Governments, such as the Spanish Government, have drawn up strategies and policy frameworks in indigenous affairs which guide their bilateral cooperation activities, and have sought the Special Rapporteur's opinion on these or incorporated ideas that are of relevance to some of the issues addressed in the Special Rapporteur's reports.**

119. **Some United Nations agencies, such as UNDP and UNHCR, have taken the Special Rapporteur's reports - both general and country reports - as a basis for the design of new projects and strategies in indigenous affairs.**

120. **This is the kind of information the Special Rapporteur believes should be collected and considered in his study. He therefore encourages all the actors mentioned to make a careful study of his reports to the Commission and of projected or ongoing work to meet the needs of indigenous peoples with regard to promotion and protection of their human rights. The Special Rapporteur will bear this approach in mind when preparing his questionnaires.**

121. **As to specific activities, in addition to preparing and distributing the questionnaires and analysing the replies, the Special Rapporteur envisages a certain amount of follow-up to his country visits, including follow-up visits to Guatemala and the Philippines, and support for a meeting on follow-up to his recommendations, to be organized with the Government of Chile and OHCHR.**

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