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Human rights and indigenous issues

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen,
submitted in accordance with Commission resolution 2001/65***

* 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.

Executive summary

Since the preparation of his first annual report to the Commission on Human Rights, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has carried out two official country missions to Guatemala (September 2002) and the Philippines (December 2002) to observe the human rights situation of indigenous peoples. These mission reports are available as documents E/CN.4/2003/90/Add.2 and E/CN.4/2003/90/Add.3. He also visited indigenous communities in Botswana (January 2002), Mexico (April 2002) and Japan (December 2002).

As he indicated in his first report to the Commission on Human Rights (E/CN.4/2002/97), the thematic focus of the present report is on the impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous peoples and communities, a subject which many indigenous representatives at the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues have repeatedly pointed out as being of crucial importance for the full enjoyment of their human rights. By "major development project" should be understood a process of investment of public and/or private, national or international capital for the purpose of building or improving the physical infrastructure of a specified region, the transformation over the long run of productive activities involving changes in the use of and property rights to land, the large-scale exploitation of natural resources including subsoil resources, the building of urban centres, manufacturing and/or mining and extraction plants, tourist developments, port facilities, military bases and similar undertakings.

Wherever such developments occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. Large-scale development projects will inevitably affect the conditions of living of indigenous peoples. Sometimes the impact will be beneficial, very often it is devastating, but it is never negligible. Indigenous peoples are said to bear disproportionately the costs of resource-intensive and resource-extractive industries, large dams and other infrastructure projects, logging and plantations, bio-prospecting, industrial fishing and farming, and also eco-tourism and imposed conservation projects.

No activity has shown this situation better than the construction of large multi-purpose dams that affect indigenous areas. This report concentrates therefore on this issue and provides information on the effects of dams on indigenous peoples in Costa Rica, Chile, Colombia, India and the Philippines, among others. It also reports on the effects of other kinds of major development activities on indigenous peoples' rights, such as the Puebla Panama Plan in Mesoamerica. The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.

The human rights of indigenous peoples and communities must be considered of the utmost priority when development projects are undertaken in indigenous areas. Governments should account the human rights of indigenous peoples a crucial factor when considering the objectives, costs and benefits of any development project in such areas, particularly when major private or public investments are intended. The potential long-term economic, social and cultural effects of major development projects on the livelihood, identity, social organization and well-being of indigenous communities must be taken into account in the assessment of their expected outcomes, and must be closely monitored on an ongoing basis. Such effects would include health and nutrition status, migration and resettlement, changes in economic activities, levels of living, as well as cultural transformations and socio-psychological conditions, with special attention given to women and children.

The Special Rapporteur recommends that Governments and business enterprises work closely with indigenous peoples and organizations to seek consensus on development strategies and projects, and set up adequate institutional mechanisms to handle these issues. Indigenous organizations should attempt to present their viewpoints publicly on major developments at an early stage and be prepared to work with Governments, multilateral financing institutions and private companies to find appropriate solutions to contentious issues. Non-governmental organizations are urged to support such efforts, particularly as regards the possibility of preparing and promoting alternative development strategies and projects within a human rights-centred approach.

Contentious issues between indigenous peoples, Governments and business enterprises arising in the course of the implementation of major development projects should at all times be considered within the framework of democratic governance, open dialogue and negotiations, and should never be handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate the human rights of indigenous communities. International organizations such as development banks and United Nations agencies in the field should at all times be ready to support indigenous peoples and communities in making human rights the primary focus of development cooperation involving major development projects in indigenous areas.

Addendum 1 to this report summarizes the communications on alleged human rights violations of indigenous peoples received and processed by the Special Rapporteur during the period since the fifty-eighth session of the Commission.

Introduction

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in its resolution 2001/57.
2. On 15 April 2002, the Special Rapporteur, Rodolfo Stavenhagen, presented his first annual report to the Commission (E/CN.4/2002/97 and Add.1), in which he indicated some of his future activities. He is now pleased to present this second annual report to the Commission in accordance with resolution 2002/65.
3. During the time since the termination of his first report, the Special Rapporteur has continued gathering information on the situation of the human rights of indigenous peoples, following developments in the United Nations system, participating in international and national-level conferences and research seminars, evaluations, training workshops and the like that deal directly with the issues of his mandate, and has undertaken research on some of the major issues affecting indigenous peoples which he laid out in his first report (E/CN.4/2002/97, para. 113). He has also carried out two official country missions, to Guatemala (2-12 September 2002) and the Philippines (2-11 December 2002). The country mission reports are contained in documents E/CN.4/2003/90/Add.2 and Add.3, respectively. Moreover, in connection with other activities, he has visited some additional countries to observe the situation of indigenous peoples, including Botswana (January 2002), Mexico (April 2002) and Japan (November 2002).
4. The Special Rapporteur attended the first session of the Permanent Forum on Indigenous Issues (New York, May 2002) and the twentieth session of the Working Group on Indigenous Populations (Geneva, July 2002). He has also taken part in events and lectured at academic institutions on different aspects of his mandate. More importantly, he developed contacts with numerous indigenous and human rights organizations around the world, which have provided him with invaluable information and documentation. He is especially grateful to the Governments, indigenous peoples' organizations, United Nations agencies, research institutions and concerned individuals who responded to his appeal for information and to the questionnaires on specific subjects which were sent out after last year's Commission session.
5. This report will concentrate thematically on a major issue that is of particular concern to indigenous peoples, namely, the impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous communities. It must be recalled that numerous statements presented over the years by indigenous representatives to the sessions of the Working Group on Indigenous Populations refer to the human rights implications of such projects. Much academic research, numerous field studies and assessments by national and international institutions are available, and there is a growing specialized literature on the topic. At the first session of the Permanent Forum, the Office of the United Nations High Commissioner for Human Rights (OHCHR), together with the World Bank, organized a panel discussion on this subject. Other multilateral agencies such as the United Nations Development Programme and the regional development banks have accumulated relevant information. In some countries, long-term impact studies have been produced which provide useful knowledge about changes over time.

I. THE IMPACT OF LARGE-SCALE OR MAJOR DEVELOPMENT PROJECTS ON THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS COMMUNITIES

6. By “major development project” should be understood a process of investment of public and/or private, national or international capital for the purpose of building or improving the physical infrastructure of a specified region, the transformation over the long run of productive activities involving changes in the use of and property rights to land, the large-scale exploitation of natural resources including subsoil resources, the building of urban centres, manufacturing and/or mining, power, extraction and refining plants, tourist developments, port facilities, military bases and similar undertakings. The purpose of such projects may vary, from furthering economic growth to flood control, generating electrical and other energy resources, improving transportation networks, promoting exports to obtain foreign exchange, creating new settlements, ensuring national security, and generating employment and income opportunities for the local population.

7. Indigenous peoples live mainly in rural environments. They have been able to maintain their community lifestyles and their traditional cultures in those areas in which they live that have been spared major upheavals resulting from rapid economic and ecological transformations. But this situation has changed rapidly over the last few decades, as national Governments, large corporations and multilateral financing agencies turn their attention to so-called undeveloped regions in order to extract natural resources, establish plantations and industrial plants, develop tourist activities, ports, communication hubs or urban centres, and build transportation networks, multipurpose dams, military bases or toxic waste dumps. When such developments occur in areas occupied by indigenous peoples, it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting the projects. Large-scale development projects will inevitably affect the living conditions of indigenous peoples. Sometimes the impact will be beneficial, very often it is devastating, but it is never negligible.

8. Traditionally, few Governments have taken the rights and interests of indigenous peoples into account when making plans for major development projects. As the projects mature, which may take several years depending on their characteristics, the concerns of indigenous peoples, who are seldom consulted on the matter, take a back seat to an overriding “national interest”, or to market-driven business objectives aimed at developing new economic activities, and maximizing productivity and profits. For a long time, multilateral financial institutions involved in the planning and execution of such projects appeared to go along with this approach. Hence, the social and environmental concerns expressed by many people, including indigenous communities, have not been given the necessary attention.

9. This situation is changing, as multilateral agencies, national Governments and the business community take a new interest in indigenous concerns. At the international level, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization stipulates that:

“Article 7

“1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

“ ...

“3. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

“4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.”

10. Numerous international conferences have reaffirmed such rights in one formulation or the other, notably the Earth Summit, Rio de Janeiro, (1992) and the World Summit on Sustainable Development, Johannesburg (2002). The World Bank is in the process of adopting a new operational policy that establishes the need to involve indigenous peoples in development projects that may affect them, and the Inter-American Development Bank has laid down similar guidelines for its own activities. Several States have likewise adopted legislation in the same sense.

11. None have been more concerned with these important issues than indigenous peoples themselves. One recent study reports on “the disproportionate impacts that indigenous peoples suffer from development programmes, so long as their human rights are not fully recognized, and so long as they continue to be marginalized in decision-making affecting their lives”.¹ Further, indigenous peoples argue that “as the pressures on the Earth’s resources intensify, indigenous peoples bear disproportionate costs of resource-intensive and resource-extractive industries and activities such as mining, oil and gas development, large dams and other infrastructure projects, logging and plantations, bio-prospecting, industrial fishing and farming, and also eco-tourism and imposed conservation projects”.² On the specific issue of large dam construction (on which this report will concentrate), the World Commission on Dams finds that:

“Large dams have had serious impacts on the lives, livelihoods, cultures and spiritual existence of indigenous and tribal peoples. Due to neglect and lack of capacity to secure justice because of structural inequities, cultural dissonance, discrimination and economic and political marginalization, indigenous and tribal peoples have suffered disproportionately from the negative impacts of large dams, while often being excluded from sharing in the benefits.”³

12. To the extent that many of these projects are located on the ancestral territories of indigenous peoples, it is not surprising that they should raise the issue of the rights to land, the right to prior consent about use of this land, the right to participation in the decision-making process regarding the implementation of such projects, the right to share in the potential benefits and, beyond this, the right of indigenous peoples to self-determination. Thus, at the twentieth session of the Working Group on Indigenous Populations (WGIP) "... virtually every indigenous participant stated that their right to self-determination is a precondition for the realization of all other human rights, and must be considered as the bedrock that ensures their self-governance, whereby they can participate in decision-making processes in policies that directly affect them. They therefore reiterated the intrinsic link of the right to self-determination to various other indigenous human rights issues such as the right to land and natural resources, the preservation of cultural identity, and the rights to language and education".⁴

13. The right to free, informed and prior consent by indigenous peoples continues to be of crucial concern, inasmuch as too many major decisions concerning large-scale development projects in indigenous territories do not comply with this stipulation, clearly set out in paragraph 6 of ILO Convention No. 169, which provides that governments shall:

“(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

“(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them ...”.

14. Likewise, article 30 of the draft United Nations declaration on the rights of indigenous peoples also provides that States shall obtain free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.⁵ The proposed American Declaration on the Rights of Indigenous Peoples (art. 21[2]) contains a similar provision. The importance of the principle of free, prior and informed consent was also highlighted in the recommendation of the Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights (Geneva, 5-7 December 2001).⁶

15. In some States legislation has progressed in this direction. The Aboriginal Land Rights (Northern Territory) Act 1976 (amended in 1987) of Australia not only recognizes the right of Aborigines to own the land, but also provides in effect the right to veto over mining for a five-year period. Furthermore, a land council with the mandate to represent the interests of Aboriginal landowners may not consent to the grant of a mining interest or construction of a road unless the traditional owners of the land understand the nature and purpose of the proposed mining or road construction proposals as a group and consent to them.⁷

16. The Indigenous Peoples Rights Act 1997 of the Philippines recognizes the indigenous right to ancestral domain and the land title to traditional lands. Philippine law also requires a

developer or company to obtain free, prior and informed consent of indigenous peoples for certain activities, such as (a) exploration, development and use of natural resources; (b) research-bioprospecting; (c) displacement and relocation; (d) archaeological explorations; (e) community-based forest management; and (f) entry of the military.⁸

17. In decision T-652-98 regarding the exploitation of natural resources in traditional territories of indigenous peoples, the Constitutional Court of Colombia argued that "... indigenous peoples are subjects of fundamental rights. If the State does not guarantee their right to subsistence (survival), these communities will not be able to materialize their right to cultural, social and economic integrity which is stated in the Constitution".⁹ Article 2 of the Constitution of Mexico (amended in 2001) recognizes the land rights of indigenous communities but subjects them to the rights of "third parties", a legal limitation which indigenous organizations and legal scholars consider rather as a step backwards in the recognition of their collective rights.

18. Indeed, the Special Rapporteur notes that numerous formally recognized legal rights of indigenous peoples are not fully implemented in practice, either in the courts by way of final adjudication determined by the judiciary, or as a result of new legislative acts which in fact weaken or reduce previously legislated rights. This concern has been expressed by indigenous participants at WGIP.¹⁰ In relation to such regression in the case of Australia, the Committee on the Elimination of Racial Discrimination (CERD), recommended that "... close scrutiny continue to be given to any other proposed State and territory legislation to ensure that protection of the rights of indigenous peoples will not be further reduced".¹¹

19. In various United Nations and other forums, indigenous organizations have signalled their concern about negative impacts of major development projects on their environments, livelihoods, lifestyles and survival. One of the recurrent issues is the loss of land and territories that indigenous communities suffer. The lack of control over their natural resources has become a widespread worry. Very often these projects entail involuntary displacements and resettlement of indigenous communities which happen to lie in the way of a dam, an airport, a game reserve, a tourist resort, a mining operation, a pipeline, a major highway, etc. As a result, violations of civil and political, economic, social and cultural rights occur with increasing frequency, prompting indigenous peoples to launch major protests or resistance campaigns in order to bring public attention to their plight, besides engaging the judicial system or appealing for administrative redress, as well as lobbying the political system.

20. A review of some recent complaints about alleged human rights violations of indigenous peoples in connection with activities surrounding the planning or execution of major development projects of different kinds draws attention to a number of focal points around the world. The High Court of Australia delivered a landmark decision on 8 August 2002, which denied native title rights over any mineral or petroleum resources in the Miriuwung-Gajerrong native title claim first lodged in 1994. A majority of the court found that native title rights did not apply to leases for the Argyle diamond mine or the Ord River irrigation project in Western Australia.¹² The Mapuche people in Chile argue that they face the threat of physical and cultural disappearance caused by transnational logging companies.¹³ An indigenous community in Kenya reported to WGIP that "today, this destruction of our cultures and land

continues, due to so-called development projects such as mining, logging, oil exploration, privatization of our territories, and tourism".¹⁴ The Kickapoo Nation in Oklahoma, United States of America, is now struggling to maintain their very existence and the health of their land and water resources due to an impending superhighway from Canada to Mexico. It was reported that in Ecuador, oil activities are being undertaken which result in the break-up of the traditional cultural and political structures of indigenous communities while facilitating the integration or assimilation of the oil economy in the country.¹⁵ In Japan, the building of a hydroelectric power dam in Nibutani, land sacred to the Ainu people, caused the destruction of traditional agriculture and the submergence of their sacred ceremonial sites. It further disrupted the links between the elders and the young as poverty forced families to sell their lands to the Government, which created divisions in the community.¹⁶

21. Serious issues regarding the non-recognition of, and failure to respect, the rights of indigenous and tribal peoples have been reported in Suriname. Indigenous and tribal peoples (Maroons), who together number about 75,000 persons, or about 14 per cent of the total population, occupy the forested areas of the "interior" and suffer various types of discrimination in the national society. The Government's report to the World Summit on Social Development recognizes these peoples as stakeholders in natural resource exploitation in their traditional lands, but concedes that their participation in decision-taking on those issues "needs to be improved". Legally, the land they occupy is owned by the State, which can issue land property grants to private owners. Indigenous and tribal lands, territories and resources are not recognized in law. Various indigenous and Maroon communities have been affected by mining (gold and bauxite) and logging activities carried out by national and foreign companies, without their prior consent or participation. As a result, numerous villages have had to relocate against their will and their environment has been disturbed, disrupting their traditional subsistence economy, their health, their social organization and their culture. Despite petitions to the national Government and the Inter-American system of protection of human rights (Commission and Court), the indigenous and Maroon communities have not received the protection they require.¹⁷

22. The Bakun Dam in Malaysia is reported to cause the forced displacement of 5,000-8,000 indigenous persons from 15 communities by clear-cutting 80,000 hectares of rainforest.¹⁸ Indigenous peoples in Manipur, India, were reported to suffer a similar fate caused by the building of 25 hydroelectric dams.¹⁹ Thousands of families of the Santhal Adivasi people in the Jharkhand province of India have reportedly been displaced as a result of extraction of minerals without proper compensation or economic security.²⁰ In Thailand, several highland communities including the Karen people have reportedly been moved out of national parks against their will,²¹ whereas tourist development in Hawaii resulted in the displacement of indigenous people and their increasing poverty.²² Asian indigenous representatives expressed to the WGIP that "... conflict and development interventions had resulted in large-scale displacements, internal and external, and serious consequences for [indigenous] children and youth resulted from the implementation of inappropriate and non-consultative development projects".²³

23. African indigenous peoples are no exception when it comes to displacement from their traditionally owned lands. The creation of national parks or game reserves has forced people off their land. The Boran of Kenya, for instance, testified that four reserves created in Isiolo had

been annexed affecting important grazing and watering points previously used by pastoralists. Moreover, the Keiyo indigenous people in Kenya also reported that they have been forcibly evicted from their land without compensation, because of mining activity there.²⁴ Despite judicial appeal to the country's High Court (which was dismissed on technical grounds) and international concern, the Basarwa people in Botswana had their water supply cut off and have had no choice but to leave their traditional hunting grounds in the Central Kalahari Game Reserve for resettlement villages, to make way for Government-sponsored development activities in the area.²⁵

24. Evictions or involuntary displacements are a common feature resulting from major development projects. The Committee on Economic, Social and Cultural Rights concluded that forced evictions are *prima facie* incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights. The term "forced evictions" is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection". Oftentimes, forced evictions occur in the name of development.²⁶

25. Conflicts over development projects on the lands of indigenous peoples lead to further violations of human rights. For instance, forced evictions from their traditional lands may lead to breaches of civil and political rights such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the right to the peaceful enjoyment of possessions.²⁷ The Special Rapporteur has received reports about the arrest and harassment of indigenous persons involved in protests against destruction brought by the building of dams, and other extractive activities including logging and mining.

26. For example, people in Penan (Malaysia) have reportedly been arrested because they were blockading roads trying to stop loggers destroying their traditional forests.²⁸ Philippine indigenous peoples have allegedly been physically abused and detained by mining companies and the police in the process of peaceful picketing against mining activities on their traditional lands.²⁹ Sometimes, as in Southern Africa, the strict enforcement of environmental conservation laws prevents indigenous farmers from farming their traditional land or using traditional resources, thus turning them into offenders who may be jailed for attempting to subsist.³⁰ According to a recent report, oil workers in the Upper Pakiria River region of south-eastern Peru forced the Kugapakori to move deep into the Amazon and threatened to arrest and decimate the community with diseases if they refused to leave their home.³¹ The Cucapá people in northern Mexico have been restrained by the authorities from practising their subsistence fishing because of environmental concerns, but the National Commission of Human Rights found that their human rights were being violated and recommended to the Government in April 2002 that the Cucapá become participants in the planning and execution of programmes for their own social development, including the fishing of protected species for their subsistence.³² Also in south-eastern Mexico, indigenous squatters have been evicted from a biosphere reserve on environmental grounds, but NGOs refer to the various kinds of business interests wishing to invest in the area. (See case study below on the Puebla Panama Plan.)³³

27. Major development projects often entail serious health hazards for indigenous peoples. Environmental degradation, toxic chemical and mineral wastes, the destruction of self-sustaining

ecosystems and the application of chemical fertilizers and pesticides are but some of the factors that seriously threaten the health of indigenous peoples in so-called “development zones”. When relatively isolated indigenous communities enter into contact with the expanding national society and monetary economy - as has happened dramatically in the Amazon basin and other inter-tropical areas in recent decades - indigenous peoples also risk contracting contagious diseases, such as smallpox, AIDS and venereal diseases, as well as psychological disorders.³⁴

28. Indigenous peoples also argue that “environmental degradation and pollution [are] an integral facet of the health and well-being of indigenous peoples”, citing, for instance, toxic contamination by persistent organic pollutants (POPs) and other industrially produced toxins.³⁵ The Batwa in Rwanda report that deforestation of land leads to loss of traditional medicinal plants and to increased mortality.³⁶ The right to food is also under siege by development projects, such as the construction of a dam in the Cuene region in Namibia which would significantly reduce or destroy food sources for the Epupa community by flooding the palm nuts and the *Faidherbia albida* trees which provide a food supply for goats, a vital food source for the community.³⁷ Because of the pollution of their traditional lands, the peoples of the north in Russia report that they have now become “ecological refugees”, whereas mining activities in Peru reportedly cause the pollution of fresh water used by indigenous peoples for food production.³⁸ During the Special Rapporteur’s mission to the Philippines in December 2002, numerous indigenous representatives reported similar environmental, economic and social effects of mining activities in various parts of the country, which they aptly label “development aggression”.³⁹

29. Indigenous peoples have argued, at length and legitimately, that major development projects that do not take into account their fundamental interests entail violations of their basic human rights. At the WGIP they maintain that “the indigenous approach to self-development [is] based on the principles of respect for and preservation of land, natural resources and all elements of the natural environment; consensus in decision-making; mutual respect for peoples’ values and ideology, including sovereignty over land, resources and the environment under natural law”.⁴⁰ They also complain that full, meaningful and effective participation of indigenous peoples in development is generally not being considered. For instance, indigenous peoples from the Chittagong Hill Tracts in Bangladesh said that “development strategies based on road construction, pacification programmes and socio-economic development programmes, and immigration, remained in the hands of the military and the participation of indigenous peoples in the development was excluded”.⁴¹ The Ogiek of Kenya and the Batwa of Rwanda, referring to the need to get their views across, spoke of difficulties of ensuring effective minority participation in a majority-based democratic system.⁴²

30. On the other hand, some Governments make efforts to ensure the participation of indigenous peoples in development. For instance, Canada adopted a number of initiatives in this direction such as participation of indigenous peoples in environmental assessment and regulatory boards and in land claim settlement agreements. It further developed a regional partnering approach to increase the opportunities for indigenous peoples’ employment. New Zealand has launched the capacity-building programme designed to assist Whanau, Hapu and Iwi Maori communities to identify needs and develop initiatives to achieve long-term economic development.⁴³

II. SELECTED CASE STUDIES

31. Detailed research reports on major development projects and their impact on the lives and livelihoods of indigenous peoples as well as on the environment are available for a number of countries. A small selection of these experiences, particularly as regards the implications of the construction of major dams, are presented and summarized in the following sections.

Costa Rica

32. The Boruca hydroelectric project in southern Costa Rica, to become operational in 2012, is expected to flood an area of around 250 square kilometres which would directly or indirectly affect seven indigenous territories and some non-indigenous areas as well. The Costa Rican Electricity Institute, which is promoting the project, has reportedly not formally consulted with indigenous organizations, which have organized commissions to dialogue with the Government and have received help and advice from local universities and international non-governmental organizations. A technical study undertaken to assess the possible effects of the project on indigenous peoples draws attention to the expected displacement of the affected population, disruption of traditional agricultural activities, changes in the environment, disorganization of customary life in indigenous communities, short-term employment for local people but no long-term plans for their incorporation into new economic activities, inflationary pressures on the cost of living and other worrisome consequences. The Special Rapporteur suggests that the Government of Costa Rica would be well advised to promote mechanisms whereby the opinion of indigenous peoples may be taken into account in relation to the Boruca project.⁴⁴

Chile

33. During the 1990s important changes occurred in the Bio-Bio River basin in southern Chile, occupied by around 10,000 Mapuche-Pehuenches, due to a major hydroelectric development project that will eventually involve the construction of six different dams and electricity plants. The first of these, Pangué, built by ENDESA, a formerly public but now privatized company, was completed in 1996. Despite having government support and international financing, the company showed no regard for the needs and interests of the Pehuenche communities nor the local environment. An evaluation study commissioned by the World Bank, which had partially financed the project, was highly critical, pointing to the fact that the poor indigenous population in the area had not benefited at all from it, whereupon the distribution of the report to the Pehuenche people was withheld. A second study corroborated the earlier findings, prompting a statement by the Bank's president recognizing the mistakes and drawbacks of the project.

34. Nevertheless, the Government of Chile and the corporation went ahead with plans to build the second, much larger, dam and plant at the Ralco site, to become operational in 2003. By that time, Chile had adopted new indigenous and environmental legislation,⁴⁵ which enabled Mapuche organizations to challenge the projects politically as well as in court. The National Corporation for Indigenous Development (CONADI), a government agency, was charged with the task of negotiating an agreement between the parties, but two of its directors - both indigenous professionals - were sacked because they expressed their reservations about the way

the company was handling the indigenous and environmental issues. Studies detailing the cumulative harmful effects of the six-dam project on the indigenous people and the environment were rejected by the authorities. In fact, both CONADI and the National Environmental Agency CONAMA at one point advised the Government to reject the project, but their positions were overruled. The Government became concerned about mitigating the negative effects of the project on indigenous peoples, yet recognizes that the indigenous law is subordinate to other laws that in this case appear to be paramount.

35. Despite the opposition of 4,000 Pehuenches to their involuntary resettlement and the destruction of their traditional environment and way of life, and in complete disregard for the existing indigenous and environmental legislation (Chile has not yet ratified ILO Convention No. 169), the company (now part of a transnational corporation) continued to buy off individual Pehuenche families in exchange for their landholdings. By 2002 only seven families were holding out while the Ralco project was nearing completion. One of the problems for the Pehuenche is that their traditional collective landholdings and territories have been privatized by decree, making it easier for business interests to appropriate indigenous lands for their own purposes. A court ruled that the Pehuenches had priority when recovering land that was located above the water line.

36. Observers have noted that in the Ralco issue, business priorities, with State support, appear to override the social and environmental concerns that have been expressed by massive protests and court action undertaken by Mapuche organizations and their supporters. As the six-dam project on the Bio-Bio progresses, the future of the Pehuenche people, particularly the two local communities directly affected by the rising waters of the dam, Ralco-Lepoy and Quepuca-Ralco, looks bleak indeed and their traditional way of life appears to have been broken to the point of no return. Moreover, the Ralco case clearly shows the social tensions that arise between a “modernizing” development model and the social, environmental and cultural costs to the people who bear the burden of this economic transformation. The Government of Chile reports that indigenous peoples are not involved in the planning of major development projects, but once such projects have been decided upon, then indigenous communities may become involved in order to help mitigate possible negative effects of these projects. The Special Rapporteur suggests that Chile ratify ILO Convention No. 169 as soon as possible and that it abide strictly by emerging international standards and its own indigenous and environmental legislation in order to adequately protect the interests of indigenous peoples; indigenous communities should be involved directly whenever major economic development projects that affect their lives and livelihoods are being considered.⁴⁶

Colombia

37. The Emberá-Katío indigenous people have traditionally lived in the area surrounding the Sinú and Verde Rivers in north-western Colombia (Departments of Córdoba and Antioquía). Their ancestral territories are legally recognized as two Indigenous *Resguardos* (reserves), created in 1993 and 1996, and inhabited by about 500 families (about 2,400 people). The Emberá-Katío are one of the several indigenous peoples who have suffered most from the persistent violence of Colombia’s civil war. Over many years they have been negotiating with

the authorities regarding the State's intention to allow a private company to build several large hydroelectric dams that would flood a good part (up to 7,000 hectares) of their traditional territories.

38. Concerned about the negative ecological and economic effects that the Urrá 1 dam would have on their cultures and social organization, the Emberá-Katío traditional authorities (*cabildos*) have been subject to great pressures and been accused of being guerrilla supporters and "enemies of progress". Since 1992 some of their land was expropriated as being of "public utility" and the privately owned Urrá company received a licence to begin work on the project without prior consultation with the indigenous communities (mandatory according to the Colombian Constitution).

39. In 1994 the company and Colombia's National Indigenous Organization (ONIC) agreed on a framework for mandatory consultation before the beginning of the second phase of the project, involving flooding and functioning of the dam. A proposed Ethno-Development Plan established compensation for eventual negative impacts of the dam on the Emberá-Katío. However, as the river was diverted, new damaging impacts emerged, such as making it difficult for the indigenous to navigate and fish in the river. Despite an evolving conflict, the company obtained the government licence to flood the area. This was later nullified by Colombia's Constitutional Court, which declared that the process violated the fundamental rights of indigenous peoples, and ordered a new consultation process as well as compensation for the Emberá-Katío.⁴⁷ In 1998 violence escalated, several indigenous families were forced to leave their homes under threat, property was destroyed and, more seriously, several indigenous leaders were assassinated or forcibly disappeared, presumably by paramilitary forces, whereas others became the alleged victims of the Revolutionary Armed Forces of Colombia (FARC).

40. In 1999 the company was able to obtain another licence for flooding, despite only partial consultation with the indigenous communities. Some of these refused to resettle notwithstanding the rising waters. Later in the year, a large delegation of Emberá-Katío travelled to Bogotá, the country's capital, to protest against the situation, where they were put under intense political pressure. Finally, in 2000 a new agreement was reached between the Government, the company and the indigenous communities. Besides promising social and health services to be provided by international agencies, the agreement acknowledged the Emberá-Katío's neutrality, their full territorial autonomy, and their non-combatant condition.⁴⁸ Nevertheless, violence continued against the Emberá in the form of assassinations, forced disappearances, arbitrary detentions and threats, some of which has been attributed to paramilitary groups and some to FARC.

41. In June 2001 the Inter-American Court of Human Rights asked the Government of Colombia to take "urgent and concerted" measures regarding the disappearance of an Emberá leader, and to guarantee the right to life and the physical integrity of the rest of the community.⁴⁹ It had to reiterate this appeal several days later as a result of Government inaction. In 2002 further assassinations and forced disappearances decimated the Emberá-Katío communities in the region. In October the Office of the United Nations High Commissioner for Human Rights in Bogotá issued a press statement denouncing the forced displacement of an Emberá community of 800 people, including 250 children, due to threats by the FARC and called upon the national Government to take adequate protective measures.⁵⁰ In a letter to the Special Rapporteur, ONIC

restated its position that megaprojects are the main cause of current conflicts between the indigenous peoples and the State. As examples, the organization mentions the U'wa people and its ongoing conflict with the Occidental Petroleum Co. (Oxy) over oil drilling on indigenous territory; the Emberá-Katío and the Urrá hydroelectric dam, the Wayúu and coal mining activities; another dam under construction in Saldaña where the Pijao people live; logging on Chamí forests by the Smurffit company; and the conflict between Inga, Kofane and Siona communities and oil companies over drilling and road building. More tensions are predicted among the Sikuaní due to the channelling of the Meta River and an African palm plantation project, as well as the Emberá people in relation to the building of the proposed Inter-Oceanic Atrato-Truandó Canal.⁵¹

42. The survival of the Emberá-Katío people is at stake. Several of their most important and prominent leaders have been killed in the last five years. The Urrá I dam was proposed and is being built without their consent, involving involuntary displacements, social and economic disorganization and cultural disruption. They resent the construction of this dam as a threat to their way of life, and some of the impacts that have already been reported seem to support this view. These include diseases which were unknown to the area, scarcity of fish and other basic elements of their diet and, most significantly, the disruption of the river, which represents a central place in the spiritual relationship of the Emberá-Katío people to their land.

43. The situation of the Emberá-Katío is not unique, because other indigenous peoples in the country face similar threats. Moreover, they have become, like other indigenous communities, victims of a violent civil conflict between armed parties involving the national security forces, the revolutionary guerrillas, the paramilitary groups, as well as criminal elements linked to drug trafficking. They have proclaimed their autonomy and neutrality in these conflicts, demanding only that their territories, cultures and ways of life be respected. Unfortunately, this has not been the case and so their fundamental human rights have been and continue to be systematically violated. The Emberá-Katío face the danger of not being able to survive this violence as a distinct people: a clear case of ethnocide.

India

44. The Sardar Sarovar Dam in India is the largest of 30 large, 135 medium and 3,000 small dams to be built to harness the waters of the Narmada River and its tributaries, in order to provide large amounts of water and electricity for the people of Gujarat, Maharashtra and Madhya Pradesh. With a proposed height of 136.5 m, the Government claims that the multipurpose Sardar Sarovar Project (SSP) will irrigate more than 1.8 million hectares and quench the thirst of the drought-prone areas of Kutch and Saurashtra in Gujarat. Others counter that these benefits are exaggerated and would never accrue to the extent suggested by the Government. Instead, the project would displace more than 320,000 people and affect the livelihood of thousands of others. Overall, due to related displacements by the canal system and other allied projects, at least 1 million people are expected to become uprooted or otherwise affected upon completion of the project. Indeed, the development surrounding the Narmada River has been labelled "India's greatest planned human and environmental disaster", a far cry from former Prime Minister Nehru's idealization of dams as the "secular temples of modern India."⁵²

45. Two thirds of the over 40,000 families expected to be displaced by the reservoir's creation will be tribal people or Adivasis, belonging to different groups collectively referred to as Bhils. Displacement of Adivasis from their traditional lands and resources due to the creation of reservoirs, canals and reforestation projects significantly impacts on the ability of Adivasis to fully enjoy their human rights. They live mainly in 14 villages in Gujarat, 33 in Maharashtra and around 53 in Madhya Pradesh. The Adivasis are largely self-sufficient, growing their own food and collecting fuel, building materials, fodder, fruits and other resources from the forests and common lands around their villages, as well as relying on water and fish from the river. Resettlement away from their territory means the destruction of their lifestyles and village organization. One farmer whose village will be submerged commented: "the forest is our moneylender and banker. From its teak and bamboo we built our homes. From its riches we are able to make our baskets and cots. ... From its trees we get our medicines."⁵³

46. In the early 1990s opponents of the dam staged a series of non-violent protests (*dharnas* and *satyagraha*), prompting the World Bank, after commissioning an independent review which underlined the flaws in the project, to withdraw its remaining funding for it (the Bank cancelled \$170 million remaining on its loan of \$450 million). Work on the dam continued nevertheless, despite attempted judicial restraint, and by the summer of 2002 the water level in the reservoir rose much higher than initially expected, threatening many more people and villages with flooding. The Government's rehabilitation and resettlement measures for "oustees" (displaced persons) appeared to be insufficient, generating a number of protest activities by the affected villagers within the rising waters themselves. Protest against the project has remained strong and the Narmada Bachao Andolan NBA) (Save the Narmada movement) has been particularly instrumental in fostering awareness and dissent. Many activists and tribal people continue to maintain that they will never abandon their land to the dam, even if it means *doobenge par hatenge nahi*: death by drowning.⁵⁴

47. Multipurpose dams surely stimulate economic activity and have the potential for bringing benefits to large sectors of the population. The problem is whether these benefits are designed to reach the indigenous peoples who provide the land on which such projects are established, and how. It is estimated that the SSP will enable the irrigation of 1.8 million hectares of land in Gujarat alone. Irrigation facilitates the production of food and other crops, which could significantly improve food production in drought-prone areas. However, it appears that much of this area is unsuitable for irrigation because of waterlogging and salinization. Moreover, some of the designated water is likely to be consumed by sugar plantations before reaching more needy farms further away from the dam. Other potential benefits of the irrigation scheme and electric power generation from the dam are unlikely to benefit the Adivasi population.⁵⁵

48. Adivasis were not involved nor consulted in the dam construction process, on the premise that the project and the displacement of people was to serve a "public purpose" which would provide a "development opportunity" to the affected population. While some local governments did involve non-governmental organizations, an observer notes that "while NGOs can play an important supportive role they cannot substitute [for] the voice of the affected people, nor can they replace what is the basic responsibility of the State".⁵⁶

49. Only the Adivasi population who live in the area that will be submerged in the reservoir (considered as project affected peoples, or PAP) are eligible for compensation and resettlement. However, many more will be affected indirectly, yet they are often not considered as PAP and therefore ineligible for rehabilitation. This would include people on islands that would be marooned and in areas affected by canals, dykes, the creation of a new wildlife sanctuary and a reforestation scheme to compensate for tree loss, and resettlement schemes on traditional Adivasi lands. Adivasi territory has also been affected by the construction of a colony to house the workers and officials engaged in the construction work and administration of the dam. All of these secondary consequences have displaced Adivasi villages and affected their lives and livelihoods. Patwardan comments that “displacement needs to be viewed as a ‘process’ rather than an ‘event’ which starts much before the actual physical displacement and continues for a long time after uprooting has taken place”, and concludes that the current situation is symptomatic of the “gross underestimation of the human costs of large dams”.⁵⁷

50. Whereas state governments have offered comprehensive resettlement and compensation packages to “landless” Adivasis displaced from their homes, observers point out that in practice Adivasis have not fully benefited from them. The promised lands in Gujarat did not materialize or were of poor quality, whereas in Madhya Pradesh the government had no resources to resettle displaced Adivasis. Moreover, resettlement has been delayed for many years and it is reported that 75 per cent of the displaced people have not been rehabilitated.⁵⁸ To the extent that the law does not recognize customary rights to land and that therefore Adivasis may be considered “encroachers” on government land, they have not received adequate compensation for their losses. In common with other indigenous peoples, Adivasis have a unique and close relationship with the land and its resources. Compensation packages treat land as property, whereas for Adivasis, their land is intrinsically linked to their culture and livelihood. It appears that the Government has failed to deal with the numerous non-quantifiable losses experienced due to the dam such as loss of access to religious sites and social disintegration.⁵⁹ Displacement due to the SSP has led to fragmentation of Adivasi communities as well as loss of cultural identity. Resettlement areas are often unsuited to the communal lifestyle of Adivasis, particularly if they have been resettled in communities of non-tribal people who reject the tribal way of life or have had to move to the cities.⁶⁰

51. Involuntary displacement readily leads to a violation of several economic, social and cultural rights. Despite claims to the contrary, resettled Adivasis have generally had to suffer a reduction in their standard of living, the loss of livelihood resources, and a reduction of health standards, a situation that stands counter to articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. While in displaced communities Government has established schools for the population, there are reports that due to economic hardship many children cannot afford to stay in school, whereas the curriculum appears to be ill-adapted to the cultural and language needs of Adivasi children (art. 13).⁶¹ There have also been reports of violence and the use of force by the police upon protesters and resisters to displacement, in violation of the International Covenant on Civil and Political Rights.⁶² The NBA recently called for protest of the decision by the Narmada Control Authority⁶³ in May 2002 to allow the dam height to rise to 95 m even though over 35,000 families displaced when the dam height reached 90 m have still not been resettled.⁶⁴ In a recent urgent appeal to the Prime Minister of India the Habitat International Coalition reported that “submergence due to the monsoons and raising the

dam's height have destroyed the crops and homes of SSP-affected villages in Nandurbar District (Maharashtra) and Jhabua District (Madhya Pradesh), rendering the villagers homeless. These people now face a severe food and drinking-water shortage." It also reports that the Maharashtra government indicates an increase in the number of project-affected persons at the 95 m level, and admits that the government does not have enough land for rehabilitation of the affected persons.⁶⁵

52. The Sardar Sarovar dam and other similar projects on the Narmada River raise a number of complex issues. Originally, the interests and aspirations of the affected Adivasi population were not considered in the project design and implementation. As a result of continued lobbying by tribal and human rights organizations, the Government of India now recognizes that the issues raised by the affected communities must be taken into account. Yet the implementation of measures intended to mitigate the negative effects and increase the benefits of the project for the Adivasi population has lagged behind and is considered insufficient by the people involved. The Special Rapporteur recommends that the human rights of the Adivasis be included as a foremost priority in the implementation of this development project and others of its kind. Only with the full and informed consent of the tribal people concerned will truly human rights-centred development, as recommended by the General Assembly, become possible. An immediate step would be to halt any further rise in the reservoir's water level until the outstanding issues of rehabilitation and resettlement are fully solved to the satisfaction of the affected population, through constructive dialogue and negotiation between the parties. India could also signal its commitment to the human rights of its Adivasi population by ratifying ILO Convention No. 169 and approving the draft United Nations Declaration on the Rights of Indigenous Peoples. Alternative ways of involving the Adivasis in the project should also be considered. It has been suggested that they should be considered as partners in the project, with their investment being their natural resources. Adivasis qua investors would be entitled to share in the project's benefits.⁶⁶

Philippines

53. The San Roque Multipurpose Project in the Philippine Cordillera region involves the construction of a large dam on the Agno River which will be used primarily for power generation and secondarily for irrigation and flood-control. Construction of the dam and power plant were completed in July 2002 and the water began to rise in August; operation of the power plant was scheduled to begin in January 2003. The construction site, in the municipality of San Manuel, province of Pangasinan, covers about 34 square kilometres, but the irrigation and flood control components will extend over a much wider area, involving around 30 municipalities in three provinces. The dam reservoir is expected to submerge eight small upland villages that are home to indigenous people.

54. Many other villages are bound to be affected by sediment build-up and upstream flooding as the reservoir becomes silted. To mitigate the potentially negative impact of these processes, the implementation of a Lower Agno Watershed Management Plan is under way. The San Roque project is being implemented by the San Roque Power Corporation with credit financing from the Japan Bank for International Cooperation. Several Philippine government agencies are actively involved in the project's implementation, particularly the watershed

management, irrigation and flood-control components. Whereas the power to be generated will range between 30 and 54 gigawatt-hours monthly, the irrigation component of the project is aimed at extending, improving and integrating various existing irrigation works, so as to service more than 70,000 hectares of riceland. The area to be serviced by the flood-control component is estimated at about 125,000 hectares.

55. The area upstream of the dam is occupied by Ibaloy, Kankaney and Kalanguya indigenous peoples. About 120 households of eight indigenous villages have been dispersed by the local effects of the rising waters of the dam. Furthermore, nearly 5,000 indigenous households (about 26,000 individuals) are going to be affected by the sedimentation and flooding to be expected from the reservoir's eventual siltation, and more than 3,000 households will be affected by watershed management. A high rate of sedimentation takes place because of continued dumping of muck waste and impoundment of tailings from several large mining operations; this threatens to seriously alter the traditional activities of numerous indigenous communities in the area. The watershed management plan, intended to mitigate the project's impact, involves curtailing some of the traditional activities of the indigenous communities, such as small-scale ore mining (which does little to affect the environment), banning the harvesting of timber products that are used for home construction and kitchen-fuel purposes, and regulating subsistence swidden agriculture which is usually considered as sound agroforestry management. Instead, large commerce-oriented agricultural production is being promoted as well as livestock raising for the market, which imply widespread clearing of vegetation and induced massive soil erosion in both the upper and parts of the lower river basin.

56. The project has several human rights implications: firstly, environmental disruption; secondly, the displacement of population, some of which appears to have been undertaken forcibly, but mostly through insistence on the implementation of the project in the face of community resistance and persuasion. Gradually, the people's resistance to the project has grown silent. Most importantly, indigenous peoples' land rights have been disregarded. Proprietary ancestral rights of indigenous families have not been given due recognition, but as project implementation progressed some families about to be displaced accepted some form of compensation, which was then cited as indication of consent. In fact, none of the affected communities participated in the planning of the project itself, and none freely gave their consent to its implementation. But many individuals participated in the consultations concerning impact-mitigation measures, and all of them are now bound by the enforcement of those measures, which imply drastic changes in livelihood engagements.

57. Whether deliberately or without meaning to, the watershed managers are steering the households away from the peasant livelihood mix traditional to their indigenous communities, towards the monocultures that tend to define the production of vegetables, flowers, broom grass, and livestock for the market. Starting with their lending of capital for the new livelihood ventures, the watershed managers are introducing the households to new economic relations that may or may not be good for the communities. Whatever the final results, the debate stirred by the dam projects has already disrupted local social relations considerably.

58. This has occurred because local mechanisms for the protection of indigenous rights have not been effective. The indigenous communities of the municipality of Itogon tried to avail themselves of the mechanism provided by the Philippines' Local Government Code to withdraw

endorsement of the dam, but the project continued. The Philippines' Indigenous Peoples' Rights Act provides for free and prior informed consent and enables an indigenous community to prevent the implementation of any project which affects its ancestral domain in any way by refusing consent to the project. Though Itogon's indigenous communities petitioned the National Commission on Indigenous Peoples to suspend the project because free and prior informed consent had not been given, the commissioners declined to act on the petition. Thus, the laws designed to protect the indigenous communities were in fact ignored.⁶⁷

III. DAMS, DEVELOPMENT AND HUMAN RIGHTS

59. Lack of space does not allow the Special Rapporteur to report on other cases of large-scale development projects impacting upon indigenous peoples. The issues involving the construction of dams are, however, emblematic of the wider picture. Given their importance, the World Commission on Dams launched extensive studies on the matter, and concludes that:

“Large dams have significantly altered many of the world's river basins, with disruptive, lasting and usually involuntary impacts on the livelihoods and socio-cultural foundations of tens of millions of people living in these regions. The impacts of dam-building on people and livelihoods - both above and below dams - have been particularly devastating in Asia, Africa and Latin America, where existing river systems supported local economies and the cultural way of life of a large population containing diverse communities.”

60. Concerning indigenous peoples specifically the Commission's report states:

“In the Philippines, almost all the larger dam schemes that have been built or proposed were on the land of the country's 6-7 million indigenous people. Similarly in India, 40-50% of those displaced by development projects were tribal people, who account for just 8% of the nation's 1 billion people. These costs are not balanced by any receipt of services from dams or by access to the benefits of ancillary services or indirect economic multipliers in the formal economy.

“... For indigenous peoples and ethnic minorities dam-induced displacement can trigger a spiral of events that spreads beyond the submergence area. A case in point is the situation of the 100,000 Chakma people displaced by the Kaptai hydropower dam in the Chittagong Hill Tracts, Bangladesh. The project submerged two fifths of their cultivable land; as a consequence, 40,000 Chakma left for India and another 20,000 were supposed to have moved into Arakan in Burma.

“... The Bayano dam in Panama that forced the indigenous Kuna and Emberá peoples from their traditional territories resettled them on land that was less fertile and subject to encroachment by loggers. The Panamanian Government systematically failed to fulfil agreements made with the affected indigenous people at the time of construction, as well as commitments negotiated later. Among the violations was the Government's failure to compensate adequately for the loss of traditional territories and provide legal titles to the new lands. What happened in Panama in the 1970s is similar to what has happened in

Malaysia in the 1990s. In the case of the Bakun project, rights to indigenous common land in the Ulu Belaga site were not recognized or properly assessed. Industrial countries' experience with indigenous peoples in the era of building large dams was not very different from that of developing countries. Dams built during the 1950s and 1960s cost the indigenous nations of the Missouri River basin in the United States an estimated 142,000 hectares of their best land, including a number of burial and other sacred sites, leading to further impoverishment and severe cultural and emotional trauma. A guarantee used to rationalize the plan - that some 87,000 hectares of Indian land would be irrigated - was scrapped as the project neared completion.

“Another case is the second stage of the Churchill Rivers project in Labrador, Canada, consisting of two dams and two river diversions that will flood a large area of hunting territory of the Innu people who live on both sides of the provincial boundary. The Innu have yet to be clearly recognized as the owners of their lands, and the whole area is the subject of an unresolved Innu land claim currently being negotiated with the Canadian Government.”

61. The Commission recommends that in the future major development projects such as dams be approached on the basis of the recognition of rights and the assessment of risks, which is of particular relevance to indigenous peoples:

“The recognition of rights and the assessment of risk identify the interested and affected parties who possess rights or entitlements as well as risk takers and bearers. This opens the way for a negotiated approach that enables the decision-making process to assess options and reach project agreements. Those whose rights are most affected, or whose entitlements are most threatened, have the greatest stake in the decisions that are taken. The same applies to risk: those groups facing the greatest risk from the development have the greatest stake in the decisions and, therefore, must have a corresponding place at the negotiating table.

“Further, the Commission has sought to demonstrate that an approach based on the recognition of rights and assessment of risks can lay the basis for greatly improved and significantly more legitimate decision-making on water and energy development. This is an effective way to determine who has a legitimate place at the negotiation table and what issues need to be included on the agenda.”⁶⁸

62. The debate on dams and indigenous peoples has wider implications, as reflected in the discussions on the environment and sustainable development. The United Nations Conference on Environment and Development (1992) recognized that: “Indigenous people ... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”⁶⁹ Ten years later, the World Summit on Sustainable Development took a small step further by reaffirming: “... the vital role of the indigenous peoples in sustainable development.”⁷⁰ These statements must necessarily be taken into consideration seriously in the design, planning and execution of major development projects that affect the lives and livelihoods of indigenous peoples.

63. These issues stand out clearly in the ambitious Puebla Panama Plan (PPP) adopted by the Governments of Central America countries and Mexico in 2000, designed to modernize and integrate the region which shares a number of common features, including a high density of indigenous inhabitants and generally low levels of human development. The plan is designed to promote economic development through public and private investments, with international financing. A number of planned projects, which range from airport security to fibre optics networks, organized around eight distinct regional initiatives, directly involve indigenous peoples, such as highway construction, tourist promotion, natural resource management, the introduction of new crops and the setting up of *maquila* plants. Many indigenous and human rights organizations in the region have expressed their serious concern regarding the possible negative effects that a number of these projects, taken together, may have on indigenous human rights. Whereas the Inter-American Development Bank expects the PPP to take advantage of the human and ecological riches of the Mesoamerican region within a framework of sustainable development and respect for its ethnic and cultural diversity, the Central American Indigenous Council addressed a letter to the region's Presidents stating:

“2. The indigenous peoples express to you our concerns about the absence and lack of enforcement of judicial and economic mechanisms to protect the territorial security of our peoples; and we state the need for the inclusion in Plan Puebla Panama of a regional strategy that guarantees that territorial security.

“...

5. We exhort the Nation States to create national judicial instruments to ratify and enforce the international instruments that protect indigenous peoples' rights. We urge the Presidents to frame the strategic actions of the Plan Puebla Panama in the promotion, guarantee and development of the indigenous peoples' fundamental rights, contemplated in the aforementioned instruments.

6. It is imperative to create an indigenous component of the Plan Puebla Panama to facilitate the exercise of a transversal approach among the different components of the general strategy and to strengthen indigenous peoples' initiatives oriented to promote development with identity, equity and social justice.”⁷¹

64. Some indigenous organizations are more critical of the Plan. Several human rights organizations in the Isthmus of Tehuantepec, Mexico, are concerned that the implementation of the Plan in their region will destroy their traditional environment and natural resources, impact negatively on their subsistence agricultural activities and social organization and force them to accept low-paying jobs in export-oriented assembly plants (*maquiladoras*). They specifically oppose the construction of a highway that would cross their traditional habitat without bringing them any benefits, and complain that their concerns have not been addressed by the agencies involved in promoting the PPP.⁷²

65. The Special Rapporteur wishes to transmit to the Commission on Human Rights his concern that notwithstanding statements to the contrary by the highest authorities and the various national and international agencies involved in promoting the Puebla Panama Plan as a

high-priority project for regional integration and development, there are as yet no institutional and legal mechanisms in place for the effective protection of the human rights of the indigenous peoples of the area designed to offset the potential risks and threats to these peoples that the implementation of the Plan implies, nor are there as yet any effective mechanisms to ensure the full and informed participation of these peoples in the design, planning, execution and evaluation of the numerous specific projects foreseen in the Plan that may have considerable impact on the region's indigenous communities. He calls on the international financing agencies, the international and national business community and the region's governments to attach the highest priorities to the needs and concerns of the indigenous peoples in this matter, recalls the principles of a human-rights centred development approach and calls their attention to the declaration of the World Summit on Sustainable Development about the vital role of the indigenous peoples in sustainable development.

IV. CONCLUSIONS AND RECOMMENDATIONS

66. **The issue of extractive resource development and human rights involves a relationship between indigenous peoples, Governments and the private sector which must be based on the full recognition of indigenous peoples' rights to their lands, territories and natural resources, which in turn implies the exercise of their right to self-determination.⁷³ Sustainable development is essential for the survival and future of indigenous peoples, whose right to development means the right to determine their own pace of change, consistent with their own vision of development, including their right to say no. Free, prior, 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 between the parties involved, including the private sector.⁷⁴**

67. **To the extent that international financial institutions such as the World Bank play a vital role in facilitating major development projects by providing various forms of financial support, the current revision of the World Bank's policy regarding indigenous peoples is of major importance. The Bank has a specific policy on indigenous peoples designed to ensure that "World Bank-financed development projects do not have adverse impacts on indigenous peoples, and that project benefits are tailored to the specific needs of indigenous peoples."⁷⁵ But some indigenous consultants argue that "the draft policy fails to uphold international human rights standards applicable to indigenous peoples" and insist particularly on the collective rights of indigenous peoples to their customary land and territories.⁷⁶ The Special Rapporteur recommends that the new Bank policy on indigenous peoples should strictly adhere to all existing and evolving international indigenous human rights standards.**

68. **Any single major development project in indigenous areas may have either direct or indirect positive and negative effects on - or both - indigenous peoples and communities. Under pressure from Governments and NGOs, some business enterprises may undertake special efforts to improve the management of the surrounding environment, as well as to provide compensation, employment and/or social services (such as housing, schools, medical care, utilities) to the affected communities. Unfortunately, as we learn from indigenous organizations and research reports, these companies appear to be in the**

minority. Others, when faced with social protest and political opposition, or in view of the cost of becoming involved in sustainable and human rights-centred development, prefer to close down their operations, withdraw their projects or abstain from making their investments.⁷⁷ Still others, however, make use of different kinds of pressure (including violence or the threat of violence) to carry out their operations despite opposition.

69. Whereas human rights violations occurring in isolated cases may be dealt with successfully - or not - by the affected communities on an ad hoc basis, it is rather the long-term effects of a certain pattern of development that entails major violations of the collective cultural, social, environmental and economic rights of indigenous peoples. Within the framework of the globalized market economy the traditional environment becomes altered irreparably, non-renewable natural resources are destroyed and extracted exclusively for private gain, numerous communities and masses of people are uprooted, evicted or resettled with little or no regard to their actual needs and rights, sometimes accompanied by organized violence intended to intimidate, harass and make them comply with decisions taken by outside interests without or explicitly against their consent. Often, the same results are achieved through bribery, corruption and co-optation.

70. Whilst indigenous peoples have made important advances in recent decades, they are still considered in many countries as second-class citizens whose needs and aspirations are seldom taken into account by the powers that be. They are often denied effective political participation in Government and the electoral system, and their concerns are hardly being met by established political parties. Nor have local and national power structures been favourable to the empowerment of indigenous peoples. 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 specific peoples.⁷⁸ This also means that their voices must be heard and their demands and grievances be met when major decisions are taken at the national and international level regarding development priorities and the allocation of resources. This is not yet the case, and the Special Rapporteur hopes that the Permanent Forum on Indigenous Issues will be able to fill this void.

71. The human rights of indigenous peoples and communities must be considered of the utmost priority when development projects are undertaken in indigenous areas. Governments should consider the human rights of indigenous peoples a crucial factor when considering the objectives, costs and benefits of any development project in such areas, particularly when major private or public investments are intended.

72. Potential investors must be made aware at all times that the human rights of indigenous peoples should be a prime objective when investment decisions in development projects are made in such areas or are expected to affect indigenous peoples directly or indirectly. There can be no justification for ignoring them.

73. Sustainable development must be understood not only in terms of environmental management but also as respectful of human rights at all times, particularly of the human rights of indigenous peoples. Any development projects or long-term strategy affecting

indigenous areas must involve the indigenous communities as stakeholders, beneficiaries and full participants, whenever possible, in the design, execution and evaluation stages. The free, informed and prior consent, as well as the right to self-determination of indigenous communities and peoples, must be considered as a necessary precondition for such strategies and projects. Governments should be prepared to work closely with indigenous peoples and organizations to seek consensus on development strategies and projects, and set up adequate institutional mechanisms to handle these issues.

74. Potential long-term economic, social and cultural effects of major development projects on the livelihood, identity, social organization and well-being of indigenous communities must be included in the assessment of their expected outcomes, and must be closely monitored on an ongoing basis. Such effects would include health and nutrition status, migration and resettlement, changes in economic activities, levels of living, as well as cultural transformations and socio-psychological conditions, with special attention given to women and children.

75. To the extent that major development projects impinge upon traditional indigenous territories or ancestral domains, indigenous land and property rights must be considered as human rights at all times, whether they are so recognized legally or not.

76. Indigenous organizations should attempt to present their viewpoints publicly on major developments at an early stage and be prepared to work with Governments, multilateral financing institutions and private companies to find convenient solutions to contentious issues. Non-governmental organizations are urged to support such efforts, particularly as regards the possibility of preparing and promoting alternative development strategies and projects within a human rights-centred approach.

77. Contentious issues between indigenous peoples, Governments and business enterprises arising in the course of the implementation of major development projects should at all times be considered within the framework of democratic governance, open dialogue and negotiations, and should never be handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate the human rights of indigenous communities.

78. International organizations such as development banks and United Nations agencies in the field should at all times be ready to support indigenous peoples and communities in making human rights the primary focus of development cooperation involving major development projects in indigenous areas.

79. The Special Rapporteur took note of a recommendation of the Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, which requested OHCHR to continue to act as a facilitator for dialogue among indigenous peoples, Governments, and the private sector with regard to the issue of indigenous peoples' human rights and the private sector.⁷⁹ The Special Rapporteur endorses this recommendation, and further encourages OHCHR to organize a second workshop on the topic along with appropriate human rights training for representatives of companies on international indigenous human rights.⁸⁰

Notes

- ¹ Jocelyn Carino, Overview paper presented to the Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, (Geneva, 5-7 December 2001), p. 4.
- ² CSD Indigenous Peoples' Caucus, "Dialogue Paper by Indigenous Peoples", in *Indigenous Affairs* 4/01, IWGIA, p. 14.
- ³ World Commission on *Dams, Dams and Development: A New Framework for Decision-Making*. The Report of the World Commission on Dams, 2000. (See chapter 4, "People and Large Dams-Social Performance", particularly the section on Indigenous Peoples.) Available at www.dams.org.
- ⁴ Report of the twentieth session of WGIP (E/CN.4/Sub.2/2002/24), para. 26.
- ⁵ See article 30 of the draft United Nations declaration on the rights of indigenous peoples, Sub-Commission on the Promotion and Protection of Human Rights resolution 1994/45, annex.
- ⁶ Report of the Workshop on Indigenous Peoples, Private Sector Natural Resources, Energy and Mining Companies and Human Rights, (E/CN.4/Sub.2/AC.4/2002/3), Conclusions, para. 4.
- ⁷ Paul Kaufmann, *Wik, Mining and Aborigines*, Allen and Unwin, pp. 15-16. The 1987 amendment requires an aboriginal consent to *exploration* which is now interpreted as also meaning consent to subsequent mining operations.
- ⁸ Carino, op. cit., pp. 11-12.
- ⁹ This case was brought by the Embera Katio people with regard to the Urra dam projects. See *infra*, paras. 37-43.
- ¹⁰ Report of the eighteenth session of WGIP (E/CN.4/Sub.2/2000/24), para. 165.
- ¹¹ CERD, concluding observations: Australia (CERD/C/304/Add.101 of 19 April 2000).
- ¹² "No native title over minerals or petroleum", <http://www.smh.com.au/articles/2002/08/08/1028157983122.html>.
- ¹³ E/CN.4/Sub.2/2000/24, op. cit., para. 126.
- ¹⁴ Statement of the Loodoariak Community Land and Development Programme in Kenya at the nineteenth session of WGIP (monograph on file). The speaker stated that this led to the displacement of whole communities and the destruction of the environment, their traditional economies and other practices which had sustained them since time immemorial.
- ¹⁵ E/CN.4/Sub.2/AC.4/2002/3, op. cit., para. 104.

¹⁶ See Report of the nineteenth session of WGIP (E/CN.4/Sub.2/2001/17), paras. 54-61. In November 2002 the Special Rapporteur visited the Nibutani Dam site and interviewed members of the Ainu community, who confirmed the report.

¹⁷ Forest Peoples Programme, *Failure of the Republic of Suriname to Recognize, Guarantee and Respect the Rights of Indigenous and Tribal Peoples to Lands, Territories and Resources, to Cultural Integrity and to be Free from Racial Discrimination*. Formal communication pursuant to Commission on Human Rights resolution 2001/57 (received: August 2002).

¹⁸ CSD Indigenous Peoples' Caucus, *op. cit.*, pp. 15-16.

¹⁹ E/CN.4/Sub.2/2001/17, *op. cit.*, para. 57.

²⁰ Statement by the representative of the Santhal Advasi People at the nineteenth session of WGIP (monograph on file).

²¹ Chumpol Maniratanavongsiri, "The Karen Response to Thai Conversation Policies", in CSD Indigenous Peoples' Caucus, *op. cit.*, p. 60.

²² E/CN.4/Sub.2/2001/17, *op. cit.*, paras. 60-61.

²³ E/CN.4/Sub.2/2000/24, *op. cit.*, para. 74.

²⁴ Statement of the Keiyo Indigenous Peoples of Kenya at the nineteenth session of WGIP (monograph on file).

²⁵ Press Release III of the negotiating team, the mandated representatives of the residents of the Central Kalahari Game Reserve (CKGR), April 2002. See also note No. 01/02/Gen/E/15 II (38) G2 of the Permanent Mission of Botswana to the United Nations Office at Geneva which acknowledges "that Basarwa were not forced but persuaded to relocate ... and given the fact that it was difficult for Government to maintain the limited facilities in the Game Reserve, Government found it prudent to terminate such services". Cf. the Special Rapporteur's report to the Commission on Human Rights in 2002 (E/CN.4/2002/97/Add.1, para. 13).

²⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (art. 11 (1) of the Covenant): forced evictions (E/C.12/1997/4). The Committee observed that "Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games."

²⁷ *Ibid.*

- ²⁸ Statement by Tana Uma Amee at the nineteenth session of WGIP (monograph on file).
- ²⁹ E/CN.4/Sub.2/AC.4/2002/3, op. cit., para. 60. Similar incidents were reported directly to the Special Rapporteur during his official mission to the Philippines. See (E/CN.4/2003/90/Add.3).
- ³⁰ Robert K. Hitchcock, "Decentralization, Natural Resource Management and Community-Based Conservation Institutions in Southern Africa" *Indigenous Affairs* 4/01, IWGIA, p. 39,
- ³¹ Cultural Survival Indigenous News, Headlines and Spotlights, 9 August 2002.
- ³² National Commission of Human Rights, Recommendation No. 08/2002, 30 April 2002.
- ³³ Detailed reports on these evictions appeared in the Mexican media in December 2002.
- ³⁴ For reports on Australian aborigines see The second annual report of the Aboriginal and Torres Strait Islander Social Justice Commissioner of Australia, 1994, p. 106. On the relation between uranium mining and the health of local Adivasi children in Jharkhand, India, see "The Miner's Canary: Indigenous Peoples and Sustainable Development in the Commonwealth", Commonwealth Policy Studies Unit, p.32.
- ³⁵ E/CN.4/Sub.2/2000/24, op. cit., paras. 29-30.
- ³⁶ *Ibid.*, para. 31.
- ³⁷ "The Proposed Construction of a Hydropower Scheme on the Lower Cuene River", *Indigenous Affairs* 2/98, IWGIA, p. 6. It is estimated that "the inundation of the Cuene basin at Epupa would destroy the riverine forests. It would result in loss of an annual crop of hundreds of tons of the palm nuts and would in addition bring an end to gardening in the fertile soils along the riverbank."
- ³⁸ E/CN.4/Sub.2/2000/24, op. cit., para. 31 and E/CN.4/Sub.2/2001/17, op. cit., paras. 87 and 106.
- ³⁹ The Special Rapporteur visited one such mining site and witnessed its environmental impact.
- ⁴⁰ E/CN.4/Sub.2/2001/17, op. cit., para. 39.
- ⁴¹ *Ibid.*, para. 47.
- ⁴² *Ibid.*, para. 32.
- ⁴³ *Ibid.*, paras. 35-37.
- ⁴⁴ Information provided to the Special Rapporteur by the Asociación de Desarrollo Integral del Territorio Indígena de Rey Curré.

⁴⁵ *Ley Indígena*, No. 19.253 [1993] and *Ley de Medio Ambiente* No. 19.300.

⁴⁶ Information on the Ralco project was provided by the Government of Chile in response to the Special Rapporteur's request, and by Alvaro Bello M. especially for this report. For the assessment studies and the World Bank's involvement see:

<http://new.aaanet.org/committees/cfhr/rptpehuenc.htm>; <http://www.ted-downing.com/>;
<http://bicusa.org>; www.mapuche-nation.org.

⁴⁷ Sentence T-652/98. The absence of a formal consultation process on the project is, according to the Court, a violation of the right to participation, of the right to due process, and of the principle of the multicultural character of the Colombian nation.

⁴⁸ *Acta de acuerdos entre el Gobierno Nacional, la empresa Urra S.A. y los Cabildos Mayores de Rio Verde y Río Sinú, y Comunidad de Seguido*. Ministerio de Medio Ambiente, Bogotá, 25 April 2000.

⁴⁹ “*Incumplimiento de la responsabilidad del Estado frente a la desaparición forzada de Kimy Domico Pernia*”, Comisión Colombiana de Juristas, 12 June 2001.

⁵⁰ Office of the High Commissioner for Human Rights in Colombia, press release, 17 October 2002.

⁵¹ “This is the main reason for the present conflicts with the Government. The following cases can be mentioned as examples: the U'wa and the oil exploitation by Oxy; the Emberá-Katío and the construction of the Urrá hydroelectric plant; the Wayuú and coal mining; the Pijao and the construction of the dam in Saldaña; the Chamí and the logging by Smurffit; the Inga, Kofane and Siona and the oil drilling and construction of a road. Acute situations are predicted in the case of the Sikuaní for the channelling of the Meta River and the African palm plantation project, as well as in the case of the Emberá and the construction of the Atrato-Truandó canal.” Response to Special Rapporteur's request for information provided by ONIC, 9 July 2002.

⁵² John R Wood, “India's Narmada River Dams: Sardar Sarovar under Siege” in *Asian Survey*, vol. XXXII, No. 10, October 1993, p. 968.

⁵³ Amrita Patwardhan et al., “Dams and Tribal People in India”, paper contributed to the World Commission on Dams, prepared for thematic review 1.2, 2000, p. 13.

⁵⁴ Wood, op. cit., p. 978.

⁵⁵ Patrick McCully, “Sardar Sarovar Project: An Overview”, May 1994, reproduced at www.narmada.org/sardar-sarovar/irnoverview940525.html.

⁵⁶ Patwardhan, op. cit., p. 11.

⁵⁷ Ibid., p. 12.

⁵⁸ See *ibid.* and McCully, *op. cit.*

⁵⁹ Patwardhan, *op. cit.*, p. 9; see in particular the section by Chaube in Patwardhan.

⁶⁰ *Ibid.*, p. 19.

⁶¹ *Ibid.*, p. 22.

⁶² *Ibid.*, pp. 7-8.

⁶³ NCA was established by the Narmada Water Disputes Tribunal to oversee the implementation of the dam. NCA is comprised of government officials from Gujarat, Maharashtra, Madhya Pradesh and Rajasthan.

⁶⁴ www.narmada.org/sardarsarovar.html.

⁶⁵ Letter dated 22 November from Joseph Schechla, Coordinator, Housing and Land Rights Network, Habitat International Coalition, to the Primer Minister of India, 22 November 2002.

⁶⁶ The information on the Sardar Sarovar project is taken from numerous documents on file at OHCHR and, among other sources, at www.narmada.org.

⁶⁷ Information on the San Roque Multipurpose Dam Project was provided in a report submitted to the Special Rapporteur by Ápit Takó, Alliance of Peasants in the Cordillera Homeland, through Tebtebba, the Indigenous Peoples' International Centre for Policy Research and Education, October 2002.

⁶⁸ World Commission on Dams (2000), *Dams and Development. A New Framework for Decision-Making. The Report of the World Commission on Dams.* (See chapter 4, "People and Large Dams-Social Performance, particularly the section on Indigenous Peoples.") Available on www.dams.org.

⁶⁹ Rio Declaration on Environment and Development, principle 22.

⁷⁰ Johannesburg Declaration on Sustainable Development, para. 25. Available at www.johannesburgsummit.org.

⁷¹ Letter "To the Presidents Summit of the Member Countries of the Plan Puebla Panama (PPP), Mérida, Yucatan, Mexico", prepared by the "Workshop Seminar: Analysis of the Indigenous Peoples of the Plan Puebla Panama", held in Belize on 5 and 6 June 2002, sponsored by the Inter-American Development Bank and the Central American Indigenous Council. See <http://www.bicusa.org/lac/PPP.htm>; www.iadb.org/ppp/.

⁷² Congreso de los Pueblos Indígenas de la Región del Istmo, Tehuantepec, Oaxaca, Mexico, 16 and 17 May 2002.

⁷³ See E/CN.4/Sub.2/AC.4/2002/3, op. cit.

⁷⁴ Ibid.

⁷⁵ World Bank, Summary of Consultations with External Stakeholders regarding the World Bank Draft Indigenous Peoples Policy (Draft OP/BP 4.10), 18 April 2002 (updated July 8, 2002) p. 2. <http://www.worldbank.org/>.

⁷⁶ Ibid., pp. 4-7.

⁷⁷ In Mexico, in recent years, organized protest managed to stop the building of a dam to generate hydroelectric power, a private golf club and an international airport, all of which would have severely altered the conditions of living of local indigenous and peasant communities.

⁷⁸ One of the many complaints heard by the Special Rapporteur during his official mission to Guatemala in September 2002 was that despite constituting the demographic majority of the country, indigenous peoples were not in fact being considered as equal partners by the dominant sectors of the society.

⁷⁹ See E/CN.4/Sub.2/AC.4/2002/3, op cit., recommendation 7.

⁸⁰ The Special Rapporteur wishes to express his gratitude to El Colegio de México, which allowed him to take time off from his academic duties to attend to the Commission's mandate. He is particularly indebted to the many indigenous organizations that provided him with information and documentation, and also to the Governments of Guatemala and the Philippines who hosted his official missions to their countries.
