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INDIGENOUS ISSUES

Human rights and indigenous issues

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

* This document is submitted late so as to include the most up-to-date information possible.

Summary

Since the submission of his previous report to the Commission on Human Rights, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has undertaken official country missions to South Africa (28 July to 8 August 2005) and New Zealand (2-11 November 2005), to observe the situation of the indigenous peoples. The mission reports are contained in documents E/CN.4/2006/78/Add.2 and 3 respectively.

The present report focuses on the gap in implementation between, on the one hand, the advances made by many countries in their domestic legislation, which recognizes indigenous peoples and their rights, and, on the other, the daily reality in which many obstacles to the effective enforcement of those legislative measures are encountered. The report describes some of the main obstacles and the measures taken to overcome them, illustrating the problem with examples from various regions.

The report also provides information on communications and replies from Governments relating to allegations of human rights violations that were received and transmitted between 1 January and 31 December 2005, as well as information on follow-up to the missions undertaken by the Special Rapporteur. At the Commission's request, the Special Rapporteur is also transmitting a progress report on the activities under way on best practices carried out to implement the recommendations contained in his reports (E/CN.4/2006/78/Add.4).

Also attached are the conclusions and recommendations of the International Seminars on Constitutional Reforms, Legislation and Implementation of Laws regarding the Rights of Indigenous Peoples, held in Geneva at the headquarters of the Inter-Parliamentary Union on 25 and 26 July 2005 and in Tucson, Arizona, at the College of Law of the University of Arizona from 12 to 14 October 2005 (E/CN.4/2006/78/Add.5) in support of the Special Rapporteur's work in this area.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 4	4
I. INDIGENOUS PEOPLES: IMPLEMENTATION OF LEGISLATION AND CASE LAW ON PROTECTION AND PROMOTION OF THEIR HUMAN RIGHTS	5 - 79	5
A. Overview of existing legislation on promotion and protection of the human rights of indigenous peoples	7 - 13	5
B. Analysis of the implementation of existing legislation: advances and obstacles	14 - 79	6
II. CONCLUSIONS	80 - 92	20
III. RECOMMENDATIONS	93 - 114	22

Introduction

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in its resolution 2001/57 and extended for a further period of three years in 2004. In 2005 the Special Rapporteur submitted his fourth report to the Commission (E/CN.4/2005/88) and his second report to the General Assembly (A/60/238). During the year he undertook official missions to South Africa from 28 July to 8 August and to New Zealand from 2 to 11 November 2005. The relevant mission reports are annexed hereto (E/CN.4/2006/78/Add.2 and 3).

2. The Special Rapporteur is now pleased to transmit to the Commission his fifth annual thematic report, which deals with the topics of constitutional reform, legislation and implementation of laws regarding the promotion and protection of the rights of indigenous peoples and their effective application, as well as the implementation of the various international standards and decisions of the relevant treaty bodies.

3. Pursuant to resolution 2005/51, the Special Rapporteur submits to the Commission a progress report on the study regarding best practices carried out to implement the recommendations contained in his reports (E/CN.4/2006/78/Add.4). He attended various meetings with governmental authorities in connection with the project of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to carry out the Special Rapporteur's recommendations in Mexico and Guatemala. He also liaised with the various special human rights mechanisms and agencies of the United Nations. As part of the follow-up to his visit to Colombia in 2004, he exchanged information with the Special Adviser of the Secretary-General on the Prevention of Genocide in connection with the extremely vulnerable situation of some small indigenous communities in the Amazon region who may be on the verge of extinction as a result of the violence there (see E/CN.4/2005/88/Add.2). Additional information concerning these reports has been sought from the Colombian authorities, and the Special Rapporteur is confident of the Government's cooperation in clarifying the situation and averting possible irremediable outcomes. In preparing this report he received support from Governments, United Nations bodies and programmes and many organizations of indigenous peoples, human rights associations, scholars and researchers and professionals who provided valuable information on legislative, political, judicial and administrative topics relating to the rights of indigenous peoples.

4. Pursuant to Commission resolution 2005/51, OHCHR organized two international expert seminars on the subject, the first with the Inter-Parliamentary Union and the second with the University of Arizona. Both seminars provided excellent inputs to this report. The conclusions and recommendations of the two seminars are transmitted to the Commission for information (E/CN.4/2006/78/Add.5). The Special Rapporteur is grateful for the collaboration of the International Labour Standards Department of the International Labour Organization (ILO), of Anders B. Johnsson, Secretary-General of the Inter-Parliamentary Union, and his colleagues, of James Anaya and his team at the University of Arizona, of the Indigenous and Minorities Team of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and of the European School of Advanced Studies in Cooperation and Development of the University of Pavia (Italy) for the support he received in order to fulfil his mandate. The Special Rapporteur is

also grateful for the collaboration of the Inter-American Institute of Human Rights, the members of the Law and Society portal Alertanet and others who cooperated with him. The Special Rapporteur has taken note of the recommendations addressed to him by the Permanent Forum on Indigenous Issues at its fourth session and is taking them into account in his work.

I. INDIGENOUS PEOPLES: IMPLEMENTATION OF LEGISLATION AND CASE LAW ON PROTECTION AND PROMOTION OF THEIR HUMAN RIGHTS

5. During the first International Decade of the World's Indigenous People (1994-2004) many countries introduced legislative processes and constitutional reforms in recognition of indigenous peoples and their rights, including recognition of languages, cultures and traditions, the need for prior and informed consultation, regulation of access to natural resources and land or, in some cases, recognition of autonomy and self-government. Despite those advances, there is still an "implementation gap" between legislation and day-to-day reality; enforcement and observance of the law are beset by myriad obstacles and problems. The present report discusses some of them and the measures taken to overcome them, illustrating the situation with some examples from various regions of the world.

6. The Special Rapporteur trusts that the factors highlighted in his report may serve as a guideline for Governments in their commitment to more effective implementation of existing norms on promotion and protection of the rights of indigenous peoples.

A. Overview of existing legislation on promotion and protection of the human rights of indigenous peoples

7. On the American continent, where for a long time indigenous peoples were not recognized as specific groups of the national population, numerous constitutional reforms relating to indigenous peoples have been carried out or new special laws enacted in recent decades. Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela have undertaken constitutional reforms in which some rights of indigenous peoples have been recognized. In Canada the 1982 Constitution Act recognizes aboriginal rights, but the other countries of the American region do not recognize the rights of indigenous peoples in their constitutions.

8. These legislative reforms embrace many issues, such as land ownership and territorial rights, use of one's own language, education and culture and, in some cases, autonomy and self-government, as well as customary law (sometimes referred to as "usages and customs"). During the last decade of the twentieth century, all the Andean countries with the exception of Chile amended their constitutions, recognized legal pluralism and ratified International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples: Colombia (1991), Peru (1993), Bolivia (1994), Ecuador (1998) and Venezuela (1999). Chile has a 1993 Act on the subject, and a constitutional reform on the matter is pending (see E/CN.4/2004/80/Add.3). In similar language, those constitutions recognized the indigenous and *campesino* authorities' jurisdictional power (to administer justice or settle disputes), according to their customary law or customs.

9. The new pluralist constitutionalism underscores the recognition of indigenous peoples as political subjects, not merely as objects of policies dictated by others; a change in the identity of the nation State, that is now recognized as multi-ethnic and multicultural; the individual and collective right to one's own identity; and the recognition of legal pluralism. However, institutional implementation, legislative and case-law development and the very appropriation of reforms by indigenous peoples and *campesinos* themselves have been unequal in the region.

10. Legislation on the subject has also been enacted in other parts of the world. The 1999 Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation is a first step towards that country's recognition of indigenous peoples' rights. This Law provides judicial protection for the rights of these peoples and protects the indigenous environment, lifestyle, economy and traditional cultures and languages. In 2001 new legislation established the regulation on territories traditionally administered by the indigenous peoples.

11. Recognition of indigenous peoples has been promoted in some Asian countries, although the concept is not universally accepted. In Cambodia the law recognizes various rights relating to land and to forest management. As long ago as 1954 Malaysia adopted the Aboriginal Peoples Act for the protection of indigenous groups known collectively as Orang Asli. The Indigenous Peoples Rights Act (IPRA) of 1997 in the Philippines recognizes various rights of those peoples (E/CN.4/2003/90/Add.3).

12. On the African continent, only a handful of States have recognized the existence of indigenous populations on their territory. Some legislation makes mention of these communities, but what is mostly sought is a single national identity rather than recognition of the specific identities of indigenous peoples.

13. The Ethiopian Constitution mentions the unconditional right to self-determination of each nation, nationality and people in Ethiopia; the Cameroonian and Ugandan Constitutions protect minorities and the rights of indigenous people. In Algeria, the 1996 Constitution recognizes the Amazigh (Berber) dimension of Algerian culture, and the Constitution of Namibia recognizes the Nama language. Although indigenous peoples are not officially recognized as such in South Africa, the 1996 Constitution includes reference to the Khoe and San people and protects the use of indigenous languages (see E/CN.4/2006/78/Add.2).

B. Analysis of the implementation of existing legislation: advances and obstacles

14. Despite these legislative measures and institutional reforms, there still exists an "implementation gap" between legislation and day-to-day reality. Full implementation of the legislative advances faces many obstacles and problems, against which various measures have been taken.

Indigenous participation and representation in legislative bodies

15. Indigenous peoples succeed in improving their civic rights insofar as they participate democratically in the political process and the affairs of State. In recent years, owing to some extent to the spaces opened up by new legislation, social organizations and movements of

indigenous people have increasingly participated in electoral politics, in accordance with the circumstances in each country. For example, in the September 2005 elections the Maori Party won four seats in the New Zealand Parliament. The Pachakutik indigenous party participated for a few months in the Government of Ecuador. And in December 2005, for the first time in its history, Bolivia elected an Aymara president by a large majority.

16. However, the level of participation of indigenous people in their countries' political life continues to be low. Despite their presence in some national parliaments and provincial legislatures, the indigenous peoples' concerns do not find adequate expression in the work of the legislative bodies, partly because of their marginalization from the electoral processes. Hence, in some cases measures have been taken to ensure the representation of indigenous people in legislative bodies through representation quotas (for instance in Colombia, Venezuela and New Zealand).

17. Being in the minority, indigenous people often have to negotiate with other interest groups, which means that their own claims are diluted in parliamentary activities and they cannot always sit on all relevant parliamentary committees. This situation is described as one of the main obstacles to indigenous peoples' agendas being taken into account in legislative processes.

Inconsistency between laws and institutional impediments

18. It has been pointed out that in many countries there is a gap between international standards and principles regarding the human rights of indigenous people and domestic legislation. International standards, even when ratified, do not always and automatically become part of domestic law. They are sometimes ignored by public officials as well as in the case law of the courts. Another problem reported is the lack of consistency between different laws, such as those relating to mining or natural resources management, and indigenous or human rights legislation.

19. The problem of inconsistency among laws, the failure to enforce those laws, and unintentional or intentional disregard of international standards is manifest at various levels and in different forms; for example, the lack of training of specialized personnel because of a lack of resources or the absence of secondary laws or regulations, depriving the public administration of the legal and practical means needed to comply with general legislation or international standards.

20. In Ecuador, faced with these lacunae, the indigenous peoples have opted for self-advancement in the matter of justice, via their own familiar bodies, the traditional *cabildos* and community assemblies. However, there are instances of conflicts of jurisdiction between ordinary justice and the indigenous jurisdiction, which are adjudicated by the Supreme Court. There are typical cases of lack of consistency between indigenous legislation and various sectoral laws (on mining, water, fishing, forests, etc.), whose application could seriously affect the rights of indigenous communities in, for example, Chile and the Philippines. A case in point is the Diaguita community of Huasco Alto in Chile, whose territorial rights are threatened by a mining project involving the removal of glaciers that feed the waters of the river they use for farming purposes. However, one positive measure was a Supreme Court ruling (2005) in favour of the indigenous Atacameño community of Toconce, recognizing that community's rights to ancestral waters and rejecting the claims of a private company.

Legislation and case law

21. On occasion the new laws on indigenous issues have the effect of limiting the claims of indigenous people instead of promoting their rights. The Russian Federation recently adopted new laws on the preservation and promotion of the cultural rights of the small peoples of northern Russia, Siberia and the far-eastern area of the country, but did not pay the same attention to the rights of the indigenous peoples to land and natural resources, which are the sources of their main problems. Russia also has laws establishing autonomous regimes for the indigenous peoples, but they have met with resistance from some local and regional Governments, and as a result have not been effectively enforced.

22. In recent years some amendments made to existing laws have in fact curtailed indigenous rights, sometimes in the name of the general interest. In Australia the Native Title Amendment Act 1998 extinguishes aboriginal land ownership and limits the rights of aborigines to negotiate certain forms of land use in future. The Committee on the Elimination of Racial Discrimination has repeatedly expressed its concern about this Act. The recent New Zealand Foreshore and Seabed Act (2004) declares areas falling into that category and traditionally belonging to native Maoris to be State property, thereby curtailing the Maoris' ancestral rights (see E/CN.4/2006/78/Add.3).

23. In some cases there have been amendments to laws on indigenous rights that negate previous advances. In 2004 an amendment to a federal law in Russia limited the indigenous rights that had been legislated only four years earlier. Previously guaranteed free social services for the indigenous communities were withdrawn, and in an amendment to another law on local communes the State withdrew its economic support and limited local decision-making powers.

24. Cambodia's Land Law displays a paternalistic attitude in granting rights to the indigenous peoples instead of recognizing them. In Taiwan the 2000 constitutional reform reaffirms the policy of cultural pluralism and commits the State to preserving and fostering the development of indigenous languages and cultures and promoting the political participation of aborigines. Consideration is being given to the idea of establishing autonomous areas for the 12 recognized indigenous peoples.

25. Some countries have established public institutions for reviewing their indigenous legislation and its implementation, such as the Philippines National Commission on Indigenous Peoples and the Ethnic Minorities Committee in Viet Nam. There are frequent claims that those institutions are not representative of their communities and peoples, being, on the contrary, made up of Government officials. In the Philippines they are appointed by the Presidency; in Australia the Aboriginal and Torres Strait Islander Commission was abolished and replaced in 2004 by the National Indigenous Council, a Government-appointed consultative body.

Public administration problems

26. One of the main obstacles to the enforcement of indigenous rights legislation arises precisely from the institutional structures of the public administration, which is often riddled with bureaucratic inertia, rigid regulatory practice, lack of flexibility and creativity, vertical authoritarianism in decision-making, and absence of popular participation. To these one might add the difficulty of setting up efficient reporting and results-assessment mechanisms, not to

mention corrupt practices. The foregoing is not a criticism of any particular Government, but reflects the complaints and reports that have reached the Special Rapporteur from numerous indigenous sources on problems relating to the consistency of the various levels of public administration with the requirements of international and domestic human rights legislation.

27. The Constitution of Venezuela (1999) creates various public organizations responsible for the effective promotion and guarantee of the rights of indigenous peoples, such as the right to collective lands, special indigenous authority in the administration of justice, and indigenous peoples' rights to political participation and consultation. However, the Law on Indigenous Peoples and Communities, which is supposed to regulate the Constitution's achievements, has still not been approved. So far it is the courts of justice, through a few significant rulings, that have given practical effect to those achievements.

28. The Constitution of Ecuador recognizes the multi-ethnicity and multiculturalism of the State, as well as legal pluralism, collective rights including culture, language, territory, forms of organization, indigenous authorities and the indigenous administration of justice. The organic law needed to regulate the enjoyment and limitation of the exercise of those rights has so far not been adopted.

29. Chile's Indigenous Peoples Act recognizes various rights of indigenous peoples. In 1991 and 2005 the Executive referred to the National Congress for its consideration a constitutional reform bill on indigenous peoples, which has still not been approved. At the same time, the Indigenous Peoples Act established the National Indigenous Development Corporation (CONADI), which originally included indigenous representatives elected by the indigenous peoples, but whose members are currently appointed by the Government. The Land and Water Fund was created to purchase land through subsidies or in case of disputes. Regarding cultural rights, the Act provides for the development of a bilingual intercultural education system in areas with a dense indigenous population. There have been reports of delays and obstacles in these two sectors that have limited enforcement of the law (see E/CN.4/2004/80/Add.3).

30. In Bolivia the Political Constitution recognizes the country's multi-ethnic and multicultural make-up. The indigenous peoples' social, economic and cultural rights are also recognized, respected and protected, especially rights relating to their original community lands and to the indigenous communities' administrative and judicial functions. It is felt, however, that many of these rights have had an effect only at the normative formal level and have not had the expected impact on indigenous communities and peoples.

31. In Colombia the 1991 Political Constitution establishes recognition of the traditional reserves of indigenous peoples and respect for their cultures, languages and traditions, while land is granted to the reserves under the law. It also establishes a special indigenous jurisdiction in which indigenous law is recognized and exists side by side with the ordinary jurisdiction of positive law. The Constitutional Court has had to resolve inconsistencies between the two jurisdictions (see E/CN.4/2005/88/Add.2).

32. Legislative advances have also been achieved in other countries of the region. In Guatemala the Constitution recognizes the customs, forms of social organization, and languages of the Maya indigenous groups. It also recognizes their forms of communal or collective land ownership. But the organic law that should give effect to this set of provisions has not been

adopted thus far. The Peace Agreement on indigenous rights and culture signed in 1995 should have been incorporated into the Constitution, but was not approved in the 1999 referendum; its implementation was therefore suspended, with adverse consequences for the rights of Guatemala's indigenous peoples (see E/CN.4/2003/90/Add.2).

33. A particularly complex problem arises when different legal provisions relating to indigenous peoples have not been properly interpreted by various State bodies or when constitutional principles on the protection of human rights are gradually diluted through subsidiary legal standards. An illustration of this dilemma can be found in Peru, where Decree Law No. 22,175 governs the territorial reserves of the indigenous peoples "in voluntary isolation or in initial contact". While all five existing territorial reserves have been demarcated, they have been subject to mining, hydrocarbon or forestry concessions that impinge on some of the indigenous peoples' individual and collective rights. The State has still not defined the policy, legal framework or institutional arrangements needed to protect the rights of the indigenous peoples of Peru's Amazon region. There is evidence of the damage caused to these peoples by various social and economic actors that come into permanent contact with them.

34. In 2005 the alarming situation of the indigenous peoples of the Amazon region of Peru, also affected by the gas pipeline that runs across the region, led to the creation of a Special Commission that drew up a bill on the protection of indigenous peoples in voluntary isolation or initial contact. But Congress formulated a different bill limiting and dismantling the special regime for protection of these peoples proposed by the Special Commission. Should this law be passed, it would leave the indigenous communities in of those reserves unprotected.

35. In Mexico implementation of the provision of the constitutional reform on indigenous issues adopted in 2001 is still pending; it neither meets the demands of the indigenous peoples nor complies with the Government commitments agreed upon in the 1996 peace negotiations (see E/CN.4/2004/80/Add.2). Although various States of the Republic subsequently adopted their own legislative reforms on indigenous issues, their implementation has not yielded significant practical results for the indigenous peoples. The Special Rapporteur recommended in his report that the debate on constitutional reform on indigenous issues should be reopened at the national level.

36. One of the most important topics that call for constant attention is the role of the courts in the interpretation and application of domestic legislation and international human rights standards in matters relating to the human rights of indigenous peoples. Significant progress has been achieved in some countries, such as Canada, Colombia and Venezuela, but in others case law on indigenous rights appears to be at a standstill. There is a need for greater and ongoing training of judges and other judicial personnel on this subject. It is important to establish mechanisms for the effective recognition of legal pluralism; in other words, so that positive law and indigenous law can exist side by side. In countries based on English common law, in which case law is built up case by case, rulings and decisions very favourable to the indigenous communities have been handed down in some courts, while in others discriminatory attitudes are maintained (for example, the United States of America, Canada, Australia and New Zealand).

37. There are often difficulties regarding the effective recognition of indigenous law, even in those countries where legal pluralism is officially recognized. There are reports of cases in which national courts have overturned rulings previously handed down by the indigenous authorities. Even when the courts find in favour of the rights of a given indigenous community, the Executive and the Legislature may fail to take the measures needed to implement or reinforce these advances, obliging the interested parties to appeal again to the courts, at considerable cost in terms of money and time they can often ill afford.

38. In the Canadian province of British Columbia, the Government refused to recognize aboriginal land titles. The courts ruled, however, that the original titles had not been extinguished. After years of negotiation, a law on the subject, the Treaty Commission Act, was adopted. One of the indigenous groups involved complains that British Columbia is not negotiating in good faith when it places various obstacles in the way of this community's exercise of its rights and recognizes a mere 8 per cent of the claimed traditional territory. The community complains that the negotiations are useless when it comes to compensation for prior violations committed against it.

39. Considerable obstacles are also encountered in cases in which, despite a favourable ruling by the courts of justice in favour of the rights of a given indigenous community, tribe or people, the Executive and the Legislature do not take the measures needed to implement or reinforce those advances, obliging the interested parties to appeal again to the courts, at considerable cost in terms of money and time they can often ill afford.

40. Important constitutional changes have not been accompanied by the necessary updating of criminal law. In Moyabamba (Peru), a court imprisoned members of *campesino* patrols (community groups organized to prevent crime and maintain law and order in indigenous communities) on charges of seizing and usurping authority, because they had detained, in exercise of their recognized powers, four persons accused of major crimes. However, the Supreme Court of Justice, recognizing the special jurisdiction established in the Constitution, acquitted them. Over a decade after the 1993 constitutional reform, the Supreme Court is opening the way for what may be the beginning of pluralist case law in the country. Some detractors accuse the *campesino* patrols of human rights violations, but these cases demonstrate the lack of intercultural procedural mechanisms for settling alleged excesses or possible violation of individual rights by the special indigenous community or patrol jurisdiction.

41. In the State of Guerrero (Mexico) indigenous communities created their own community police that came up against problems similar to those of the Peruvian patrols, but, unlike the latter, the community police has not been formally recognized in law. Nevertheless, it bases its work on the Federal Political Constitution and on ILO Convention No. 169. In some Indian communities in Chiapas similar institutions are at work, establishing a de facto special jurisdiction, although they are not yet recognized in national legislation (see E/CN.4/2004/80/Add.2).

42. The Constitutional Court in Colombia has constructively interpreted the Constitution regarding indigenous rights. Over the past few years the Court has handed down numerous rulings favourable to the rights of indigenous peoples, thereby helping to consolidate the ideal of legal pluralism and the special jurisdiction of the indigenous peoples.

43. In the Raposa Serra do Sol Indigenous Reserve in Brazil, which has been demarcated and registered for its indigenous peoples after many years of negotiations and formalities, acts that violate the rights of these communities continue to be performed, such as encouragement of immigration of people from other areas, concessions of land to mining companies, urban and farming settlements, and projects for hydroelectric works and a military base. Although the Ministry of Justice awarded definitive ownership to the indigenous people, contentious cases continue to be heard by the Superior Tribunal of Justice to the detriment of their rights.

44. In some countries the State has sometimes confronted the social struggles, claims and protests of the indigenous organizations with the implementation of terrorist laws. The Special Rapporteur considers that when ordinary crimes are committed under the umbrella of these movements, ordinary laws are sufficient for the maintenance of law and order. He considers that the use of exceptional laws is not only counterproductive, but forms a pattern of human rights violations. The Special Rapporteur recommends, in the cases that have come to his attention, that these laws should not be used to criminalize social protest and the struggles of the indigenous peoples; they should preferably be repealed. He is pleased to see that in Chile the Mapuche leaders charged with conspiracy to commit a terrorist act, for which they had been tried in mid-2005, were acquitted (see E/CN.4/2006/78/Add.1).

45. In the Asian countries with legislation on indigenous peoples, not all laws have been fully implemented. Conflict of laws often results in disregard of indigenous rights. A two-track system of land rights for indigenous people and for non-indigenous people creates confusion, which in turn leads to more abuses against indigenous persons. For instance, even if a land regulation gives priority to those with customary rights, in practice their claims are often ignored, and preference is given to other persons or enterprises.

46. In order fully to promote the protection and promotion of the rights of indigenous peoples, in some countries the institution of indigenous “ombudsman” or equivalent has been established. Or sometimes the office of the national ombudsman (where one exists) or equivalent (commissions, defenders’ offices and human rights attorneys) has a department or office devoted to these problems of the indigenous peoples. According to information received by the Special Rapporteur, these bodies often lack sufficient financial and human resources to tackle all the issues arising in their spheres, so that their response capacity is reduced. In addition to which a human rights ombudsman system generally occupies a secondary place in the national spectrum.

47. A comparative study by the Inter-American Institute of Human Rights shows that these bodies normally perform activities of investigation, mediation, proxy representation, and education. They sometimes propose legislative initiatives. As a general rule, they are institutionally fragile and not fully independent; their budgets are inadequate; their mandate is often not legally justified; they are not physically present in indigenous areas; they cannot investigate violations committed by private individuals; they lack qualified personnel; they do not maintain proper relations with indigenous organizations; and performance of their defence functions is poor. The study recommends institutional and legal strengthening, independence and civic support, stable and independent budgets, powers to investigate violations committed by

private individuals, greater compliance-monitoring functions, special bodies for the protection of indigenous peoples, sufficient financial resources, expansion of their geographical coverage to indigenous regions, recruitment of indigenous staff, strengthening of investigation, legislative initiative and powers of attorney, support for customary law and access to justice, and coordination with indigenous movements.

48. One of the recurrent topics in the conversations the Special Rapporteur had with many indigenous communities and organizations was the inadequacy of the consultation and participation mechanisms available to them. One example: in many cases of decisions taken by Governments to undertake development projects, explore or exploit natural resources, amend existing legislation or apply various administrative measures, the indigenous communities directly or indirectly affected often complain that they are not taken into account and that their rights are ignored or set aside. When consultation mechanisms do exist they are considered to be insufficiently participatory and transparent or ineffective in terms of results obtained.

49. Many complaints also refer to the lack, inadequacy or inefficiency of mechanisms for evaluating and monitoring the application of national and international human rights standards in the implementation of development projects and programmes or legislation that directly or indirectly affects indigenous peoples, their lands, territories, resources and environment, their sacred places and their cultural environment.

50. In this regard, there have been frequent reports of human rights violations committed sometimes by transnational corporations operating in indigenous regions. The Special Rapporteur has addressed some cases in his various reports to this Commission. It is not only politic for these corporations to comply to the letter with the pertinent national and international standards, but it is important for an international code of conduct to be drawn up and be made binding on such corporations when they operate in the indigenous regions.

Protection provided by the international system

51. The indigenous peoples have had increasing recourse to the protection mechanisms of the international system in order to claim their rights, thus establishing a new circle of good practices which brings together indigenous peoples, States and international mechanisms, but does not always obtain satisfactory results. The Special Rapporteur has reviewed several of these mechanisms and discusses some cases and significant results below.

52. The Human Rights Committee has frequently addressed problems besetting the indigenous peoples, pointing out that the right of self-determination of peoples, enshrined in article 1 of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights, protects the indigenous peoples' right to their own traditional lands and resources and that the unilateral extinction of those rights constitutes a violation of that article. Regarding article 27 of the International Covenant on Civil and Political Rights, the Committee has examined cases in the United States of America, Canada and Tahiti (France). The Committee on the Elimination of Racial Discrimination has also spoken out on the violations of the rights of indigenous peoples by unilateral actions on the part of the United States of America (case of the Western Shoshone) and of Maori rights violated by recent New Zealand legislation (see E/CN.4/2006/78/Add.3).

53. The Committee on the Elimination of Racial Discrimination, in its concluding observations on the sixteenth to eighteenth periodic reports of Argentina, expressed concern at the fact that Argentina has not enacted the necessary laws for implementing ILO Convention No. 169. In the light of its general recommendation No. XXIII, the Committee urges the State party fully to implement that Convention and to adopt, among other things, a general land tenure policy and effective legal procedures to recognize indigenous peoples' titles to land and to demarcate territorial boundaries. The Committee also regrets that, despite the State party's efforts, the right to a bilingual and intercultural education for indigenous peoples recognized by the Constitution is not fully respected in practice (see CERD/C/65/CO/1).

54. For its part, the Committee on the Rights of the Child expresses its concern about the limited access to education for children belonging to indigenous groups and the low relevance of the current bilingual educational programmes available for them in Peru. Prior to that, in 1999 the Committee on the Elimination of Racial Discrimination had noted with concern reports that interpreters are not in practice available to monolingual indigenous people and that legislation has not been translated into the indigenous languages.

55. In 2003 the Committee on Economic, Social and Cultural Rights expressed its concern at various violations of the human rights of indigenous peoples in Guatemala and the lack of progress made by the State party towards the effective implementation of the Peace Agreements of 1996, which have led to serious and persistent problems, such as violence at the national level, intimidation, corruption, impunity and lack of constitutional, fiscal, educational and agrarian reforms (see E/C.12/1/Add.93). The Human Rights Committee voiced similar concerns in 2001 (see CCPR/CO/72/GTM). The Committee against Torture, for its part, drew attention in 2000 to racial discrimination against indigenous persons in prisons and regretted the failure to implement its recommendations regarding the real situation of indigenous women, which showed the need for the Government to review its actions and improve them in favour of Guatemalan women. The Special Rapporteur duly reported these matters in the report on his mission to Guatemala (E/CN.4/2003/90/Add.2).

56. Regarding the topics mentioned and that of prior and informed consultation, one must not underestimate the importance of ILO Convention No. 169, which is gaining increasing recognition as an ineluctable international standard for the protection and promotion of these peoples' human rights and must be underscored, especially in its participatory aspect. Moreover, the provisions of this Convention are an excellent instrument of dialogue, which must be made the most of in this context.

57. The ILO Committee of Experts can receive communications from the indigenous peoples through employers' and workers' organizations and reports from Governments on specific situations relating to the fulfilment of the obligations assumed by the State under the Convention. Although only 17 member States have so far ratified this Convention, it is of decisive regional influence since it has been ratified by virtually all the countries of Latin America, is used as a framework for donor countries' cooperation activities and serves as an influential model in Asia and, more recently, in Africa. In parallel with the procedure involving the Committee of Experts, there is a complaints procedure involving the ILO Governing Body through which many complaints have been lodged. Indigenous peoples display a high level of participation in these mechanisms, attesting to the need for international monitoring bodies and to the topicality of the issues regulated by the Convention.

58. With regard to Argentina, there are reports of numerous problems in recognizing the indigenous peoples; they involve mainly the protracted, complicated procedures for acquiring legal personality, which is essential if peoples are to be able to defend their rights in court or before the public administration. It appears that the National Institute of Indigenous Affairs (INAI) recognizes a mere 15 per cent of 850 indigenous communities. There are reports that legal personality granted at the provincial level is worthless at the national level, barring the existence of special agreements, and that only 4 provinces out of the 20 with indigenous peoples have approved these agreements. There are also complaints about failure to consult the indigenous peoples in accordance with the 1994 constitutional reform. The Argentine Government maintains in its report that the legislation must be brought into line with the legal reality established by the 1994 constitutional reform relating to the regulation of land ownership rights where indigenous communities are concerned. Another pressing problem is that of land disputes and the inconsistency between the Civil Code's regulation of property rights and the rights enshrined in the Convention.

59. The Committee of Experts heard a complaint by the indigenous community of Olmos (Peru) of wrongful dispossession of ancestral lands, which the Government claimed as State property in order to implement a hydroelectric project without compensating the indigenous community in any way. The Committee decided that the Convention protected lands traditionally occupied by indigenous peoples, and requested the Government to take the appropriate measures to enable the community to assert effectively its claim to the lands in question. This case also illustrates the inconsistency between land rights protected by the Convention and the ownership system provided for in the Civil Code and in the legislation deriving therefrom. In another instance concerning the lands of a coastal indigenous community, the Committee found a national law to be inconsistent with Convention No. 169 in that it breached the communities' autonomy and forced them to divide their lands up into individual holdings.

60. ILO experience regarding indigenous and tribal peoples shows that when collectively owned indigenous lands are divided up and allotted to private individuals or third parties, the exercise of the indigenous communities' rights tends to be weakened and, by and large, they end up losing all or much of their lands with the resultant general reduction of the resources at their disposal when they hold their lands collectively.

61. Guatemala has achieved substantial progress with the adoption of a package of legal provisions that in theory make possible the recognition and institutionalization of indigenous peoples' participation and consultation. There have been reforms of the Law on Urban and Rural Development Councils, the Municipal Code, the Law on Indigenous Languages and the Anti-Discrimination Act. Also established were an Indigenous Affairs Commission in the Supreme Court, a Presidential Commission to Combat Discrimination and Racism against Indigenous Peoples in Guatemala, an Office for the Defence of Indigenous Peoples in the Office of the Human Rights Procurator, and other units in the public administration and budget allocations for institutions devoted to the defence of the rights of the indigenous peoples.

62. However, the Government notes that the measures taken have thus far been insufficient to eliminate inequality and the marginalization and exclusion of the indigenous peoples. The Government points out that although the groups in power explain that measures have been adopted for eliminating racism and exclusion on the basis of the alleged principle of equality,

this is not translated into laws or practice. The Committee noted that there is still no mechanism for consulting indigenous peoples, but the Government has expressed a determination to introduce one; the Special Rapporteur considers support for the Government and for indigenous organizations to be particularly important in this regard. The Council of Mayan Organizations of Guatemala claims that one of the reasons the indigenous peoples are not duly taken into account in the formulation and adoption of legislation and the execution of governmental policies affecting them is their low level of representation in the Legislature, with 12 per cent in the period 2000-2004 and 8 per cent in the period 2004-2008, which also goes for all State institutions and society in general.

63. Although the Government of Brazil reports that over 70 per cent of recognized indigenous lands have been demarcated and officially recognized as such, the Committee of Experts requests additional information on pending demarcation cases and points out that the Organization of American States has shown that Brazilian Government Decree 1775/1996 delays and prolongs the formalities for the legalization of indigenous lands.

64. Concern has been expressed over information furnished by the National Indian Foundation (FUNAI), a Brazilian governmental body, to the effect that the demarcation of indigenous lands has not impeded the processes of farming, mining, forestry, road construction, hydroelectric and other types of expansion which have been noted in recent years, affecting the integrity of indigenous lands and the right to exclusive enjoyment of the resources of the soil, rivers and lakes they contain. FUNAI claims that 85 per cent of indigenous lands - including those demarcated and entered in the registers - are subject to a wide variety of violations, such as the presence of *poseiros*, *garimpeiros*, loggers, settlement projects, opening up of roads, hydroelectric projects, power lines, railways, oil pipelines, *mineroductos* and gas pipelines. Encroachment on indigenous lands in the Amazon region is generally motivated by pressures on natural resources, especially timber and mineral resources, and results in the destruction of the environment, with serious consequences for the life of the communities.

65. According to official Brazilian statistics, in 1998 there were 7,203 proceedings under way for the granting of mining titles affecting 126 indigenous land holdings. With the increase in these cases, claims have been laid to a significant percentage of the subsoil of various indigenous land holdings. Most of these irregular mining titles had been awarded after completion of the proceedings for identification and demarcation of the indigenous lands to which they relate.

66. In addition, many comments by workers' organizations to the Committee of Experts and complaints to the ILO Governing Body concern the exploration and exploitation of natural resources (oil, forests, mines) - without consultation of the indigenous peoples, or through the use of improper procedures - in order to determine whether, and to what extent, these peoples' interests are prejudiced, before undertaking or authorizing any programme for prospecting or exploiting the resources existing on their lands, without compensation or a share in the profits. Other cases refer to development projects (without consultation or using improper procedures) to assess the social, spiritual, cultural and environmental impact that planned development activities may have on those peoples. The Committee pointed out that proper application of the mechanisms provided for in the Convention would help reduce social tension, increase cohesion and formulate inclusive development policies.

67. The Inter-American Court of Human Rights has on many occasions ruled in favour of indigenous communities under the American Convention on Human Rights (“Pact of San José, Costa Rica”) in, for instance, cases in Nicaragua, Belize, the United States of America, Paraguay and Suriname. However, the States concerned do not always fulfil their obligations, and these opinions and rulings sometimes remain without effect, which has serious consequences for protection of the human rights of indigenous peoples.

68. A landmark case is that of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001). The Court’s judgement concluded that the Government of Nicaragua had violated the rights of the indigenous community by awarding a logging concession within its traditional territory without the community’s consent and without heeding its requests for titling of its ancestral territory. To date, the Nicaraguan Government has not taken action that is remotely sufficient to give effect to the judgement and the decision on interim measures handed down by the Court. Four years after this judgement and almost three years after the 15-month deadline set by the Court expired, the lands of the Awas Tingni Community have still been neither demarcated nor titled, which constitutes a continuing violation of the rights of ownership recognized by the Court and other international human rights instruments and bodies. As a result of this non-compliance, the community’s situation has deteriorated drastically, to the point where it is in a much more precarious situation regarding the enjoyment of its human rights than when the case first entered the international system, casting serious doubts on this system’s effectiveness to bring about change in the standards and policies of States where indigenous peoples are concerned.

69. A dispute has been going on since 2003 between the Kichwa people of Sarayaku and the Government of Ecuador owing to a transnational oil company’s activities on their territory. Having exhausted all domestic legal remedies, Sarayaku lodged a complaint with the Inter-American Commission on Human Rights, which requested the State to take precautionary measures in favour of the Sarayaku. In view of the State’s failure to respond, the case was referred to the Inter-American Court of Human Rights. In June 2005 the Court once more requested the State to take interim measures in favour of the indigenous community and to inform it in due course of its compliance (in order to protect the lives and personal safety of individuals, ensure free movement along the river, remove the threat posed by explosives placed within the community’s territory and ensure that violence in the region is reduced, among other things). In October 2005 the Inter-American Commission on Human Rights convened a new session to hear the opposing parties.

70. In June 2005 the Inter-American Court of Human Rights handed down a judgement in the case of the indigenous Yakye Axa community of Paraguay concerning a territorial claim the community had submitted as early as 1993. The Court decided that the State had violated the Yakye Axa community’s right to life and property and ordered the State to make over the claimed land free of charge, provide the community with the necessary basic services and promote its development, and adopt legislative, administrative and such other measures as might be necessary to guarantee the effective enjoyment of the right to property of the members of indigenous communities.

71. As these cases show, the inter-American regional human rights system has become progressively involved in the field of indigenous human rights in recent years and, with its decisions and judgements, has built up a substantial body of case law for the protection of those rights pursuant to the pertinent international legislation. Although the system's activity in this area is recent, the Special Rapporteur considers that its contributions form part, beyond its regional sphere, of emerging international human rights law and can therefore be also relevant in other regions. In this regard, an important example is the petition by the Inuit Circumpolar Conference to the Inter-American Commission on Human Rights (December 2005) seeking remedy for the persistent violation of the human rights of the Inuit in the Arctic region through increasing global warming, responsibility for which they attribute mainly to the United States of America and its environment policy.

72. The Court's decisions constitute per se a claim for the human rights of the indigenous peoples. However, these achievements cannot suffice if the States that the object of those decisions fail partially or entirely to comply with the judgements. There is still a need for the inter-American human rights system - as for the international system as a whole - to find a way of making its decisions binding and to succeed in establishing sanction mechanisms to be applied to States that persist in ignoring them.

73. It has been a relatively new experience for the indigenous peoples to be able to appeal to the international commissions, committees and courts in order to defend their rights. It is necessary to expand and strengthen that protection measure and bring into operation mechanisms for consolidating the actions of indigenous organizations and human rights bodies in the international protection system.

74. The African Commission on Human and Peoples' Rights is taking an increasing interest in the situation of the indigenous peoples of the African continent. An extensive study of the question, adopted by the Commission in 2005, indicates the main problems facing the region's indigenous peoples. From a number of subjects, the Special Rapporteur would like to underscore the following points made in that study.

75. The indigenous peoples of Africa comprise for the most part herdsmen and hunter-gatherers in different regions of the continent they have inhabited since time immemorial. In recent decades they have been the victims of a process of loss of their lands and resources. The Commission notes that some of these peoples, such as the Hadzabe and Batwa, are in danger of extinction. The plundering of their lands and resources endangers these communities' economic, social and cultural survival. Generally speaking, they are victims of different forms of discrimination in the countries in which they live. They do not have the same access to justice as the rest of the population. They also suffer from high levels of poverty and low levels of social development (education, health, housing and social services). The foregoing is part of a widely documented picture of violations of the human rights of the indigenous peoples of Africa and, according to the Commission, they breach the provisions of the African Charter on Human and Peoples' Rights.

76. By and large, African States deny the existence of indigenous peoples, who are not constitutionally recognized, and they are barely taken into account in domestic legislation. The

lack of constitutional and legislative recognition and the development model adopted by virtually all the countries of the region involve assimilation of the indigenous peoples and the denial of their linguistic and cultural specificity. They are generally viewed as marginalized and isolated population groups who deserve special attention from Governments but not specific human rights. The Commission considers that until African Governments assume the responsibility of ensuring that all their citizens enjoy access to appropriate development, the indigenous peoples will continue to stagnate at the lowest levels of the population.

77. One case that has caused particular concern on the part of the African Commission and other international organizations is that of the Basarwa in Botswana. The Commission's delegation that visited the country in 2005 reports that the Government of Botswana decided to relocate the inhabitants of the Central Kalahari Game Reserve (a small group of Basarwa hunter-gatherers who have lived in the area for thousands of years). In response to that act, a coalition of Basarwa and human rights organizations was formed and set up a negotiating team to discuss the future of the reserve's population with the Government. With the breakdown of the initial negotiations, the Basarwa took the Government to court in 2002 in order to affirm their rights to continue to live on the reserve. The case is still going on and the talks have not been resumed. Meanwhile, the population was evicted from the reserve, following which all supplies and services were cut off, and was relocated in nearby camps. The Government also filed an amendment to the Constitution of Botswana that would repeal a constitutional provision giving the Basarwa the right of access to their traditional hunting grounds.

78. The delegation sent by the African Commission summarizes its report by stressing that the Basarwa have long been victims of policies of eviction and relocation against their will. The displaced persons have no access to ownership of the land and are employed, if at all, as day-labourers in conditions of extreme vulnerability. The services promised by the Government have not been provided. The eviction was carried out without prior consultation or consent of the parties concerned. Threatened, some families decided to relocate, but others refused and remained on the reserve. Some later returned to the reserve when they did not receive the promised services. The delegation feels that the Government's programme was poorly coordinated and rushed, and did not take into account the international minimum standards. The Basarwa, lacking any representation vis-à-vis the Government and not recognized as such by law, are unable to file their complaints and claims in the right way.

79. The same source thinks the problem of forced displacement of the Basarwa is more of a development policy problem than a juridical-legal issue and that it calls for a human rights-based political solution, which can only be achieved through consultation among all the parties concerned: the Government, the indigenous communities and civil society. The delegation recommends that the Government of Botswana should take affirmative action in favour of the Basarwa and allow them to be represented in all the policy-making bodies; that it should establish communal conservation zones in the reserve so that the Basarwa can participate in the care and management of the environment and livestock; that they should receive training and education that enables them to participate in their own development; and, finally, that the Government should desist from legally denying the Basarwa's existence as an indigenous people and, rather, recognize them as such together with their rights, in accordance with international standards.

II. CONCLUSIONS

80. The foregoing observations and analysis have set out some of the main problems regarding the full implementation of legislation and reforms concerning the promotion and protection of the human rights of indigenous people, with emphasis on areas where rapid and effective intervention is needed to ensure the full enjoyment of these rights.

81. During the last decade numerous constitutional and legislative reforms have been carried out in many countries in which the indigenous peoples and their civil and political rights, and more particularly their economic, social and cultural rights, are recognized. Some of these legislative provisions are broader than others; in some cases recognized rights are limited and subordinated to the interests of third parties or broader national interests.

82. The Special Rapporteur draws attention to two types of problems in such a situation; firstly, there are many cases in which legislation on indigenous issues is inconsistent with other laws. Secondly, in most documented constitutional reforms there is a delay in the adoption of statutory and secondary laws.

83. The main problem, however, is the “implementation gap” that is, the vacuum between existing legislation and administrative, legal and political practice. This divide between form and substance constitutes a violation of the human rights of indigenous people. To close the gap and narrow the divide is a challenge that must be addressed through a programme of action for the human rights of indigenous people in the future.

84. Part of the problem is to be found in the legislative formalities themselves, in the membership of legislatures, in the scant representation and participation of indigenous people in legislative work, in the lack of consultation of the indigenous peoples, in the biases and prejudices against indigenous rights observed among many actors on the political scene, among legislators and political parties of different persuasions. The problem is not only one of legislating on indigenous issues, but also of doing so with the indigenous people themselves.

85. Generally speaking, there are no proper mechanisms for monitoring the effectiveness of indigenous legislation and evaluating its application in the day-to-day practice of the public administration and society. The ad hoc commissions created by such legislation are fragile and subject to the political vagaries of the moment. The various ombudsmen responsible for indigenous rights are weak and vulnerable and cannot count on the necessary political or financial support. The civil society organizations that can assume the defence of the indigenous peoples are usually under pressure, not to say threatened or harassed, and often need to act in their own defence.

86. One aspect of the same problem is the lack of a coordinated or systematic policy - with the participation of the indigenous peoples - that plays a cross-cutting role in the various ministries and organs of State regarding indigenous issues, such as ministries of agriculture, energy, mines and natural resources, education and health, to name but a few, in order to

guarantee the rights of the indigenous peoples. The existence of human rights commissions or ombudsmen is not enough if the ministries with responsibilities in sensitive areas for the indigenous peoples do not take coordinated action.

87. One of the clearest illustrations of the “implementation gap” is to be found in the public administration. With a few exceptions, the State bureaucracy reacts slowly to new legislation in favour of indigenous rights; it is not functionally prepared to address the new challenges; it exists in an administrative culture that makes it difficult to welcome and accept multiculturalism and the right to be different; it advocates a heritage of assimilation that rejects recognition of the indigenous peoples; and it often displays discriminatory, not to say racist, behaviour on indigenous issues within its own administration. This has been extensively documented in the areas of the administration of justice, education, health, environmental policy, agrarian issues and economic development.

88. Another problem lies in the lack of consultation and participation mechanisms, established jointly with the indigenous peoples so as to envisage the needs and views of both parties in order to determine the way in which such mechanisms will be applied in the various areas: legislative, administrative, development and natural resources programmes, among others. Unilaterally developed mechanisms ignore one or other of the parties in the consultation, impose subordination regarding methodology and therefore make for such frustration that the consultation process is doomed to failure from the outset.

89. The judicial sector has been increasingly called upon to become involved in this issue. The courts are instrumental in resolving conflicts between laws, non-enforcement of those laws, and measures taken by the authorities that are at variance with the reforms and jeopardize the rights of indigenous peoples and communities. Superior courts, supreme courts and constitutional courts have played an important role in this process. But they will have to do much more in the future.

90. Indigenous people are increasingly availing themselves of international mechanisms for the defence of their human rights and to try and close the “implementation gap”. At the regional level the inter-American human rights system has played an increasingly important role and is beginning to be useful to the African regional system. At the international level the ILO and the United Nations treaty bodies have unquestionable moral authority that is being increasingly exercised in defence of the rights of the indigenous peoples, although some States have difficulty in believing it.

91. Lastly, the gap can only be closed with full participation of the indigenous organizations and civil society acting constructively within the framework of national institutions, in the quest for a solution to conflicts and for consensus which, in the long run, will benefit the national society as a whole.

92. The Special Rapporteur trusts that the aspects highlighted in this report can serve as a guide for Governments in their commitment to more effective implementation of existing standards on promotion and protection of the rights of indigenous peoples and, accordingly, makes the following recommendations.

II. RECOMMENDATIONS

93. The Special Rapporteur recommends that Governments should assign high priority to the quest for concrete measures and actions that will help close the existing gap between laws for protecting the human rights of indigenous people and their practical implementation.

94. They should develop a coordinated and systematic policy, with the participation of the indigenous peoples, that cuts across the various ministries concerned with indigenous issues.

95. They should establish, in consultation with the institutions representing the indigenous peoples, bodies for consultation and participation on all general and particular measures that affect them, with special attention to legislation, natural resources and development projects.

96. Aware that the establishment of appropriate intercultural consultation and participation mechanisms can only come from a process and not from a single action, they should formulate flexible mechanisms and create national commissions that can evaluate the manner in which such mechanisms operate and make the necessary adjustments.

97. In parallel with the new laws, they should establish monitoring and evaluation mechanisms and practices and mechanisms for the implementation of the standards established with the participation of the indigenous peoples.

98. Parliaments should establish, where they do not yet exist, commissions on indigenous affairs and on human rights, and those already in existence should be made responsible for ensuring that legislative proposals respond effectively to the needs and requirements of the indigenous peoples in consultation with those peoples. Likewise, they should carefully monitor use of the budgets allocated to the areas of protection and promotion of the rights of indigenous peoples and communities.

99. The necessary statutory and organic laws should be enacted as soon as possible in consultation with the representative institutions of the indigenous peoples, for the effective implementation of the standards established in laws on the human rights of the indigenous peoples.

100. In cases of inconsistency between laws, priority and precedence should be given to those that protect the human rights of the indigenous peoples, and conflicts that may arise from such inconsistencies should be resolved in good faith and by common agreement.

101. Independent mechanisms should be established for determining the appropriate criteria and indicators for systematic monitoring of enforcement of laws concerning the

rights of the indigenous peoples and others that affect those peoples' fundamental rights and freedoms. To that end, it is recommended that citizen observatories should be set up and duly financed and staffed with highly trained personnel.

102. If they have not already done so, the legislatures should incorporate the relevant international human rights standards pertaining to indigenous peoples into their national legislation.

103. Political parties and groupings should develop a dialogue with the indigenous peoples in order to incorporate the demands of those peoples into their legislative agendas.

104. States should adopt effective measures to ensure that the judicial authorities concerned, legislators and public officials have knowledge of the laws and decisions and international commitments concerning indigenous rights and act accordingly.

105. The courts should apply these international standards in cases involving situations concerning the human rights of indigenous peoples and communities and take into account the emerging case law of the Inter-American Court of Human Rights on the subject.

106. Ombudsman-type bodies for indigenous rights should be strengthened and provided with the necessary budgetary and institutional resources.

107. The recommendations of ombudsman-type bodies regarding indigenous rights should be mandatory for the authorities mentioned in them.

108. Civil society organizations should accord priority to the training of indigenous representatives to enable them to present their views to the pertinent legislative bodies.

109. The institutions of the public administration dealing with policies aimed at the indigenous peoples and communities should establish appropriate mechanisms for making progress on these tasks, and should train public officials to carry them out with respect for cultural differences and the specific needs of the indigenous peoples.

110. Taking note of the UNHCHR strategic plan and the policy of commitment to countries, technical cooperation on matters relating to the human rights of the indigenous peoples should be strengthened.

111. Bearing in mind the establishment of the Human Rights Council, States should ensure that the subject of the human rights of indigenous peoples should be kept on the agenda of this new body and that the indigenous peoples are guaranteed an important role in future discussions on this topic.

112. The United Nations country teams, in formulating, implementing and evaluating programmes, should accord priority to matters relating to the promotion and protection of the human rights of the indigenous peoples, supporting the idea of the Human Rights Strengthening (HURIST) programme in order to ensure greater participation of indigenous peoples in the activities of the United Nations.

113. The African Commission on Human and Peoples' Rights should continue its incipient and important work in favour of the indigenous peoples of the continent and should consider the advisability of elaborating appropriate regional instruments for the protection of the human rights of those peoples.

114. This Commission should consider the advisability of elaborating an international code of conduct for the protection of the rights of the indigenous peoples for transnational corporations operating in indigenous regions.
