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

## Summary

This report is submitted in accordance with Council decision 1/102. Since the submission of his fifth annual report to the Human Rights Council, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has undertaken official visits to Ecuador and Kenya. The reports on those missions may be found at annexes 2 and 3 of this document. The Special Rapporteur is now pleased to submit his sixth annual report to the Council, devoting the thematic part to the various trends that have affected the situation of the human rights of indigenous people over the last six years. In annex 3, the Special Rapporteur presents a study of “best practices” in the implementation of the recommendations included in his previous reports.

While there has been progress in the adoption of standards that recognize the rights of indigenous people, the gap when it comes to implementing those standards still remains. To give greater visibility to their needs and rights, indigenous peoples have resorted to various forms of social organization and mobilization that often prove the only way to make their claims heard. However, it is all too often the case that social protest is criminalized, giving rise to new and sometimes grave human rights violations.

The continuing trend is towards a decline in the resources of indigenous people, reduction of their land and territorial base, and progressive and accelerated loss of control over their natural resources, in particular their forests. Particularly affected are indigenous peoples living in isolation, above all in the Amazon basin. The existence of pastoral peoples in arid and semi-arid regions is also endangered. Reference is made to cases in various countries.

The growing incidence of migration among indigenous people is one of the expressions of globalization and of the inequality and poverty it engenders. Indigenous migrants are particularly subject to violations of their human rights in agricultural and mining work, in the urban environment and at the international level. There is a need for adequate policies to protect the human rights of the increasing numbers of indigenous people who find themselves in such circumstances. Especially deserving of attention are indigenous migrant women and young people, who suffer disproportionately from violence and sexual exploitation.

The Special Rapporteur also includes in this report some recommendations to the Council and the member States with a view to improving protection of the human rights of indigenous peoples.

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## **Introduction**

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in its resolution 2001/57, extended for a further period of three years in 2004 (resolution 2004/62) and renewed by the Human Rights Council in 2006 (decision 1/102). In 2006, the Special Rapporteur submitted his fifth annual report to the Council (E/CN.4/2006/78) and his third report to the General Assembly (A/60/358). During the course of that year he undertook official missions to Ecuador from 28 July to 8 August and to Kenya from 4 to 14 December. The reports on those missions may be found respectively at annexes 2 and 3 to this document.
2. The Special Rapporteur is now pleased to submit his sixth and final annual report to the Council; it reviews and evaluates the most pressing outstanding problems that affect the human rights of indigenous people, and seeks to share with the Council some thoughts on the subject by way of possible pointers to its future activities in that regard.
3. In the context of the various transformation processes taking place, the indigenous people have achieved a measure of progress in some countries in which good practices were applied. Nevertheless, obstacles to the full recognition and enjoyment of their human rights persist, and the challenges they face are great. A study of “best practices” and implementation of the Special Rapporteur’s recommendations may be found at annex 4 to this document.

### **I. TRENDS AND CHALLENGES**

4. The problems and challenges facing indigenous people stem from deep-rooted historical processes and structural causes and cannot be resolved simply by the adoption of a law or the creation of public institutions. They require a multidimensional approach, political will, and active participation on the part of the indigenous people themselves, based on respect for differences and intercultural sensitivity. That outlook calls for the involvement of a wide range of actors, starting with indigenous peoples themselves, governments, all sectors of national society, and international organizations.
5. Recent years have seen the development of new structures for dialogue and negotiation between governments, international organizations and indigenous peoples. This has served to increase the public visibility of these peoples, which has in turn made for progress in the mechanisms for protecting their rights. However, a persistent, and even widening, *implementation gap* remains between the good intentions frequently expressed in constitutional reforms and various forms of legislation and the effective enjoyment of human rights at the practical, everyday level. Just as there has been some progress, so one can point to obstacles apparent in various trends to which the Special Rapporteur refers below.

#### **A. The new legal standard and the implementation gap**

6. Constitutional, legislative and institutional reform with regard to the rights of indigenous peoples has continued to make ground in countries such as Burundi, Cambodia, Morocco, Norway, Nicaragua and the Bolivarian Republic of Venezuela. Recognition of their rights is under consideration in other countries, as in the case of the constitutional reform processes in Kenya and Nepal.

7. The Special Rapporteur has received information from different parts of the world concerning the slowness and difficulties in implementing those reforms and the frequent inconsistency between legislation on indigenous people's rights and sectoral legislation. This contradiction arises above all in connection with the right to natural resources, generating a great deal of uncertainty and tension, which often finds expression in persistent social conflict. In countries such as Cambodia, Chile, Mexico and the Philippines, practice shows that these conflicts are sometimes resolved in a manner contrary to indigenous people's interests and rights. Nevertheless, experience also shows that the new legal standard has become an essential tool for promoting the rights of these people, especially through the judicial system.

8. National courts are beginning to play an increasingly active role in the defence of indigenous rights. In December 2006, following one of Botswana's lengthiest and most expensive trials, the High Court ruled that the Basarwa, who had been evicted by the Government from the Central Kalahari Game Reserve, had the right to return to their traditional territory. In Kenya, the High Court recognized the right of the Ilchamus to effective representation in Parliament (A/HRC/4/32/Add.3, para. 23). In South Africa, the Supreme Court found in 2003 that the Richtersvel community held customary tenure of traditional lands, including the rights to subsoil resources

9. In September 2006 a federal court in Australia ruled that the indigenous Noonger people were the traditional owners of an area covering the city of Perth and its surroundings and concluded that the community had maintained its culture and customs since the European colonization era. This judgement means that the aboriginal communities may claim rights to lands where indigenous customary title has not been extinguished by legislative or executive acts that transformed those lands into individual private property.

10. Brazil's Federal Supreme Court ruled in August 2006 that the four persons responsible for the killing of 12 Yanomami Indians in 1993 were guilty of the crime of genocide, rather than common murder, a crime that carries a lesser penalty and would have allowed the guilty parties to go free.

11. In 2006 the Canadian Supreme Court acknowledged the right of members of the First Nations of New Brunswick (Mi'kmaq and Maliseet) to carry out non-commercial logging in forests classified as Crown Lands, on the basis of the aboriginal title and of rights derived from treaties signed with the British Crown. It is yet another case in which the courts have recognized indigenous people's rights in disputes with the federal and provincial Governments, on the basis of constitutional provisions and past treaties.

12. Following the considerable advance represented by the ruling on the Awas Tingni community's land rights in Nicaragua in 2001, the Inter-American Court of Human Rights has ruled in some other cases in favour of the rights of indigenous communities on the American continent, including its judgements in the following cases: *Plan de Sánchez Massacre* (Guatemala), *Yatama* (Nicaragua), *Yakie Axa* and *Sawhoyamaxa* (Paraguay), *Moiwana* (Suriname) and the protective measures in favour of the Sarayaku community in Ecuador (A/HRC/4/32/Add.2, paras. 19-21). The Inter-American Commission on Human Rights plays an active role in these cases and has issued reports on the cases of the Western Shoshone people of the United States of America, and the Maya communities of Belize, among others.

13. The international organs' judgements and rulings on the rights of indigenous people also suffer from an implementation gap. The rights of the Awas Tingni community were violated by the failure to implement the Judgement of the Inter-American Court of Human Rights (E/CN.4/2006/78, para. 68). The situation of the human rights of the Western Shoshone in the United States continues to deteriorate. Despite the fact that the Inter-American Commission on Human Rights found in favour of the indigenous people that claimed that their land rights had been violated, the Government of the United States of America considers the Shoshone's title to their ancestral lands to have been extinguished by judicial and administrative procedures, and now denies them access to those lands and their natural resources. The Government has promoted mining, oil exploration, dumping of toxic and nuclear waste, and the use of Shoshone sacred sites for military purposes. In November 2006 the Committee on the Elimination of Racial Discrimination again urged the United States Government to desist from its anti-Shoshone activities, and in July 2006 the Human Rights Committee enjoined that country to grant indigenous people the same judicial protection enjoyed by its non-indigenous population (CCPR/C/USA/CO/3/Rev.1, para. 37).

### **B. Continued loss of indigenous territories**

14. The trend towards the depletion of the natural resources of the indigenous people is continuing, mainly through expropriation of their lands. Although in recent years many countries have adopted laws recognizing the indigenous communities' collective and inalienable right to ownership of their lands, land-titling procedures have been slow and complex and, in many cases, the titles awarded to the communities are not respected in practice. At the same time, privatization of traditional lands is on the increase. This measure is claimed to benefit indigenous owners in that it provides legal certainty. The Special Rapporteur has, however, observed that in the long run the indigenous communities tend to lose their traditional lands and territories to the various private economic interests of either firms or individual invaders and settlers who have managed to install themselves in traditional indigenous areas.

15. In Cambodia, despite the 2001 Land Law recognizing indigenous people's right to collective ownership of their lands, the indigenous highland communities complain of the progressive decline of their forest resources. In the past decade, some 6.5 million hectares of forest have been expropriated through concessions to timber companies, and another 3.3 million hectares were declared protected areas, while the indigenous communities are prevented from using the forest resources necessary for their subsistence.

16. In Canada, the agreements being negotiated by the federal and provincial Governments with the First Nations of British Columbia recognize only a small proportion of these communities' traditional lands as their reserve, and privatize the remainder to be freely bought and sold. The agreements also establish that, following new negotiations, the indigenous communities must agree to renounce forever any legal recourse in exchange for financial compensation. Of course, many First Nations are resisting these manoeuvres, and the courts have lately begun to rule in their favour.

17. The global economy is increasingly raising the value of the oil and mineral resources to be found in indigenous regions. The Special Rapporteur has received any number of reports and complaints from indigenous communities whose resources have been appropriated and are being

utilized by powerful economic consortia, with neither their prior consent nor their participation, and without the communities securing any of the benefit of that activity. This is currently one of the most controversial issues involving indigenous people, the State, and private enterprises, and often also the international financial institutions.

18. In the countries of South-East Asia, disputes between the State and the indigenous highland inhabitants over land ownership and control of natural resources persist and usually have to do with infrastructure works, especially dams, and the creation of new forest reserves. In these countries, massive evictions of indigenous peoples have occurred or are being envisaged, including in the area around the Chinese dams on the Upper Mekong and its tributaries, the Black River project in Viet Nam, the Nam Theun in Laos, and Thai plans for major infrastructure works in the Chiang Mai region, which threaten to disturb the ecological balance and affect the right of the indigenous communities concerned to land, cultural integrity, food and health

19. The construction of 13 dams on the River Nu in China will entail the displacement of an estimated 50,000 members of indigenous communities (Nu, Lissu, Tibetans, Yi and Pumi) and other ethnic minorities. Part of this area, Three Parallel Rivers, has been declared a World Heritage site by the United Nations Educational, Scientific and Cultural Organization (UNESCO). In 2006 the World Heritage Committee expressed concern over the possible impact of the dam construction on the affected communities. These communities claim that they have not been consulted about these projects as other indigenous border communities in the Myanmar-Thailand frontier area have been.

20. The Basic principles and guidelines on development-based evictions and displacement (E/CN.4/2006/41, annex), proposed in 2006 by Miloon Kothari, Special Rapporteur on adequate housing, for its possible adoption by the Human Rights Council, defines forced evictions as violations of human rights, which can only be carried out under exceptional circumstances and in full accordance with international human rights law. The guidelines propose a series of guarantees relating to protection of the rights of indigenous people, including a set of preventive strategies and procedural requirements for both eviction and relocation.

21. In the Russian Federation, a new Land Code adopted in 2001 permits private land appropriation, but access to ownership is so mired in red tape as to exclude most indigenous communities from the process. The same is true of the country's Water and Forestry Codes. Central Siberia is currently a vast petroleum, gas, coal and heavy-metal reserve. Russian and foreign companies are vying for access to subsoil resources in this region and for the right to build roads and pipelines for transporting fuel and timber to foreign markets. These are the problems facing the indigenous peoples of, for instance, the Turukhansk, Taimyr and Evenk districts in Krasnoyarsk Territory.

22. The establishment of protected areas such as national parks and nature reserves often involves eviction of indigenous people from large tracts of indigenous lands, the collapse of traditional forms of land tenure, and their impoverishment, which has led to many social conflicts. The creation of national parks in Uganda with World Bank support in the early 1990s caused problems for the indigenous Batwa, who no longer have access to their forest resources and have been reduced to the status of landless labourers. As a result of the new World Bank

Indigenous Peoples Policy - and recognition of the devastating impact the creation of the national parks has had on the Batwa - resources are now available to enable families of this indigenous group to purchase smallholdings.

23. At recent world congresses on parks and conservation (held, respectively, in Durban, South Africa, in 2003 and Bangkok in 2004), attention was drawn to the need for new paradigms for protected areas in order to ensure that violated indigenous rights are restored and are respected in future. The defence of human rights must be a priority in environmental campaigns, which calls for the establishment of a database.

24. The Special Rapporteur recommends that States should endeavour to close the implementation gap between legally recognized rights, sometimes reinforced by the courts, and the practical exercise of those rights, especially regarding the protection of the lands and natural resources of the indigenous peoples, in accordance with the spirit of the United Nations Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council.

### **C. Forest peoples**

25. The reduction of the indigenous people's territorial base is only a small part of a broader phenomenon: the progressive and accelerated loss of control over their natural resources, in which the forest resources situation is particularly dire. In recent years the forests of the indigenous people have been systematically affected by the activities of large forestry corporations and of legal and illegal logging, leading to the progressive destruction of their traditional means of subsistence. This process not only leads to the deforestation and desertification of large tracts of the planet, but also accelerates the gradual destruction of the indigenous people's lifestyle and culture. This process affects the living conditions of a multitude of indigenous communities in the equatorial forests of Central Africa, the Amazon basin, the boreal forests of Siberia and America, the Andean range and South-East Asia, as well as the Pacific islands. The Special Rapporteur has visited many of these areas and has personally witnessed the damage in question.

26. Some 60 million indigenous people in the world depend almost entirely on the forests for their survival. Hiding behind forest legislation, the authorities tend to sacrifice the rights of local communities to the interests of commercial firms, and resources are often utilized for illegal activities protected by corrupt officials and entrepreneurs. In many countries, eviction of indigenous people from their traditional forests as a result of such activities is one of the essential causes of their impoverishment.

27. In many South-East Asian countries, the way forest dwellers live is considered primitive and has sometimes been criminalized to be replaced by "permanent" commercial agriculture. The expansion of industrial plantations for palm oil, rubber and trees for wood pulp has caused innumerable disputes in countries such as Indonesia and Malaysia, when local communities' lands are expropriated and passed on to companies without the communities' consent. The disputes often intensify and result in human rights violations.

28. Indonesia possesses 10 per cent of the world's forest resources, which provide a livelihood for approximately 30 million indigenous people. The Indonesian Government

classifies most of the indigenous territories as State forest, comprising a total of 143 million hectares. Nearly 58 million hectares are already in the hands of timber companies and the remainder is in the process of conversion into commercial plantations, a transformation largely financed by multilateral corporations. Meanwhile, the forests have been taken over by large-scale enterprises, and many indigenous territories have been conceded to various companies without the indigenous people's consent.

29. A statistical analysis of the social impact of protected forests in the Congo basin and in East Africa concludes that tens of thousands of people, mostly belonging to hunter-gatherer communities, were displaced by the creation of these areas and that the subsistence of as many more has been adversely affected. The documented consequences of these processes include landlessness, unemployment, loss of income, lack of housing, food insecurity, growing morbidity and mortality, and the social breakdown of the indigenous people's communal life.

30. The drastic decline in forests in Rwanda during the twentieth century to a mere 7 per cent of the total territory, with the resultant loss of biotic resources, has particularly affected the indigenous Twa. Their customary rights to the forest have never been formally recognized and most of them were transformed into precarious occupants or else evicted to give way to commercial eucalyptus plantations that generate timber products, and to the dairy industry on grazing areas on ancient forest lands. Contrary to promises made, the Twa, the poorest group in Rwanda, received no compensation, nor were they employed in the development projects, and they have no access to formal education, housing, or health services. Having lost 30 per cent of their population in the 1994 genocide, the Twa have organized themselves to fight for their rights.

31. Cameroonian forest pygmies are victims of loss of forest resources, which are being developed for economic purposes. They have lost their ancestral lands and their natural resources to further the interests and profits of large forestry enterprises, agribusiness, and conservation organizations and, as a result, see their culture and their survival as a people threatened.

32. Although the 55,000 to 60,000 Amerindian Indians of Guyana have spent decades lobbying successive governments for full legal recognition of their traditional land rights, they still find themselves in a very precarious land situation. Many communities have no deeds of ownership or only insecure title. The untitled areas are considered State land and are subject to mining and timber concessions granted without the prior consent of the Amerindian communities, as in the case of gold and diamond mining in the traditional territories of the indigenous Akawaio, Macusi, Wapichan and Waiwai. In recent years, civil society has organized itself to promote a policy change that would take the rights of indigenous forest peoples into account, achieve a community resource management system and a comprehensive and more democratic and egalitarian approach.

33. Many countries have adopted laws regulating the use of forest resources. While the communities' ancestral rights and the traditional use of these resources are sometimes recognized, legislation generally tends to favour the large timber corporations and commercial plantations. A comparative analysis shows that forestry laws do little to protect the security and rights of indigenous communities. By and large, the authorities give precedence to other laws

that effectively restrict or even deny those rights. Only social mobilization and the sometimes favourable intervention of the courts succeed in protecting the rights of the indigenous communities against the powerful interests of the timber industry.

34. In December 2006 the Indian Parliament passed a law recognizing forest dwellers' forestry rights. These include the right to own and occupy forest land individually or collectively for the production of subsistence foods, but exclude the hunting of wild animals. It falls to the communal assembly to administer the exercise of these rights.

35. The rights of forest peoples have now been incorporated into various international texts. In 2005, the World Social Forum, meeting in Porto Alegre (Brazil), signed a Forest Declaration in which it affirmed that the indigenous peoples of those forest areas have inalienable rights that must be safeguarded; that their full participation in decision-making must be ensured; and that governments must ensure an enabling environment for community management of the forests.

36. A new and useful instrument for the defence of indigenous territories is community surveys and maps, also known as "ethnic mapping". The benefits that the indigenous people of Guyana and the Bolivarian Republic of Venezuela, for example, have derived from this pioneering technique can strengthen their negotiating capacity as part of an effective territorial defence strategy.

37. The Special Rapporteur recommends that States and multilateral agencies should respect the traditional rights of the forest peoples and include the indigenous people affected in all forest-resource management projects, ensuring that such projects have their full consent and that they share in any profits deriving from them.

#### **D. Pastoral peoples**

38. The situation of Kenya's Masai herdsmen is a perfect example of the problems facing the pastoral peoples of North and East Africa, Central Asia and other parts of the world. At the time of colonization the Masai were dispossessed of much of their vast nomadic and semi-nomadic grazing areas, and in recent years they were evicted from areas destined for conservation. Under pressure from the international financial institutions, many of their communal grazing areas were transformed into private agricultural estates. As a consequence, the Masai and other pastoral peoples, such as the Somalis and the Turkana, have suffered reduction of their herds, gradual deterioration of their standard of living, and increased poverty and insecurity associated with periodic droughts in the arid zones where they eke out a living. The Government of Kenya now recognizes that for years it had been applying flawed development strategies and is launching an alternative strategy to incorporate nomadic herdsmen and their means of subsistence into national development plans (see A/HRC/4/32/Add.3, paras. 65-68).

39. In Tanzania also, where 2 million people earn a living from pastoral activities, herdsmen were badly hit by the policy of forced sedentarization, which eventually failed. Masai, Tatota, Barabaig and other nomadic herdsmen, as well as the Hadza and Akie hunter-gatherers, are subject to the progressive depletion of their land and water resources through the official policy of creating national parks and nature reserves for tourists from which the indigenous population is excluded (a signal example being the Ngorongoro park), and of promoting private land

ownership for agricultural ventures, many of them foreign commercial companies. A growing social disparity has sprung up between them and there are high poverty rates owing to the loss of their grazing areas, restrictions on their land-resources management capacity, inadequate access to water, and lack of support for infrastructure and marketing of their cattle. But little by little, through the increasing activism of organizations of herdsmen and hunter-gatherers, State policy is beginning to take these communities' rights and needs into consideration, including the 2005 Livestock Policy and the National Strategy for Growth and Reduction of Poverty 2005-2010.

40. Most of the 45 groups that appear in the Common Register of Indigenous Peoples of the Russian Federation are in the Arctic region or in subarctic areas of the Siberian tundra and taiga, where they still subsist on pastoralism. The Ministry of Labour reported in 1995 that in the Khanty-Mansi and Yamal-Nenets autonomous districts 11 million hectares of lands used by reindeer herds had been irreparably destroyed and dozens of rivers and lakes irreversibly polluted. The privatization of local lands and resources introduced in the post-Soviet era contributed even further to the loss of the indigenous peoples' collective property, accelerating their social and cultural destruction and their impoverishment.

41. The Special Rapporteur recommends that development projects that allow pastoral peoples, if they so wish, to preserve their way of life and the traditional lands required for them to do so should be developed with indigenous participation.

#### **E. Peoples living in isolation**

42. Small indigenous communities that shun all contact with modern society and prefer to live in isolation and devote themselves to their traditional subsistence economy are to be found in different parts of the equatorial forests that still exist in the world. Contrary to the image portrayed by some media, these groups are not the original settlers "who have never had contact with civilization", but population groups that for generations have been avoiding contacts that have been extremely violent and deadly for them, leading them to seek refuge in forests. Many of these communities are now on the brink of what some describe as genocide, owing to oil exploration, timber extraction, the introduction of vast commercial plantations, infrastructure works, missionary activity, drug trafficking and international tourism. The few contacts that may take place can turn violent and the diseases carried by the new settlers continue to wipe out a large number of these population groups.

43. In Ecuador (see A/HRC/4/32/Add.2, paras. 37-41) the law has reserved "untouchable land" for the Tagaeri-Taromenani. But, even so, there are conflict situations or violent clashes between the indigenous settlers and the isolated population, generally involving the timber and mining interests in the area. The Special Rapporteur continues to be concerned at the extremely vulnerable situation of some small indigenous communities living in the Colombian Amazon and threatened with extinction as a result of violence (see E/CN.4/2005/88/Add.2, para. 57).

44. In the Madre Dios Department of Peru, the indigenous organization Native Federation of Madre Dios and Tributaries (FENAMAD), supported by other organizations, is endeavouring to secure a reserve for isolated peoples, including the small surviving groups of Maslo, Matsigenka and Chitonahua. But the legal establishment of indigenous reserves does not in itself guarantee

that the various economic actors respect indigenous people's territorial integrity. The absence of concrete measures for protecting their physical and cultural integrity may well lead to their total disappearance.

45. Brazil and Peru have passed specific legislation for the protection of indigenous people living in isolation, and Bolivia recently designated as "off-limits" (*zona intangible*) an area where the Toroma live. Venezuela has set up health programmes to address the situation of indigenous people in "initial contact". In Paraguay a policy concerning those peoples, such as the Ayoreo, is being defined. Nevertheless, these actions appear to be inadequate, given the conditions of extreme vulnerability in which isolated peoples live.

46. In November 2006 a seminar was held in Bolivia on peoples living in isolation, with the support of the Government of Bolivia, the Office of the United Nations High Commissioner for Human Rights, the Confederation of Indigenous Peoples of Bolivia (CIDOB) and the International Work Group for Indigenous Affairs (IWGIA), among others. The seminar recommended to States and international organizations that they should proclaim protection of indigenous peoples living in isolation to be a matter of high priority and include it in national and international agendas. Emphasis was also placed on the importance of indigenous participation in the development of specific protection programmes, the fight against impunity for violations of the "no contact" principle, and the establishment of off-limit territories for those peoples. An indigenous working group on the situation in the seven countries of Latin America with isolated populations was set up.

47. Regarding the "no contact" principle, the seminar proposed strengthening the role of the public prosecutors' offices and ombudsmen in enforcing prohibition of involuntary contact, the imposition of exemplary punishments on anyone who endangers those peoples' lifestyle and integrity, and the establishment of legal instruments that enable protection measures to be taken rapidly. Another recommendation is that religious missionaries should be prohibited from entering the territories inhabited by these indigenous peoples.

48. The Special Rapporteur recommends that States should undertake to put into effect the necessary mechanisms to protect the lives and integrity of isolated peoples in order to ensure their survival with respect for their human rights.

## **F. Environmental impact**

49. Extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease.

50. The Inuit people have been affected by large-scale thawing in their traditional Arctic territories; this state of affairs was the subject of a recent petition lodged by the Inuit Circumpolar Conference (ICC) with the Inter-American Commission on Human Rights against the United States of America, which it alleges to be mainly responsible for increasing global

warming (E/CN.4/2006/78, para. 71). Some peoples, particularly on the islands of the Pacific, are directly threatened with total or partial disappearance as a result of climate change, a matter that the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights is studying at the time of writing (see E/CN.4/Sub.2/2005/28).

51. The indigenous populations have also been affected by the diminution of water reserves throughout the world. There are numerous populations whose subsistence depends on their close link with rivers and lakes and the regularity of rains, or, when it comes to herdsmen or nomads, to the aquifers in desert or semi-desert areas. The frequent droughts and famines in some indigenous regions are the result of human activity and could be avoided with appropriate policies. Meanwhile, the trend towards the privatization of water resources in many countries, especially in Latin America and Africa, threatens to deprive many indigenous communities of traditional access to this resource, precipitating “water wars” in many countries.

52. Extraction of natural resources from the subsoil has had a highly discriminatory impact on the indigenous populations. Gold-mining in San Miguel Ixtahuacán and Sipakapa in Guatemala, nickel extraction in the Goro and Prony deposits in New Caledonia, the Chad-Cameroon oil pipeline, and the gas pipeline in Camisea in the Peruvian Amazon have had devastating effects on the indigenous peoples, who have witnessed the destruction of their traditional territories as a result of highly polluting technologies and disregard of local communities’ right to the environment. The widespread practice of dumping toxic waste in indigenous territories has been the cause of many abortions and cases of cancer and other diseases among indigenous women.

### **G. Social conflicts and indigenous rights**

53. The criminalization of social protest, and the repression practised by the security forces (police, army and sometimes even paramilitary groups) are still regularly denounced by indigenous and civil society organizations. The Special Rapporteur has documented various cases in the reports on his visits to different countries and in the inventory of the communications which he has followed up. They include charges of extrajudicial executions, forced disappearances, torture, arbitrary detentions, intimidation and harassment. Many of these incidents take place in connection with the indigenous communities’ and organizations’ defence of their lands, natural resources and ancestral territories.

54. In 2006, for example, there were acts of civil protest in which indigenous and non-indigenous persons participated; these were violently and arbitrarily put down by the Mexican Government in Atenco and Oaxaca, entailing numerous violations of individual rights. Despite many attempts at dialogue between the parties, the conflict and protests continue. The National Human Rights Commission received over 1,200 complaints and recorded 20 killings, 350 detentions and 370 injuries, concluding that the conflicting parties and the Federal Preventive Police used repeated and excessive force. Civil society bodies also reported kidnappings, violations of freedom of expression, threats, harassment, torture, sexual abuse, and assaults committed by the various police forces, State agents, and allegedly armed “parapolice” groups. Although some of the persons unlawfully detained and taken to remote prisons have been released, the Government has neither investigated the alleged offences nor taken any action against those responsible for these violations.

55. Also victims of abuse and violations in Mexico are indigenous peasant farmers in the State of Guerrero who oppose the La Parota dam project in their territory, which the State insists on carrying out without the population's free consent. A court has instructed the Government to desist from the construction of infrastructure works in this area until the conflict has been resolved through negotiation, but the authorities have ignored the injunction and are going ahead with road building as part of the dam project, to which many villagers are opposed.

56. In the Philippines there have been reports of numerous cases - still not clarified - of murders of human rights defenders, social activists and indigenous community leaders. In Guatemala, violence and insecurity in indigenous regions continue to cause concern to the human rights and international community. In Chile, Mapuche communities continue to have their houses searched and to be abused by the police. Similar reports are heard from the Chittagong region of Bangladesh and from countries in South-East Asia concerning persistent disputes between the State and the indigenous highlanders over ownership and control of natural resources.

57. These events illustrate once again the tendency of some governments to criminalize social protest in favour of the legitimate claims of the indigenous populations, a phenomenon the Special Rapporteur has already mentioned in many of his reports. The Special Rapporteur recommends that States should scrupulously respect the rights and guarantees of indigenous populations, as part of their international commitments, and that these people's legitimate demands in respect of their legitimate rights should not be criminalized.

#### **H. Intellectual property rights**

58. Indigenous people's traditional knowledge, biological resources, innovations and practices have never been properly defined or protected at the national and international levels. A case in point is their traditional herbal lore, which is today being used by pharmaceutical companies to develop modern medicines, or their non-copyrighted indigenous music that is reproduced in the media without any recognition of their authors' rights. Given the frequently collective and ancestral possession of traditional knowledge, the current legal intellectual property regime does not adequately protect indigenous populations.

59. The Convention on Biological Diversity contains several provisions that are important for indigenous people and refer to respect for and preservation of traditional lore and the indigenous populations' innovations and practices for the conservation and sustainable use of biological diversity. It also establishes that benefits deriving from the use of traditional knowledge must be shared with the indigenous communities. At the suggestion of the Permanent Forum on Indigenous Issues, there are plans to formulate the basic principles for a code of ethics and conduct for ensuring respect for the indigenous peoples' cultural heritage for the conservation and sustainable use of biological diversity.

60. There are 11 organizations of the United Nations system currently engaged in activities relating to the cultural heritage and traditional lore of the indigenous peoples in different international legal systems. These include the working groups on article 8 (j) of the Convention on Biological Diversity and on access and benefit-sharing in connection with the implementation of the Convention; the Intergovernmental Committee on Intellectual Property and Genetic

Resources, Traditional Knowledge and Folklore, established by the World Intellectual Property Organization (WIPO); and the various activities of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the protection of the intangible cultural heritage. For its part, the Working Group on Indigenous Populations is elaborating a set of principles and guidelines for the protection of the cultural heritage of the indigenous peoples.

61. In November 2005, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 17 (2005) (E/2006/22/E/C.12/2005/5, annex IX) in which it recognized that, under article 15 of the Covenant, indigenous communities and other groups are entitled to the right to protection of their moral and material interests resulting from their scientific, literary and artistic productions, including knowledge and intangible practices.

### **I. Indigenous poverty, standards of living and social policies**

62. Although sundry governments have adopted social policies with the aim of “closing the gap” as regards the disparities in human development indicators between indigenous and non-indigenous peoples, the results have thus far been meagre. Of the indigenous population in Latin America, 40 per cent lack access to basic health services, and the huge differences between health rates among the indigenous and non-indigenous population persist. Indigenous children display extraordinarily high malnutrition rates. A World Bank comparative study conducted in five Latin American countries shows that the situation of indigenous people has not changed in the past decade, except in the field of education.

63. In Latin America 17 countries already officially recognize the indigenous peoples’ right to intercultural, bilingual education, but the actual results have been relatively modest. Educational outcomes of pupils in indigenous schools tend to be inferior to the educational standard among other national sectors. This is basically due to the fact that bilingual intercultural education has not been given the required institutional, technical, academic and financial support it needs and that teacher training, availability of teaching materials and the suitability of school syllabuses to indigenous people’s needs and cultural contexts are severely lagging behind.

64. Official indicators in Australia show that the aborigines are the poorest and most marginalized sector of the population. The aborigines’ household income is 68 per cent that of non-indigenous Australians, and an estimated 30 per cent of all indigenous households are poor. The aborigines of Australia enjoy less than half the opportunities to complete 12 years of education than non-indigenous inhabitants do; their unemployment rate is 4 times as high, their imprisonment rate 16 times higher, and their life expectancy 20 years lower than that of non-indigenous Australians. Historically, indigenous poverty is directly linked to dispossession of their lands.

65. Indigenous men, women and children have continued to emigrate to urban centres. In some countries, most of the national indigenous population is currently living in cities; this is the case in Australia, Canada, Chile, the United States of America, Norway, Kenya and New Zealand. Even in economically developed countries the urban indigenous population posts lower indicators of social well-being and human development than the average for the population as a whole: they lack a systematic social welfare system and are excluded from the protection

networks that other social groups have been able to build over the years. The situation of indigenous urban migrants is particularly dismal in the poorest poor countries. They crowd into the most miserable shantytowns and slums, unprotected by any systematic social welfare system.

66. Social policies that cover only the most vulnerable sectors of the population without considering the special characteristics of indigenous people have been unable to resolve the grave problems they face. The Special Rapporteur recommends that redoubled efforts should be made to apply affirmative action specifically geared to the needs of indigenous people, in the context of the actions recommended by the Permanent Forum on Indigenous Issues. Specific social policies for town-based indigenous populations are required if indigenous migration is not to become just another vehicle for the transfer of rural to urban poverty.

### **J. Rights of indigenous women**

67. Indigenous women continue to be discriminated against and marginalized in many parts of the world. The threefold discrimination they suffer (for being women, indigenous and poor) marginalize them even further - even compared with indigenous men - regarding economic and political opportunities for employment, social services, access to justice, and, more particularly, access to land and other productive resources.

68. The presence of women is steadily on the rise in the migratory cycles of agricultural workers and they continue to have a strong presence in domestic service and other ill-paid and poorly protected private jobs. They are also increasingly present in international migration and the informal economy and among the swelling ranks of urban poor who survive by begging. Even more alarming is the victimization of indigenous women and girls in drug trafficking, sex tourism and prostitution in vast regions of the world, for which reason the rates of HIV/AIDS and other venereal diseases are rapidly increasing among the indigenous population. Governments have not paid enough attention to this matter, and social and welfare policies have not, to date, been very effective in protecting this especially vulnerable segment of indigenous populations.

69. Infant mortality among the aborigines of Australia is more than double that among non-indigenous inhabitants, and the imprisonment rate among aborigine women is higher than that of any other community. In Ecuador indigenous women receive less medical care during childbirth than their non-indigenous counterparts (33 per cent as against 82 per cent). Infant mortality among the children of indigenous women is 10.5 per cent compared with 5.1 per cent for non-indigenous children.

70. In its 2003 report the Committee for the Elimination of Discrimination against Women expressed its concern at the continued discrimination faced by aboriginal women in Canada (A/58/38, para. 362). Despite some positive measures taken in that country, the report shows that indigenous Canadian women are overrepresented in low-quality, poorly paid jobs and that they constitute a high percentage of women who have not completed secondary education and of women in prison. The Committee also expressed its concern at the sexual violence against women practised by members of the army and by *garimpeiros* (miners) in indigenous territories in Brazil (ibid. para. 115).

71. The Special Rapporteur has talked to numerous indigenous women's organizations, which complained of discriminatory practices against women within their own communities, such as forced marriages, the practice of giving children away to other families, frequent domestic violence, child rape, dispossession of property, limited access to land ownership and other forms of male patriarchal domination. For the most part, women are unable to take these abuses before the courts and when they do they experience a lack of sympathy and fierce pressure from the family and community. In many countries they have organized themselves to confront this situation of gender discrimination and violence, adopting a human rights-based approach.

72. The Special Rapporteur recommends that States, civil society and the multilateral organizations should implement adequately-funded special programmes for the protection, defence and support of indigenous women and children who find themselves in the situations described above.

### **K. Indigenous children**

73. The World Bank has found that indigenous children in five Latin American countries still work more than non-indigenous children, although their level of schooling has by and large risen. In Guatemala the proportion of non-indigenous working children has declined, while that of indigenous children has remained the same. In Bolivia the incidence of child labour is four times higher among indigenous children than among the non-indigenous population. In other countries, such as the Philippines and Kenya, indigenous children work in mining activities, prostitution, commercial farming and domestic service, while in other countries they are involved in armed conflicts. Generally speaking, social policies do not address indigenous child labour, which remains invisible and poorly understood.

74. The Committee on Racial Discrimination reported in 2004 the growing sexual exploitation of children and the rape of girls belonging to indigenous and tribal peoples in regions where mining and forestry operations have developed (A/59/18, para. 195). The Committee on the Rights of the Child expressed its concern at the situation of Batwa children and the total failure to respect their rights at all levels (CRC/C/100, para. 162). It also expressed its concern at the situation of indigenous children in the Republic of the Congo, although it recognizes that progress had been made towards the approval of a law on indigenous peoples in that country (CRC/C/COG/CO/1, para. 88).

75. The Special Rapporteur recommends to Governments that they should take into account and promptly implement the recommendations of the Permanent Forum on Indigenous Issues and the Committee on the Rights of the Child concerning the protection of the rights of indigenous children in vulnerable situations, especially in situations of migration, urban environments, detention, forced eviction, and domestic and international conflict.

## **II. FUTURE INTERNATIONAL PROTECTION OF INDIGENOUS RIGHTS**

76. The new trends and challenges analysed above only reinforce the need for standards and mechanisms for the effective protection of indigenous peoples' rights. The debate on the United Nations Declaration on the Rights of Indigenous Peoples in the Human Rights Council

and in the Third Committee of the General Assembly, as well as the review of the Council's mechanisms and procedures currently under way, point to the relevance of reviewing and updating existing United Nations mechanisms for the protection of indigenous rights, and the application of the experience and synergies established over more than two decades.

**A. Implications of the debate on the United Nations  
Declaration on the Rights of Indigenous Peoples**

77. One of the Council's first actions was the adoption on 29 June 2006 of the text of the Declaration on the Rights of Indigenous Peoples and the recommendation of its final adoption by the General Assembly. The majority of the members of the Council supported the text, with the only dissenting votes coming from Canada and the Russian Federation. The Declaration has been subject to a prolonged gestation process that has actively involved States and indigenous organizations the world over, and its adoption was an outcome long awaited by the indigenous peoples and by the universal human rights community. In November 2006, the Third Committee of the General Assembly, through draft resolution A/C.3/L.18/Rev.1, decided to postpone the "consideration and adoption of measures" relating to the Declaration to the end of the sixty-first session of the Assembly.

78. The Declaration is a fundamental text for the protection of the rights of the indigenous peoples throughout the world, as well as a necessary adjunct to the universal human rights system. For this reason, the Special Rapporteur has actively advocated the adoption of the Declaration on various occasions before the General Assembly and considers that the Council must now reaffirm its commitment to the protection of millions of indigenous people the world over.

79. Having been adopted by the Human Rights Council, the Declaration is now an essential frame of reference for actions both by the Council itself and the Office of the United Nations High Commissioner for Human Rights, and by other United Nations agencies. The Declaration will also serve as a guide for the actions of the international human rights treaty bodies. The Declaration must be a fundamental part of the discussion about future international standards relating to indigenous peoples, not only at the international level, but also in regional or specialized areas. Its adoption also gives a strong impetus to the clarification of emerging customary law concerning indigenous rights at the international level, and should similarly energize the processes of legislative reform and domestic court proceedings.

80. In view of the foregoing, the Special Rapporteur urges the General Assembly to adopt the Declaration during its current session. It also recommends to the Organization of American States that it should adopt as soon as possible the American Declaration on the Rights of Indigenous Peoples and strengthen its support for the Special Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights, and to the African Union that it should support and take into consideration the contributions being made to human rights by the Working Group on Indigenous Populations of the African Commission on Human and Peoples' Rights.

## **B. Indigenous issues in the Human Rights Council**

81. The current review of the activities, organs and mechanisms of the Human Rights Council affords a valuable opportunity for improving the effectiveness of international protection of indigenous rights and their incorporation into the overall system of human rights mechanisms. Bearing in mind the provisions of the Declaration, the Council should place “indigenous issues” as a separate item on the agenda of its sessions, as the Commission on Human Rights did. It is essential for the situation of the rights of indigenous peoples to be included also in the universal periodic review currently under consideration.

82. Likewise, the Council should take account of the important contribution of the Working Group on Indigenous Populations as a forum of discussion and technical advice on indigenous peoples’ rights, in order to envisage setting up a new expert body to prepare reports and specialized studies on matters relating to the rights of indigenous peoples, in coordination with the existing mechanisms, and discussion of pertinent international standards. Modelling itself on the Permanent Forum on Indigenous Issues, the future expert body should include indigenous human rights experts.

83. In its review of existing mechanisms, the Human Rights Council should consider renewing the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people within the framework of the Council’s special procedures. Irrespective of how this particular Special Rapporteur has fulfilled his tasks, the broad and flexible definition of the special rapporteur’s mandate has played a significant role in recent years in highlighting the situation of indigenous rights in the activities of human rights bodies and international agencies and has provided new opportunities for dialogue with States and indigenous people. The Special Rapporteur has been actively supported by Governments, civil society and indigenous organizations and a series of “best practices” have been identified for implementing the Special Rapporteur’s recommendations, such as the legislative and institutional changes that have brought about progress in the protection of indigenous rights in various countries (see A/HRC/4/32/Add.5). The Office of the United Nations High Commissioner for Human Rights must continue to play an active role in the promotion of the rights of indigenous peoples, especially with regard to the implementation of the recommendations of the treaty bodies and the Special Rapporteur.

84. In this context, the universal treaty bodies’ contribution has been vital, as has that of the bodies of the regional human rights systems. The Special Rapporteur therefore invites them to continue to pay priority attention to the rights of indigenous peoples as part of their oversight activities.

## **C. International organizations**

85. Considering the groundbreaking importance of the 1998 International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries as part of the normative framework for guaranteeing the rights of indigenous peoples, it is important for States that have not yet done so to consider prompt ratification of this Convention and for States parties to the Convention to pursue their efforts to transfer its provisions into their legislation and institutional regulations, with the participation of the indigenous people concerned.

86. Despite its limitations, the adoption of the World Bank Operational Policy on Indigenous Peoples (OP/BP 4.10) has been positive in that this body has supported many development projects on indigenous lands in different parts of the world. The World Bank, together with the other international financial institutions that have recently adopted specific policies or directives on indigenous people, such as the International Finance Corporation, the Asian Development Bank and the Inter-American Development Bank, must ensure that their policies and directives on indigenous people are fully respected and effectively implemented.

87. Numerous United Nations bodies have included indigenous issues in their work agendas and serious efforts are being made to incorporate such issues into their respective fields of action. Coordination of such work is a key function of the Inter-Agency Support Group for the Permanent Forum on Indigenous Issues, comprising 27 intergovernmental organizations. The Special Rapporteur has observed, however, that these objectives do not always find immediate effect in the activities of all the United Nations country teams with local responsibility for implementing those policies. The Special Rapporteur therefore recommends that the United Nations agencies and country teams should include indigenous rights in their agendas, with a view to securing full implementation of the Declaration and attaining the Millennium Development Goals, and should actively involve the indigenous peoples in the planning and implementation of their policies at the national and international level.

### III. CONCLUSIONS AND RECOMMENDATIONS

88. **Since the Special Rapporteur's mandate was established, it cannot be said that the human rights situation of indigenous people has so far changed substantially. Progress has been made in some areas, especially in the legislative and judicial spheres. The human rights of indigenous people have acquired greater visibility in some countries as well as internationally, largely thanks to the work of various United Nations bodies, which has culminated for the time being in the Human Rights Council's adoption of the Declaration on the Rights of Indigenous Peoples. In some countries it has been possible to identify good practices leading to the consolidation of the human rights of these people, whose claims and proposals are being expressed ever more vocally, owing to the high degree of social, and sometimes political, mobilization.**

89. **These advances, however, have encountered numerous obstacles and in some cases also setbacks. In many spheres, there is still a lack of understanding about indigenous rights, linked to the persistence of prejudices and discriminatory, not to say racist, attitudes. More disturbing is the opposition displayed by various national and international private economic interests to the full enjoyment of indigenous rights. Those interests are centred on land ownership and the exploitation of natural resources, especially forestry, water and subsoil resources. They often collude with the structures of political power to impede progress with regard to indigenous people's human rights.**

90. **This the reason for the implementation gap between legislation, public institutions and actual practice at the local level, and why indicators of social and economic well-being of the vast majority of the indigenous population, especially women, continue to be well below national averages. In order to address this pattern of inequality and injustice that generates permanent human rights violations, indigenous people resort to different forms**

of social mobilization that, in turn, often provoke the use of public force, and so incur further violations of their rights. This has given rise to patterns of criminalization of indigenous social protest, making it harder to achieve a negotiated and democratic solution to their legitimate demands.

91. Globalization and environmental degradation contribute to the increasing involvement of indigenous people in migratory flows, their growing urbanization and the progressive modification of their cultural and social identity. These processes pose new challenges for the protection of human rights and for the framing of public policies, which require proactive and affirmative approaches, especially in the light of the specific problems facing indigenous women and children. Failure to address the structural causes of these situations will mean that the promises of the Millennium Development Goals will not become a reality for indigenous people, nor will they fully enjoy their human rights.

92. The Council now has the responsibility and the opportunity to take new steps towards international protection of the human rights of indigenous people. States need to display greater political will and capacity to construct efficient mechanisms and structures that will genuinely promote, rather than merely simulate, effective respect for the human rights of indigenous people in their countries. The courts must actively defend those rights and transcend the legal niceties so long invoked to deny indigenous people their rights. Civil society organizations, as well as political parties, must push for the human rights of indigenous people to be placed on their agendas for social and political action. In conclusion, indigenous communities and organizations, which have played such an outstanding role in the defence and promotion of their human rights, must reassess their objectives and strategies, strengthen and consolidate their alliances, and involve themselves in the processes required to build genuine democratic and plural societies.

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