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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**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 resolution 6/12 of the Human Rights Council and summarizes the main activities that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has undertaken since submitting his second report to the Human Rights Council. During that period the Special Rapporteur continued to transmit information to Governments regarding alleged violations of the human rights and fundamental freedoms of indigenous peoples (see annex 1). The Special Rapporteur also undertook an official mission to Bolivia. A preliminary note on the visit is annexed to this report (see annex 2). Lastly, the Special Rapporteur lays before the Council some general considerations on the situation of human rights and fundamental freedoms of indigenous peoples in Asia, a region to which he has given special attention this year (see annex 3).

The Special Rapporteur's thematic analysis in his third periodic report to the Council focuses on the implications of the human rights-based approach to development. Indigenous peoples are identified, according to this approach, as human rights holders and the realization of their rights is posited as the main objective of development. The recently adopted United Nations Declaration on the Rights of Indigenous Peoples provides a clear normative framework for development policies and actions on behalf of indigenous peoples based on self-determination; free, prior and informed consent; effective participation, autonomy and self-management; territorial control and non-discrimination.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 7	4
I. INDIGENOUS PEOPLES AND DEVELOPMENT: THE OTHER IMPLEMENTATION GAP	8 - 11	5
II. HUMAN RIGHTS-BASED APPROACH AND INDIGENOUS PEOPLES	12 - 16	7
III. HUMAN RIGHTS PRINCIPLES IN INDIGENOUS DEVELOPMENT	17 - 61	8
A. Indigenous peoples as subjects of rights	17 - 18	8
B. Duty bearers: States, multilateral agencies and other actors	19 - 21	9
C. Free, prior and informed consent	22 - 26	10
D. Participation and empowerment	27 - 35	11
E. Autonomy and self-management	36 - 42	13
F. Territorial control	43 - 53	15
G. Non-discrimination	54 - 59	18
IV. CONCLUSIONS	60 - 64	19
V. RECOMMENDATIONS	65 - 77	20
A. General recommendations	66 - 71	20
B. Recommendations to donors and international agencies	72 - 76	21
C. Recommendation to the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme	77	21

Introduction

1. The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was established by Commission on Human Rights resolution 2001/57. The Human Rights Council renewed the mandate in its resolution 6/12, which invites the Special Rapporteur to “examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous people, in conformity with his/her mandate, and to identify, exchange and promote best practices” (para. 1 (a)) and to “submit a report on the implementation of his/her mandate to the Council in accordance with its annual programme of work” (para. 1 (j)).
2. In 2007 the Special Rapporteur submitted his second report to the Human Rights Council (A/HRC/4/32). He undertook an official mission to Bolivia from 25 November to 6 December 2007, on which a preliminary note is annexed to this report (annex 2). As in previous years, he continued to receive allegations of violations of the rights of indigenous peoples, which were transmitted in some cases to Governments and other relevant bodies in the form of urgent appeals or letters of allegation. A summary of these communications and of the replies received is annexed to the present report (annex 1).
3. The Special Rapporteur continued to compile information on the human rights situation of indigenous peoples in different parts of the world, kept track of relevant developments in the United Nations system, and participated in national and international expert seminars, technical advisory missions and other activities having a direct bearing on his mandate. Special mention should be made of activities in Asian countries (Cambodia, Nepal, the Philippines) organized by the Office of the United Nations High Commissioner for Human Rights and by diverse indigenous civil-society organizations. These activities, together with numerous communications received in recent years, served as the basis for some general considerations on the situation of human rights of indigenous peoples in Asia, which are presented as an annex to this report (annex 3).
4. The Special Rapporteur submitted his fourth report to the General Assembly at its sixty-second session in October 2007 (see A/62/286). He also attended the sixth session of the Permanent Forum on Indigenous Issues (New York, May 2007) and takes note of the Forum’s recommendations to him for the planning of his future activities. The Special Rapporteur also attended the sixth session of the Human Rights Council (Geneva, September 2007), taking part in the discussion concerning the renewal of the mandate pertaining to the situation of human rights and fundamental freedoms of indigenous people, which was extended for a period of three years (resolution 6/12).
5. In response to a civil society invitation, he undertook a joint visit in September 2007 with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, to the communities directly affected by the construction of the La Parota hydroelectric project in the State of Guerrero (Mexico). The observations of the Special Rapporteurs on this situation and their recommendations aimed at safeguarding the rights of the communities concerned were set out in a communication addressed subsequently to the Government of Mexico.

6. The Special Rapporteur hereby submits his third report to the Council, which analyses the implications of human rights-based development, an issue of special importance in the light of the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007. The Declaration already forms part of the international normative framework that is required to assess the human rights situation of indigenous peoples.¹ The Council itself, in extending the Special Rapporteur's mandate, directs him to "promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples" (A/HRC/6/L.26, para. 1 (g)). The adoption of the Declaration has provided States, international agencies and donors, and civil-society organizations with a clear-cut frame of reference for the formulation and implementation of development policies on behalf of indigenous peoples.

7. In preparing this report, the Special Rapporteur took into account, inter alia, replies received to the questionnaire distributed in August 2007 from the Governments of Argentina, Bolivia, Bosnia and Herzegovina, Canada, Chile, Denmark, Germany, Guyana, Honduras, Iraq, Japan, Mauritius, the Russian Federation, Serbia, Spain, Sweden and Turkey. He also received replies from the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the International Fund for Agricultural Development (IFAD), the United Nations Population Fund (UNFPA), the Secretariat of the Commonwealth of Nations, the Pan American Health Organization (PAHO), the United Nations Human Settlements Programme (UN-Habitat) and the United Nations Development Programme (UNDP), and from a total of 35 indigenous organizations and NGOs. The Special Rapporteur wishes to extend sincere thanks for the support he received for the preparation of his report.

I. INDIGENOUS PEOPLES AND DEVELOPMENT: THE OTHER IMPLEMENTATION GAP

8. The Special Rapporteur noted in several previous reports that the protection deficit suffered by indigenous peoples covers the whole range of both individual and collective civil, political, economic, social and cultural rights. Redress for many violations may be obtained through the traditional protection machinery provided by judicial systems or extrajudicial bodies such as national human rights institutions. This applies in particular to civil and political rights, although many shortcomings in this area have also been reported in addition to the persistence of various forms of discrimination and racism, of which indigenous women are usually the prime victims.²

¹ For example, in October 2007 the Supreme Court of Belize cited the Declaration as an authority in a judgement in favour of the Mayan indigenous communities in Toledo. See Supreme Court of Belize, *Claims No. 171 and 172 (Consolidated)* (19 October 2007).

² See, for example, the Special Rapporteur's report on the administration of justice (E/CN.4/2004/80).

9. Goal-oriented public policies are also required to guarantee the enjoyment of economic, social and cultural rights. The Special Rapporteur has observed in recent years that it is primarily in the area of economic, social and cultural rights that a large gap exists between the declared aims of Governments and the everyday experience of indigenous peoples, a gap that has been widening instead of disappearing. The “implementation gap” affecting indigenous peoples’ rights is not just a legal gap reflected in the failure of case law to keep abreast of legislative advances in individual countries.³ There is also an “implementation gap” between national and international recognition of indigenous peoples’ rights and State policies and programmes affecting indigenous peoples, which frequently fail to take account of or contravene indigenous rights.

10. To address the historical marginalization and discrimination experienced by indigenous peoples, a number of strategies have been implemented to promote their progress and development. These strategies may be summarized in terms of the following categories:

(a) *Modernization and integration*: When the predominant view in States was that indigenous communities were “backward” or “primitive”, the most common strategy advocated by the authorities consisted in introducing “modern” technology and production methods in order to bring about socio-economic change which would resolve what was long referred to as the “indigenous problem”. Relying on public and missionary schools, religious conversion and the imposition of a national language and a uniform school curriculum, many States promoted the cultural assimilation of indigenous children in the expectation that after one or two generations there would no longer be an indigenous population in their countries. This approach has generally had an adverse impact on indigenous peoples, resulting in higher poverty ratios, but it continues to be applied in many countries;

(b) *Economic growth*: For the past half century the notion of economic growth has won unqualified support on the basis of the theory that if the global economy grows, national economies will follow suit and sooner or later indigenous communities (just like other sections of the population classified as “poor”) will reap the desired benefits. This model is frequently associated with giant infrastructural, mining, agro-industrial, tourism and other projects in indigenous territories, which have largely - barring some exceptions - proved disastrous for the peoples concerned. While they may offer opportunities for advancement to some individuals or enterprises (which may, in turn, be indigenous), they have generally had a detrimental impact on the well-being of the affected indigenous peoples and have contributed to an increase in poverty and social inequality. The economic growth strategy has recently been coupled with the idea of sustainable development, primarily to meet environmental concerns, with indigenous peoples being excluded from this concept inasmuch as they are baselessly held responsible for the destruction of the environment in which they live. The most striking examples of this phenomenon, of which the Special Rapporteur has informed the Human Rights Council,⁴ are

³ See the Special Rapporteur’s report on the implementation of legislation and case law pertaining to indigenous peoples’ rights (E/CN.4/2006/78).

⁴ A/HRC/4/32, paras. 25 to 41.

programmes to establish parks or nature reserves, especially in the tropical and semi-tropical regions of the world (where a large proportion of the indigenous population is concentrated). In some cases the general growth strategy involves an integrated local development approach based on the participation of indigenous peoples and communities as development units. It is here that the changes have had their most pronounced impact. A term that has more recently come into use is development with identity.

11. Yet despite the progress achieved and the abundant resources invested in these development programmes for decades, the tangible results have been relatively modest. Indigenous peoples have had little opportunity to become involved in their own development, since they are treated as the object of policies designed by others. Invoking the notion of human rights-based development, many indigenous peoples are now demanding autonomy and self-determination as an essential basis for promoting and managing their own development (a concept defined in terms of their own cultural values rather than one invented by the industrial economy). Without autonomy, they say, there can be no genuine human and social development, as opposed to economic growth measured in quantitative terms. The United Nations Declaration on the Rights of Indigenous Peoples specifically recognizes self-determination and autonomy as human rights of indigenous peoples.

II. HUMAN RIGHTS-BASED APPROACH AND INDIGENOUS PEOPLES

12. The international consensus on the interdependence between development and human rights was forged in the context of the World Summit for Social Development held in Copenhagen in 1996, the Millennium Summit of the United Nations and the World Summit on Sustainable Development held in Johannesburg in 2005. Since its adoption as a United Nations principle, human rights-based development has begun to gain acceptance internationally and in some countries domestically as a frame of reference for public social and economic policies. The United Nations specialized agencies, international technical cooperation agencies, some local and regional national development strategies and many civil-society organizations are now adopting this model.

13. The basic principle underlying this approach is that the realization of human rights should be the end goal of development, and that development should therefore be perceived as a relationship between rights holders and the corresponding duty bearers. All programmes designed in accordance with this approach incorporate human rights indicators for the purpose of monitoring and assessing the impact of development projects and programmes. The key to this approach lies in its explicit link to human rights norms and principles, which are used to identify the start-up situation and goals and to assess the development impact.

14. The rights-based approach attaches importance both to results and to the development process itself, which should take into account basic principles such as the indivisibility and universality of human rights; non-discrimination, especially in the case of vulnerable or marginalized groups; participation and empowerment; and accountability. It follows that human rights-based development requires changes not only in priorities and in the development discourse but also political and institutional changes, with a shift of emphasis from microprojects to public policies as a whole.

15. Recognition of indigenous peoples as subjects of rights implies that the communities should be assigned a prominent role in determining development priorities and strategies, especially with a view to achieving the Millennium Development Goals. In north-east Cameroon, for example, ILO found that national poverty reduction strategies did not necessarily match the priorities of the Mbororo pastoral people, for whom the key to poverty reduction lies in the recognition and protection of their collective rights to land and natural resources; security of persons and property; and improved access to pastureland. If these three conditions are met, the situation of the Mbororo communities in terms of the rights to education, health and food will improve.

16. To date neither Governments nor international cooperation agencies have applied a rights-based approach systematically in development policies and programmes on behalf of indigenous peoples. In some cases, mere references to indigenous rights in development discourse are not necessarily indicative of the existence of a rights-based approach and may coexist in practice with the application of old-fashioned development models that are not conducive to the effective promotion of indigenous rights.

III. HUMAN RIGHTS PRINCIPLES IN INDIGENOUS DEVELOPMENT

A. Indigenous peoples as subjects of rights

17. The human rights-based approach stems from a concept of development that identifies subjects of rights and not merely a population that is the object of public policies. Indigenous peoples must thus be identified as subjects of collective rights that complement the rights of their individual members. These rights are recognized in various international instruments, particularly the United Nations Declaration on the Rights of Indigenous Peoples. The principles set out in the Declaration complement and expand those contained in other international instruments such as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989, and the general comments of the United Nations treaty bodies.

18. These principles underpin the content of development and its procedures in the context of indigenous peoples, which should be:

- (a) Endogenous: it should originate with the indigenous peoples and communities themselves as a means of fulfilling their collective needs;
- (b) Participatory: it should be based on the free and informed consent of the indigenous peoples and communities, who should be involved in all stages of development. No project should be imposed from outside;
- (c) Socially responsible: it should respond to needs identified by the indigenous peoples and communities themselves and bolster their own development initiatives. At the same time, it should promote the empowerment of indigenous peoples, especially indigenous women;
- (d) Equitable: it should benefit all members equally, without discrimination, and help to reduce inequality and alleviate poverty;

- (e) Self-sustaining: it should lay the foundations for a gradual long-term improvement in living standards for all members of the community;
- (f) Sustainable and protective of environmental balance;
- (g) Culturally appropriate in order to facilitate the human and cultural development of the persons involved;
- (h) Self-managed: resources (economic, technical, institutional, political) should be managed by those concerned, using their own tried and tested forms of organization and participation;
- (i) Democratic: it should be supported by a democratic State that is committed to its population's well-being, respects multiculturalism and has the political will to protect and promote the human rights of all its citizens, especially those of indigenous peoples;
- (j) Accountable: the actors responsible for development must be able to render a clear account of their performance to the community and society in general.

B. Duty bearers: States, multilateral agencies and other actors

19. A logical corollary to the rights-based approach to indigenous development is that the State has an obligation to implement a minimum set of public policies aimed at respecting, protecting, guaranteeing and promoting the rights of indigenous peoples, beginning with steps to improve their living conditions. This not only requires a change in the development discourse but also a transformation of public institutions and international cooperation. Alongside States, bilateral and multilateral donors, international agencies and in some circumstances private enterprises are also key players in human rights-based development and hence also duty bearers in respect of policies and programmes on behalf of indigenous peoples.

20. The Permanent Forum on Indigenous Issues has promoted the rights-based approach to indigenous peoples' development adopted in UNDP activities and applied by ILO in the light of Convention No. 169 and by UNICEF in implementing article 45 of the Convention on the Rights of the Child.

21. An analysis of 27 development cooperation agencies undertaken by the Forest Peoples Programme in 2003 concluded that only eight agencies had a specific policy of collaborating with indigenous peoples. Since then some of these policies have been updated, including the revision of the Strategy for Danish Support to Indigenous People of the Danish International Development Agency (DANIDA), the recent launching by the German Federal Ministry for Economic Cooperation and Development (BMZ) of the Development Cooperation with Indigenous Peoples in Latin America and the Caribbean strategy and the adoption by Spain of the Spanish Strategy for Cooperation with Indigenous Peoples in conjunction with its ratification of ILO Convention No. 169 as a framework for cooperation activities with indigenous peoples. These policies include recognition of basic rights of indigenous peoples set out in the Declaration, such as self-identification, recognition of the relationship between indigenous peoples and their lands and territories, the right to establish and implement their own models of

self-development, and free, prior and informed consent, including the right not to accept activities that are incompatible with those rights. The World Bank adopted revised Operational Policy 4.10 concerning its activities affecting indigenous peoples. Other agencies, such as the Japan Bank for International Cooperation, include specific provisions governing indigenous peoples in which the fundamental role of respect for their rights is recognized.

C. Free, prior and informed consent

22. One of the basic articles in the United Nations Declaration on the Rights of Indigenous Peoples stipulates that States “shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them” (art. 19). Application of this principle in development programmes and projects on behalf of indigenous communities and peoples is a basic prerequisite for ensuring respect for the right of indigenous peoples to self-determination.

23. According to the Permanent Forum on Indigenous Issues, the principle of free, prior and informed consent comprises the following elements:⁵

- (a) There should be no coercion, intimidation or manipulation;
- (b) Consent should be sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of indigenous consultation/consensus processes;
- (c) Information should be provided that covers (at least) the following aspects: the nature, size, pace, reversibility and scope of any proposed project or activity; the reason(s) for or purpose(s) of the project and/or activity; its duration and the locality of areas that will be affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;
- (d) Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities, ensuring gender balance and taking into account the views of children and youth, as relevant;
- (e) Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand;
- (f) Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest-holders.

⁵ E/C.19/2005/3, paras. 46-48.

24. Among the positive experiences in this regard was that of the Tagbanua Calamian people of the Coron Island, in Palawan (Philippines), whose rights to their ancestral lands were recognized through the Indigenous Peoples Rights Act (IPRA). This Act recognizes the right of indigenous communities to free, prior and informed consent in relation to any development programme or project undertaken for their benefit, mainly through a council of elders (*mame'pet*) which represents the entire territory. This process has enabled indigenous communities to better manage their ancestral lands and helped them to generate income by giving them control of local tourism activities.

25. In Canada, the Inuit and Haida peoples have also had some positive experiences relating to free, prior and informed consent. A good example is the agreement reached among the Voisey Bay Nickel Company, the Innu Nation and the Labrador Inuit Association. The agreement recognizes that local indigenous communities have constitutional rights to their ancestral land, and that mining activities on that land can only be conducted with their consent. The agreement has enabled the involvement of indigenous peoples in project design, employment, environmental protection, social security and cultural protection measures.

26. Although this principle is well-established in the legislation and policies of many countries, the Special Rapporteur continues to receive reports from indigenous organizations on the lack of its implementation. In the case of the Russian Federation, for example, in their replies to a questionnaire sent by the Special Rapporteur referring to the Federal Act of 2000 on the indigenous peoples of the North, Siberia and the Far East of the Russian Federation, which incorporates the principles of consultation and consent, indigenous organizations have reported that the Act is not being implemented effectively in all cases where natural resources are being exploited. Likewise, in Colombia, there are continued complaints from indigenous organizations about flaws in the consultation mechanism established by decree No. 1320 of 1998.

D. Participation and empowerment

27. Participation and empowerment, two basic and interrelated principles of the human rights-based approach to development, are particularly important for indigenous peoples, who have been systematically excluded and marginalized from decision-making on matters affecting them. Thus, the United Nations Declaration on the Rights of Indigenous Peoples recognizes their right to “participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures” (art. 18), as an essential part of their right to self-determination. More specifically, article 23 of the Declaration states that:

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

28. There are many positive examples in which the participation of indigenous peoples has contributed effectively to achieving development goals and at the same time helped reinforce the institutional capacity of rights holders. In Argentina, the National Institute of Indigenous Affairs (INAI) established the Council on Indigenous Participation (CPI), the aim of which is to promote

intercultural dialogue. CPI has played a key role in monitoring the issue of the land of indigenous peoples in the country, including through the adoption of an emergency land ownership act for indigenous communities (Act No. 26.160). In Bolivia, the participation of indigenous peoples has been key in drawing up new legislation which has recently been adopted in the country.

29. Africa has seen an increasing number of laws and projects involving the participation of indigenous communities, including the forestry codes of Cameroon (1994), Gabon (2001) and the Democratic Republic of the Congo (2002). In the Forest and Environment Development Programme of Cameroon, developed with support from the World Bank, indigenous communities participate in the local management of forestry resources, through the legalization of property rights and the use of their lands and natural resources. In Kenya, the Government has included indigenous peoples in a planning process - the Indigenous Peoples Planning Framework - as part of the Kenya Agricultural Productivity and Sustainable Land Management Project, although this has not yet been implemented. It should be noted that the principle of participation extends beyond the planning, implementation and evaluation of projects, also enabling indigenous peoples to share in the benefits derived from development. Thus, in Nigeria, an agreement is being negotiated for the Ogoni communities to share in profits from oil production in the Niger Delta.

30. Within the United Nations system the Human Rights Strengthening Programme (HURIST), implemented jointly by UNDP and the Office of the United Nations High Commissioner for Human Rights, has a strong indigenous focus. Through this programme, funded by the Catalan Agency for Development Cooperation, arrangements have been made to involve indigenous peoples in planning the work of the United Nations country teams in Ecuador, Bolivia and Kenya. UNDP has also established the Regional Initiative on Indigenous Peoples' Rights and Development in the Asia Pacific (RIPP), which has been endorsed by the Governments of Cambodia, Indonesia, the Philippines, Thailand and Viet Nam. In Indonesia, this programme has made it possible to conduct an analytical review of legislation, bringing together the Government, the National Human Rights Commission and indigenous peoples to discuss how better to align laws and policies with the aspirations of indigenous peoples.

31. The development of indigenous peoples can only come about by strengthening the capacity of indigenous organizations, communities and peoples, to enable their members to exercise their rights. This explains why an increasing number of programmes are combining the objectives of participation, training and institutional strengthening. Thus, in 2006, the German Agency for Technical Cooperation (GTZ) launched a programme to strengthen indigenous organizations in Latin America, and the cooperation agencies of other countries, such as Spain and Denmark, have also set strengthening the capacity of indigenous peoples as a priority objective.

32. A model experience at the local level is that of the Centre for Rural Development and Social Development (CESDER), in the northern mountain range of Puebla, Mexico, which combines educational objectives with the sound and sustainable use of resources and efforts to improve access to the market for community products. This project has led to the creation of five new institutional entities: an agriculture and livestock office; a support programme for rural women; a rural business promotion service; rural vocational training schools and a school for the vocational and technical training of agricultural workers. These schools have adopted a bilingual and multicultural teaching method, and the diplomas that they confer are officially recognized by

the Ministry of Public Education. The project now includes a university programme for indigenous rural populations, based on the model developed by the Inuit people in Nunavut (Canada), and draws on the financial and human resources of the communities themselves, with added assistance from State, federal and international agency funds.

33. Best practices for the participation and empowerment of indigenous peoples as components of the human rights-based approach demonstrate that the time has come to move beyond the old participative model for development and to include processes for their autonomy and self-management. One innovative example in this context is the project to empower the indigenous peoples of Antioquia, to enable them to exercise their rights and autonomy in the context of the armed conflict in Colombia. This project receives support from the European Initiative for Democracy and Human Rights, with the participation of the Indigenous Organization of Antioquia and the Mugarik Gabe and Almaciga NGOs. The project promotes the empowerment of authorities and women's organizations in Antioquia in three ways: by strengthening the autonomy enjoyed by indigenous peoples, especially through the political participation of indigenous organizations within their own communities; through dialogue with State officials and non-indigenous entities; and through "indigenous diplomacy" with international and cooperation agencies.

34. Empowering rights holders and duty bearers reinforces institutional dialogue, thus rendering the exercise of rights more effective. This was the key to a UNDP project with the Philippine NGO Centre for Community Journalism and Development (CCJD), which aims to enhance knowledge and foster public discussion about human rights. This project involved community organizations and public authorities alike, including the Commission on Human Rights of the Philippines and the Philippine National Commission on Indigenous Peoples. Through this project, indigenous communities in the Iloilo province of the Western Visayas region of the Philippines were able to organize themselves in protest against the building of a dam. A community newspaper, TVE, went with local organizations on fact-finding missions and disseminated the results of those missions in order to raise awareness among the general public about the impact of that dam on indigenous communities.

35. By involving and empowering rights holders and duty bearers, it is possible to find solutions to individual cases that take into account their specific cultural characteristics. In the context of educating nomadic communities in Karamoja (Uganda), the NGO Save the Children promoted an initiative to foster understanding between the local authorities and the Karamojong community, which follows traditional herding practices, in order to tackle the issue of illiteracy affecting 90 per cent of the population. An alternative education system was designed as part of this initiative, providing lessons at the beginning and end of the day for children involved in traditional herding activities, and also accommodating those parents who want to learn. This alternative education system, managed jointly by local communities and district authorities, provides students an opportunity to enter the formal school system, and has thus enabled Karamojong children to receive a formal education.

E. Autonomy and self-management

36. Of particular importance to the development of indigenous peoples is their right "to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions" (article 4 of the United Nations

Declaration on the Rights of Indigenous Peoples). This right builds on the principle of the participation of indigenous peoples in development projects and programmes managed by non-indigenous entities, affirming the additional principle that indigenous peoples themselves must play a role in their own development.

37. In Latin America, for example, the State reform and decentralization processes have led to the emergence of indigenous policymakers, who have started to participate in State decision-making structures, especially at the local level. In Ecuador, indigenous leaders have been elected to such positions as mayor of Cotacachi in 1996 and governor of the Cotopaxi province in 2000, subsequent to the mobilization of indigenous organizations. This has also given local authorities the chance to make changes to territorial government institutions, creating new opportunities among indigenous communities for access to and the distribution, control and use of resources for development. A similar case is that of the Tirúa, in southern Chile, where, in 1996, an indigenous person was elected as mayor, the first such appointment in the country's democratic history. Since then, the Mapuche-Lafkenche communities have benefited from access to local government on three levels: first, by channelling more resources to indigenous communities, to improve infrastructure and basic services in particular; second, by devising innovative ways to promote their participation in community development planning; and third, by creating new networks which include a variety of national and international development agencies, and in which the municipality plays the role of facilitator and adviser.

38. Other significant experiences of autonomy and self-management for the development of indigenous peoples include moves by indigenous peoples and communities to take direct responsibility for the management of State policies. For example, the union of municipal authorities of Zoogocho sector in the Sierra Norte region of Oaxaca (Mexico), established in 1991, brings together 21 Zapotec communities; this intercommunity organization, based on customary law, conducts activities to promote cultural values, to improve infrastructure and education and health services, and to boost agricultural and livestock production. Most of the costs arising from those activities are covered by the respective sectoral authorities or, in the case of major projects, from State and federal funds.

39. In the area of education, one positive self-management experience is the programme for the training of bilingual teachers in Peruvian Amazonia (FORMABIAP), an initiative carried out jointly with the Interethnic Association of Peruvian Amazonia (AIDSESP), and the Ministry of Education of Peru. The aim of this programme is to introduce bilingual and intercultural education in indigenous communities by developing teaching materials and school curricula, and training bilingual indigenous teachers. Since its creation in 1988, the programme has successfully trained more than 800 teachers from 15 different indigenous groups. The Ticuna education project in the Alto Solimões region of Brazil, launched in 1998, is similar; it has served as a model for the Ministry of Education's initiative on national curricular references for indigenous education (RCNEI). While these projects have generated positive results, they have been difficult to incorporate into the public education system, added to which they are highly reliant on funds from international aid agencies.

40. The Education Guarantee Scheme (EGS) in Madhya Pradesh, India, launched in 1997, which aims to achieve the goal of universal primary education for indigenous communities and other marginalized groups from this State, is based on a three-tiered structure of cooperation among the Government of Madhya Pradesh, the local government body (Panchayat) and local

communities. The State Government allocates funds for the training and remuneration of teachers; the Panchayat manages the programme funds, and the relevant community is responsible for the implementation and evaluation of the system as a whole. To achieve the goal of universal primary education, the communities have the right to demand that a school be set up (for 25 children, in the case of indigenous communities). Among the positive lessons learned from this experience is the high level of participation of the communities themselves, and the recognition of the role of civil society as a catalyst for change in public policy. Both factors, and a favourable political context, were key to ensuring the justiciability of the right to education, as well as the self-sustainability of the process, since the authorities do not depend on donor funds.

41. In the area of health, the United Nations Fund for Population Activities (UNFPA) helped set up the Jambi Huasi health clinic, which has acquired great importance for Quechua communities in Ecuador. A central aspect of this programme was the emphasis on transforming public services into community services, thus taking better account of the needs and priorities of indigenous communities. This process has made it possible to incorporate indigenous knowledge into health services, and to provide traditional medicine alongside modern medicine, including by making a pharmacopeia of medicinal plants available to traditional healers.

42. This type of approach has also been adopted in national poverty reduction plans. For example, the Western Uplands Poverty Alleviation Project (WUPAP) in Nepal was one of the first projects to apply a human rights-based approach to matters relating to indigenous communities and Dalits. The project, a joint initiative of IFAD and the Government of Nepal, promotes food security through the establishment of grassroots organizations, for example, which later take a key role in mobilizing resources and fostering the accountability of government entities. While the sectors in which these organizations operate are marginal, the project has made significant progress in the development of infrastructure and public services and of alternative productive activities. In its first two years, this project has reached more than 20,000 persons in 4,000 households.

F. Territorial control

43. One of the basic principles of a human rights-based approach to development is the indivisibility and interdependence of human rights. Indigenous peoples have constantly and consistently drawn attention to the importance of their “spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories ... and other resources and to uphold their responsibilities to future generations in this regard”, as reflected in the text of the Declaration (art. 25). Respect for the rights of indigenous peoples to ownership of, control over and access to their traditional lands and natural resources is a precondition for the enjoyment of other rights such as the rights to food, health, adequate housing, culture and free exercise of religion. The increasing urban drift of many of their members or their migration to other countries do not contradict, but rather reinforce the need to ensure the territorial control of indigenous communities as a part of development, to which migration, in many cases, is merely a desperate alternative.

44. A well-established principle in international instruments and jurisprudence is that the right of indigenous peoples to their traditional lands and territories is a corollary of States’ duty to give effect to those rights by demarcating and registering the territories, with due respect to the

customs, traditions and land tenure systems of the indigenous peoples concerned (Declaration, art. 26, para. 3). The participation and empowerment of the affected communities and the strengthening of public legal and administrative mechanisms are essential components of these experiences.

45. A pioneering initiative in this regard was the multilateral Indigenous Lands Project in Brazil. From 1996 to 2006, the Indigenous Lands Project supported the National Indian Foundation (FUNAI) in the demarcation, approval and registration of indigenous lands in the Amazon basin. It also supported indigenous initiatives aimed at the preservation and sustainable use of their territories. Designed as an open project, it was successful in securing 70 per cent of indigenous lands, although to date only 50 per cent of the illegal occupants of those lands have been relocated. In 2007, the German cooperation agency launched a project to monitor the protection and conservation of the demarcated territories. Similar initiatives have been implemented by the Danish cooperation agency, such as support for the registration of community lands surrounding the two major areas of protection in Nicaragua, namely the Bosawas and Indio Maíz reserves.

46. As of 2006, the process of granting title to indigenous land in Bolivia has been stepped up. Under the Community Renewal Act No. 3545, title to 3.7 million hectares was granted in full compliance with the human rights-based approach, with significant implications for the development of indigenous native peoples. Likewise, the supreme decrees on consultation and participation and on monitoring hydrocarbon-related activities in indigenous territories and rural communities recognize the right of those peoples to be consulted and to participate, in accordance with their customs and traditions, in decisions relating to their lands and territories in conformity with the provisions of ILO Convention No. 169. In Bolivia, there are over 80 initiatives relating to community tourism. Government policy aims at establishing links between such tourism structures in indigenous areas and indigenous and native peoples so that they themselves manage tourism.

47. Another important example of this type of initiative is the Orissa Tribal Development Project (OTDP) in India, implemented between 1987 and 1998. Designed as a comprehensive development project, one of its components was the registration and regularization of indigenous lands in the State of Orissa, which included the formal recognition of agricultural and forest lands traditionally used by indigenous peoples. This measure both facilitated the recognition of the property rights of the communities involved and helped restore the ecological balance and enhance the productivity of these lands.

48. Good practices were also achieved with regard to protected areas, where the aim of environmental protection was linked to institutional reform processes and the empowerment of indigenous peoples. Since 1998, the Ereto project, a bilateral cooperation initiative between the United Republic of Tanzania and DANIDA has involved local pastoral communities in conservation efforts in the Ngorongoro district. The cornerstone of this project has been the association of respect for traditional grazing practices with conservation as mutually reinforcing objectives, rather than incompatible elements, as is the case in policies pursued in other countries. Such factors as the empowerment of local communities and the support for livestock initiatives launched by the communities themselves were identified as key to the success of the project.

49. In more recent cases, the joint management model has been applied to new types of protected areas. Such is the case for the designated indigenous conservation areas in Bolivia, where indigenous people retain the control and administration of the protected areas on the basis of full recognition of their land rights, thus yoking together the objectives of conservation, development and land control. In 1990, the Isiboro Sécure National Park, which was originally set up as a protected area in 1965, was given dual status as national park and indigenous territory following representations by the indigenous peoples. In Neuquén, Argentina, the National Parks Administration (APN) and the Neuquén Mapuche Confederation agreed on the establishment of a management system that involves indigenous communities in decision-making relating to issues such as livestock breeding, tourism and the harvesting of forest products in protected areas. This system was also used for other new protected areas, which are now administered by a national advisory board for native peoples composed of representatives of indigenous communities that live within or around these areas.

50. A similar experience is that of the Cordillera del Condor (Condor range) in Ecuador, where plans for the creation of a national park, which was promoted by environmental organizations, met with opposition from local indigenous communities and raised concerns about existing environmental legislation. Following negotiations between the communities and the Ministry of the Environment, there is now a plan for the creation of a “Shuar protected area”.

51. The Toro people of Indonesia, who traditionally inhabited the area in Sulawesi now known as the Lore Lindu National Park, implemented a special plan between 1993 and 2000 which included the documentation of the customary law of the communities concerned and the participative mapping of their territories. This plan served as a basis for the negotiation of a formal agreement with the authorities in charge of the Lore Lindu National Park, which led to the recognition of the Toro indigenous territory alongside the system of national parks. The benefits of this project include the prevention of illegal logging, which used to be widespread in the Park, and the strengthening of the system of traditional authorities (*desa*) and the customary system of national resource use and protection (*adapt*).

52. The Squiala First Nation in British Columbia has informed the Special Rapporteur that, following the conclusion of the Squiala First Nation Individual Agreement with the Department of Indian Affairs, it has obtained control over its traditional lands. On the basis of this agreement, the communities have developed their own land code, which provides the legal framework for identifying lands that should be protected for conservation or spiritual purposes, as well as those areas required for economic development. The benefits derived from such development, which are retained by the community itself, are administered in accordance with specific guidelines on governance and financial accountability.

53. The previous examples show how, acting by themselves and on their own initiative, indigenous peoples determine their own development, which is recognized by the State through formal agreements that facilitate cooperation in the sustainable management of their traditional territories. A crucial factor in the success of such human rights-based experiences is capacity-building for the indigenous communities concerned, which facilitates their administrative participation, and institutional reform at the local level. The various strategies used to gain territorial control in these cases have enabled the indigenous peoples and communities to enjoy a greater degree of self-determination.

G. Non-discrimination

54. The human rights-based approach to development highlights the importance of the principle of equality and non-discrimination, and the need to give priority attention to marginalized and socially excluded groups. The United Nations Declaration also emphasizes the need for States to take “effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities” (art. 21, para. 2).

55. As repeatedly pointed out by the Special Rapporteur, indigenous women suffer discrimination at various levels.⁶ Many studies have shown that women are often excluded from participative processes and decision-making on development projects and programmes in indigenous communities. Although women play a critical role in the social and economic life of their communities, this means that their priorities are often not reflected in development policies and measures which, in turn, further deepens their marginalization. As a result, the best practices for indigenous development place special emphasis on the role of women in their own cultural context.

56. The activities of the International Fund for Agricultural Development (IFAD) carried out in cooperation with the Maasai communities of the United Republic of Tanzania have shown the importance of taking account of the role and responsibility of women within their communities. These activities have revealed the essential role of Maasai women in caring for livestock, with which they are in daily contact through milking and the sale of milk, and women have become key players in programmes aimed at promoting nomadic herding. In this connection, the availability of gender disaggregated data has proved particularly important, and these data have also helped reassess the extent to which traditional knowledge is transmitted through women. A similar experience was gained in the Philippines by the World Agroforestry Centre (ICRAF), which provided technical support to the Subanen communities in documenting and securing the legal protection of their traditional ethno-botanical knowledge and biodiversity resources. The project showed that the women have knowledge about a wide range of biogenetic resources, including rice varieties, that are crucial to the nutrition and health of their communities.

57. Organizational strengthening and empowerment are of key importance in ensuring that indigenous women are involved in the development process: accordingly, some integrated projects now include specific components to strengthen the position of rights holders. In Panama, the Sustainable Agricultural Development and Environmental Protection Project for the Darién (PRODARIEN) includes a component on the legal recognition and training of indigenous women’s organizations in the management of their own initiatives and projects, which encourages closer cooperation between women from various indigenous groups and ethnic communities. Similarly, the Programme of Reconstruction and Development for the Quiche and Proderqui Departments (PRODERQUI) in Guatemala sets as one of its main targets the involvement of indigenous women in the restoration of community systems following the

⁶ See A/HRC/4/32, paras. 67-72.

civil war. PRODERQUI has also set itself the goal of easing the workload of women in their day-to-day activities, so as to enable them to participate in political and decision-making processes, and of strengthening indigenous women's organizations and micro-enterprises.

58. Institutional strengthening processes have made it possible for indigenous women's organizations to become more closely involved in programme management. Thus, the Ngöbe Women's Association (ASMUNG) has played a fundamental role in promoting health care and reproductive health services in more than 30 Ngöbe communities in Panama. The association's high standing has played an important role in reaching women and girls from the communities involved, as well as their husbands and fathers.

59. Institutional strengthening of indigenous women's organizations has also been a key factor in promoting respect for human rights and combating problems which particularly concern women, such as gender-based violence. In that context, UNIFEM has promoted capacity-building and institutional strengthening for women's organizations in such countries as Bolivia, Ecuador, Guatemala, Mexico and Peru, encouraging efforts to expose acts of violence against women and girls and to identify mechanisms to combat such violence, both through the official justice system and through traditional indigenous justice.

IV. CONCLUSIONS

60. Although over the past 50 years extensive efforts and resources have been devoted to overcoming the poverty and marginalization from which most indigenous communities suffer, the economic, social and human development levels of these communities generally remain very low. Key to understanding the limited impact of development policies is that they have not attacked the structural causes underlying the marginalization of indigenous peoples, causes that are directly linked to the failure to recognize, protect and guarantee observance of their individual and collective human rights.

61. A rights-based approach identifies indigenous people as full holders of human rights and sets the realization of their rights as the primary objective of development. As documented in many best practices followed in different parts of the world, an endogenous and sustained development is possible when it is based on respect for the rights of indigenous peoples and undertakes to ensure their observance.

62. Attested best practices in development based on the rights of indigenous peoples are to be found in social and political processes initiated by indigenous communities and organizations in exercising and defending their rights. These are empowerment processes which are predicated on the assumption by indigenous peoples of ownership of their rights and on strengthening the ability of these peoples to organize and demand the observance and exercise of their rights, and also their political participation.

63. The rights-based approach brings with it a system of principles which may be used in formulating, applying and evaluating constructive policies and agreements between Governments and indigenous peoples. With the recent adoption of the United Nations Declaration on the Rights of Indigenous Peoples, development stakeholders now have at their disposal a clearly formulated regulatory framework for development policies and actions targeted at them.

64. The rights and principles enshrined in the Declaration mesh with the general principles of the rights-based approach. Under the Declaration, the rights-based approach entails respect for the principles of self-determination of indigenous peoples in the context of development: namely, their free, prior and informed consent; participation and empowerment; autonomy and self-management; the strengthened control of their lands; and non-discrimination.

V. RECOMMENDATIONS

65. In the light of the above considerations, the Special Rapporteur submits the following recommendations to Governments and, in particular, agencies responsible for social policy and development; United Nations agencies and international organizations; international financial institutions and aid agencies; domestic and international non-governmental organizations; and indigenous organizations and the indigenous peoples themselves.

A. General recommendations

66. The development and implementation of public policies must be guided by the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and other international instruments and by the jurisprudence of the human rights bodies.

67. The objectives of social and development policies and programmes designed for indigenous peoples must be to promote respect for and guarantee compliance with the human rights, individual and collective, of these peoples. Accordingly, these programmes and policies must be formulated and evaluated in terms of their contribution to meeting that goal. This necessitates the development, in cooperation with indigenous peoples, of operational criteria which draw together the activities of the various stakeholders involved, and of indicators to measure the impact of those activities.

68. On no account should development activities be allowed to run counter to the general principles of the human rights of indigenous peoples. Accordingly, there must be a requirement for the conduct of social, cultural and environmental impact studies for projects to be carried out in the lands and areas occupied by indigenous peoples.

69. Social and development policies and programmes relating to indigenous peoples must be based on the free, prior and informed consent of the communities concerned. These communities must be effectively involved in identifying priorities and in designing, implementing and evaluating the development activities intended to help strengthen their capacities and those of their organizations. Priority must be given to development initiatives identified and defined by the indigenous peoples themselves.

70. The design of social and development policies and programmes intended for indigenous peoples must take due account of the individual and collective rights situation of these communities involved, with a view to uncovering the underlying causes of discrimination, exclusion and marginalization. In this process, efforts must be made to identify the holders of these rights, with special attention to the vulnerable and marginalized groups within the indigenous communities, and also the relevant duty bearers.

71. **Provision must be made in the regular budgets of States for social and development policies and programmes targeted at indigenous peoples. A rights-based budget approach must be followed, whereby decisions at all stages of the budget process are taken in keeping with the principles of transparency, accountability, non-discrimination and participation.**

B. Recommendations to donors and international agencies

72. **Those engaged in cooperation work should refrain from supporting programmes and projects which, either directly or indirectly, are or could be conducive to the violation of the rights of indigenous peoples in the countries receiving development aid.**

73. **Cooperation partners should work directly with indigenous communities and organizations.**

74. **Development cooperation partners should ensure that their activities help strengthen dialogue and cooperative relations between indigenous peoples and the Governments of the countries in which those peoples live, identifying priority areas and the necessary resources to ensure the effective exercise of the rights of indigenous peoples.**

75. **Development cooperation partners should give particular attention to strengthening the capacities of government and civil-society bodies to ensure the effective exercise of the rights of indigenous peoples, including by supporting the reforms necessary for the incorporation of these rights in legislation and in public policies.**

76. **At the same time, steps should be taken to strengthen the mechanisms for political participation and accountability which support efforts by indigenous peoples to identify their priorities and exercise their rights.**

C. Recommendation to the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme

77. **The principles underlying the human rights-based approach to indigenous development must be applied in such a way that they can be drawn on by those responsible for implementing public policy and cooperation, as well as by the indigenous peoples themselves, in the development, preparation, implementation and evaluation of policies, programmes and projects for the benefit of these peoples. The Special Rapporteur recommends that the Office of the High Commissioner and UNDP, as key players in the process of promoting a rights-based approach to development, conduct studies of good practices and prepare a manual on the use of this approach in development activities involving indigenous peoples.**
