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INDIGENOUS ISSUES

Human rights and indigenous issues

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen,
submitted in accordance with Commission resolution 2002/65**

Addendum

Communications received by the Special Rapporteur* **

* This document is being circulated in the language of submission and in Spanish only.

** In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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Introduction

1. This addendum to the report of the Special Rapporteur contains information on communications received from February 2002 to 14 December 2002. It further contains information on three urgent appeals sent, one in November and two in December 2001 the replies to which were not reported to the Commission on Human Rights in 2002.
2. It should be emphasized that the summary of communications with the countries discussed in this addendum in no way reflects the total extent of the human rights problems that indigenous peoples are currently confronted with the world over, some of which are dealt with in the main report.
3. The Special Rapporteur transmitted six letters containing allegations concerning violations of the human rights of indigenous peoples and communities, three of which - along with four urgent appeals - were sent jointly with other thematic rapporteurs. (See table below.) Three government replies had been received from the Government of Mexico at the time of writing this addendum (14 December 2002). The Special Rapporteur would like to thank the Government for its prompt attention and replies.
4. In addition to this summary of formal communications between himself and Governments, the Special Rapporteur further provides a brief overview of the situation of indigenous peoples in additional countries, based on first-hand testimonies and on reputable and credible sources, which have been brought to his attention by numerous and varied human rights defenders and representatives of indigenous peoples and non-governmental organizations working on indigenous issues.

I. COMMUNICATIONS

Argentina

Communication sent

5. On 3 October 2002, in a **joint letter of allegation** with the Special Rapporteur on torture, the Special Rapporteur sent a communication to the Government of Argentina, enquiring about an attack reportedly perpetrated by the police of Formosa Province against Toba-Qom indigenous people, part of the Nam Qom community, in reprisal for the murder of a sergeant-major on 16 August 2002. Several members of the community were allegedly detained arbitrarily, threatened and physically abused by the police. In the letter, the Government was asked to provide detailed information on this case and to take all effective measures to avoid a repetition of such alleged violations and to compensate the families and victims in accordance with international human rights norms.

Observations

6. The Special Rapporteur is still awaiting a reply from the Government.

Chile

Communication sent

7. On 11 December 2001, the Special Rapporteur, in a **joint letter of urgent appeal** with the Special Representative of the Secretary-General for human rights defenders, sent a communication to the Government of Chile, enquiring about the alleged detention of the indigenous leaders of the Mapuche organization Consejo de Todas las Tierras: Aucán Huilcamán, Manuel Santander, Margot Collipal, Adán Ayenao and Sergio Marillán. It was reported that on 20 July 2001, on orders of the public prosecutor's office, the police violently entered the premises of the Consejo de Todas las Tierras to confiscate the organization's computers, and the staff of the office allegedly defended themselves against the police intrusion. Consequently, on 29 November 2001, the leaders were allegedly arrested on orders of the military prosecutor. At the time of writing the letter of urgent appeal, the detainees had not yet been released, on the grounds that they represented a danger to society. The Special Rapporteur appealed to the Government to provide information about the situation of the people mentioned.

Observations

8. The Special Rapporteur is still awaiting a reply from the Government

Colombia

Communication sent

9. On 5 July 2002, the Special Rapporteur, in a **joint letter of urgent appeal** with the Special Rapporteur on torture, and the Special Representative of the Secretary-General for human rights defenders, sent a communication to the Government of Colombia, enquiring about the alleged detention and mistreatment of two brothers in the indigenous community of Vereda La Despensa, Jamundí, municipality, Department of Valle de Cauca, by members of the Colombian army brigade III, who arrested them without judicial warrant, tortured them and accused them of being guerrilla supporters. Their home was searched by the army, and weapons and uniforms were allegedly introduced among their belongings in order to enable the public prosecutor to obtain a guilty verdict against them. In the letter of urgent appeal the Government was asked to provide information on the case and about measures it might have taken to guarantee the rights to life and physical integrity of the victims, and to promote the human rights and fundamental freedoms of indigenous people.

Observations

10. The Special Rapporteur is still awaiting a reply from the Government.

Communication sent

11. On 12 November 2002, in a **letter of urgent appeal** to the Government of Colombia, the Special Rapporteur enquired about the situation of the U'wa community. According to the information received, Occidental Petroleum Company (known as Oxy) had operated until six months previously in Bloque Gibraltar, located approximately 500 metres from the U'wa Reservation and within the U'wa ancestral homeland. Its operations were to be taken over by Ecopetrol, under the protection of the Colombian police and armed forces. The U'wa people argued that the activities of Oxy and the proposed oil drilling by Ecopetrol on their ancestral territories became matters of serious concern because these activities affected a sacred area. They further claimed that local development plans were agreed upon between Ecopetrol and local peasant communities without taking their interests into account, and complained that oil drilling on their land is in contravention of their cultural beliefs, which attach spiritual significance to land and territory, besides having a negative impact on their living environment. They also reported that a state of emergency had been declared in Colombia and a special law had entered into force in Arauca Department in order to protect oil drilling activities. The Special Rapporteur appealed to the Government to take all necessary measures to ensure that the rights of the U'wa community, including their rights to life, to physical integrity, and to land and territory, as well as the right of peaceful assembly, are protected.

Observations

12. The Special Rapporteur is still awaiting a reply from the Government.

Communication sent

13. On 12 November 2002, in a **letter of urgent appeal** to the Government of Colombia, the Special Rapporteur enquired about the situation of the Emberá Katío peoples of Alto Sinú who have been displaced from their autonomous territory. According to the information received, about 800 Emberá Katíos, approximately one third of the population, inhabiting the River Esmeralda communities of Kachichí, Widó, Karakadó and Kanyidó, were forcibly displaced by the Fuerzas Armadas Revolucionarias de Colombia (FARC) to the municipality of Tierralta on 9 October 2002. The same information reported that the military actions by Colombian army brigade XI in the autonomous territory of the Emberá Katío people caused additional forced displacement, violated the human rights of the civil population and threatened the life of the communities. The Governing Council of the Emberá Katío people had requested humanitarian protection from the Government many months previously and an end to the military operations in their autonomous territory. The Colombian army allegedly did not provide humanitarian protection and instead increased its military actions, in contravention of a request by the Inter-American Court of Human Rights in June 2001, which had asked the Government of Colombia to take urgent measures to guarantee the right to life and physical integrity of the community.

14. The Special Rapporteur appealed to the Government to take all necessary steps to ensure the Emberá Katío's security in order to guarantee the neutrality and inviolability of their territories, to avoid new occurrences of forced displacement, to ensure the return and the humanitarian protection of the displaced people, as well as to ensure their right to land and territory as a fundamental part of their ethnic and cultural identity. The Special Rapporteur further appealed to the Government to take all necessary measures to locate a community leader, who had been abducted allegedly by the armed forces, and to bring his captors to justice.

Observations

15. The Special Rapporteur is still awaiting a reply from the Government.

India

Communication sent

16. On 27 August 2002, the Special Rapporteur sent a **letter of allegation** to the Government of India, enquiring about reports that members of the village of Khedi-Balwari in the district of Dhar, Madhya Pradesh, had been evicted by the police on 20 July 2002. According to the information received, about 400 policemen armed with guns entered the village and forcibly evicted the villagers. It had further been reported that in the course of this action women and children were severely beaten and homes were looted, and savings and cattle stolen. The villagers were allegedly picked up and dumped at the so-called "resettlement" sites of Kesur and Aamkhedia, where they remain under the police guard. The same source reported that this forced eviction took place as part of the undertaking of the Man Irrigation Project.

Observations

17. The Special Rapporteur is still awaiting a reply from the Government.

Mexico

Communication sent

18. On 28 November 2001, the Special Rapporteur, in a **joint letter of urgent appeal** with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General for human rights defenders, sent a communication to the Government of Mexico, enquiring about alleged death threats against two members of the Unión de Organizaciones de la Sierra Juárez de Oaxaca. Allegedly such threats are related to the organization's work for the promotion and protection of the rights of the indigenous peoples of the region. The Special Rapporteur appealed to the Government to provide information about the status of the case, judicial investigations and measures taken in order to guarantee the promotion and protection of the fundamental freedoms and human rights of the concerned persons.

Observations

19. In its reply of 18 December 2001 the Government of Mexico stated that the Attorney-General's Office was investigating possible crimes committed against Aldo González Rojas and Melina Hernández Sosa and informed the Special Rapporteur that preventive measures had been taken to protect the life and physical integrity of the alleged victims.

Communication sent

20. On 20 December 2001, the Special Rapporteur, in a **joint letter of urgent appeal** with the Special Representative of the Secretary-General for human rights defenders, asked the Government of Mexico about an alleged attack against an indigenous human rights defender and member of the Network of Communitarian Defenders in Tila, State of Chiapas. According to the information received, on 8 December 2001, members of a paramilitary group known as "Peace and Justice" had set fire to the house of the victim while he was asleep. The attack appeared to be related to his activities as a community defender and his research on disappeared persons during the confrontation between members of this paramilitary group and the Ejército Zapatista de Liberación Nacional. Furthermore, it followed upon a number of threats, harassments and other attacks during the previous six months against members of the Network of Community Defenders, including the victim, in response to their efforts to denounce and prevent human rights violations in various indigenous communities in Chiapas.

Observations

21. On 18 March 2002, the Government of Mexico informed the Special Rapporteur that various complaints had been filed concerning this case and were being handled by the Chiapas State Commission and the National Commission on Human Rights, which had ordered preventive measures to guarantee the safety and physical integrity of Ramón Pérez, the victim of the arson attempt.

Communication sent

22. On 26 August 2002, in a **joint letter of allegation** with the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur sent a communication to the Government of Mexico in which he sought information on Juan Anzaldo Meneses, an indigenous human rights defender, who had allegedly been illegally detained, threatened and interrogated about his work by the State Judicial Police in Mexico State on 12 June 2002. The Special Rapporteur appealed to the Government to take all necessary steps to ensure the safety of the victim and to carry out a prompt, impartial and thorough investigation in response to the formal complaint that the plaintiff had lodged at the public prosecutor's office.

Observations

23. On 14 November 2002 the Government of Mexico informed the Special Rapporteur that the Mexico State Human Rights Commission was already involved in the case and that the State public prosecutor had begun an investigation of the complaint to establish the facts of the case and identify the presumed authors of the violation of the human rights of Mr. Anzaldo Meneses.

Peru

Communication sent

24. On 26 August 2002, in a **joint letter of allegation** with the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur sent a communication to the Government of Peru, enquiring about an attack on an indigenous human rights defender who was injured with a sabre allegedly by an official of the Peruvian army, when he tried peacefully to speak in a public square on 16 June 2002. The Special Rapporteur appealed to the Government to carry out a prompt, impartial and thorough investigation of this complaint, to make the results public, and to bring those responsible to justice.

Observations

25. The Special Rapporteur is still awaiting a reply from the Government.

United States of America

Communication sent

26. On 1 July 2002, in a **letter of allegation**, the Special Rapporteur sent a communication to the Government of the United States of America, enquiring about the alleged freezing by the Bureau of Indian Affairs (BIA) of a bank account of the Seminole Nation, Oklahoma, used to pay for essential services such as burial assistance and groceries for families, as well as the Indian Child Welfare Programme which provides assistance to Indian children. The Seminole Nation complains that unless the elected members of its General Council are recognized by the BIA they cannot have access to the account in question.

Observations

27. The Special Rapporteur is still awaiting a reply from the Government.

Communication sent

28. On 1 October 2002, in a **letter of allegation**, the Special Rapporteur sent a communication to the Government of the United States of America, enquiring about information concerning a proposed archaeological excavation on sacred territory of the Teton Oyate Lakota Nation at the Pine Ridge Reservation, South Dakota. The National Park Service is alleged to be

planning this excavation in violation of the 1851 and 1869 treaties concluded between the Lakota Nation and the United States of America. The Special Rapporteur appealed to the Government to take all necessary steps to ensure that the Lakota Nation's rights to their territory, including the use of their land, as well as their right to practise and revitalise their cultural traditions and customs, are respected.

Observations

29. The Special Rapporteur is still awaiting a reply from the Government.

Table 1

Summary table of communications sent to and received from Governments

	Africa	Asia	Eastern Europe	Western Europe and Other	Latin America and the Caribbean	Total
No. of countries to which UA and LA were sent	-	1	-	1	7	9
No. of UA sent	-	-	-	-	6	6
No. of joint UA (with thematic and country mechanisms)	-	-	-	-	4	4
No. of LA sent	-	1	-	2	3	6
No. of joint LA (with thematic and country mechanisms)	-	-	-	-	3	3
No. of PR	-	-	-	-	-	-
No. of government replies	-	-	-	-	3	3

UA - urgent appeals
LA - letters of allegation
PR - press releases

Table 2**Statistics on joint communications**

	Letters of allegation	Urgent appeals
Number of joint communications	3	4
Thematic mechanisms		
Special Representative of the Secretary-General on human rights defenders	2	4*
Special Rapporteur on torture	1	1
Special Rapporteur on extrajudicial, summary or arbitrary executions	-	1

* The Special Representative of the Secretary-General on human rights defenders joined all four joint appeals.

II. RELATED ACTIVITIES**Visit to Hokkaido**

30. On the occasion of a private visit to Japan, the Special Rapporteur gladly accepted the invitation extended to him by the **Ainu Association of Hokkaido** to visit some Ainu communities in the region from 24 to 27 November 2002, and he is pleased to be able to share his impressions with the Commission on Human Rights.

31. The Ainu, the original indigenous inhabitants of the island of Hokkaido, were formally incorporated into the Japanese State in the nineteenth century. Official government policy was to integrate the Ainu into Japanese society and culture, a process that over the decades led to the almost complete loss of Ainu ethnic identity. At the same time, Ainu hunting and fishing communities were practically destroyed as their labour became incorporated into the economic activities brought by an increasing number of Japanese settlers to Hokkaido. The Ainu soon became a minority on their own ancestral territory.

32. The current generation of Ainu have lost most of their direct links to their traditional lands and lifestyles, through land expropriations and the agrarian reforms of the period following the Second World War. Their hunting and fishing rights were extinguished or severely curtailed by the authorities.

33. The first reaction to preserve their vanishing culture was undertaken about 20 or 30 years ago by Ainu activists who, concerned about the loss of their language, traditions and identity, formed the Ainu Association of Hokkaido. Even though public opinion and government authorities were not very supportive of these efforts, they finally achieved a long-hoped-for result: the passage of the Ainu Cultural Promotion Law of 1997 by the Japanese Diet, which replaced the Hokkaido Former Aborigines Protection Law of 1899. As a result of the Law the Government set up a foundation and research centre for the promotion of Ainu culture. In Hokkaido there are also various public and private museums exhibiting Ainu cultural artefacts and traditions. Efforts are also under way to introduce knowledge about Ainu culture and history into school textbooks.

34. In his numerous interviews, the Special Rapporteur was informed that the Ainu Cultural Promotion Law does not entirely satisfy Ainu aspirations, because it does not formally recognize their social and cultural rights as an indigenous people.

35. A landmark case for the Ainu was achieved in the Sapporo District Court, which decided in 1997 that the building of the Nibutani Dam on the Saru River illegally affected traditional sacred and burial sites of Ainu communities. While the Court did not declare the building of the dam null and void, because such a decision would affect the public welfare, the Ainu for the first time won a legal victory. The Special Rapporteur visited the dam site, saw some of the affected sacred sites and spoke with the plaintiffs who had filed the case in court.

36. Another contentious issue relates to the management by the Hokkaido government, for over a 100 years, of the "communal property" of the Ainu for which, according to the 1997 Law, they were to be compensated. The Ainu Communal Property Justice Association states that the Ainu people were not consulted about this and that the monetary amount that they have been offered is far less than the real value of the communal property that they lost, accounting for inflation during the intervening years. A number of Ainu have filed a complaint in the Sapporo District Court demanding just compensation and citing the violation of several of their human rights.

37. Ainu people, particularly women, also reported incidents of discrimination against them in daily activities. While these cases are not very widespread, they affect the self-perception and self-esteem of Ainu people. It is one of the reasons why only a few members of the younger generation have taken up the defence of their Ainu identity actively.

38. Nowadays, Ainu cultural activists undertake a series of activities at the community level to preserve knowledge of the Ainu language and their arts and traditions. They hope for more government support and understanding on the part of the rest of society (as well as other Ainus), because they are aware that their human rights as an indigenous people are at stake in this process.

39. The Special Rapporteur considers that the Ainu Cultural Promotion Law could be improved to incorporate specific references to the human rights of Ainu indigenous people. He would also like to see the official institutions involved in Ainu cultural programmes go beyond the preservation of cultural traditions and become more involved in actively promoting

contemporary Ainu cultural creativity within a human rights-centred intercultural development approach, as suggested, for example, by the United Nations Educational, Scientific and Cultural Organization, in order to concentrate on economic, social and cultural rights. The “community property” issue in Hokkaido must be solved in accordance with existing human rights provisions.

Brief Communications

40. **Australia.** The Special Rapporteur’s attention has been drawn to an ongoing dispute between, on one side, the Nyungah Circle of Elders and the Combined Swan River and Swan Coastal Plains Native Title Claims in Western Australia, and on the other, the Federal Government and the government of Western Australia, regarding the alleged threats by local governments, developers and mining interests against aboriginal sacred areas, including disturbances or desecrations of aboriginal sites. These claims should be dealt with constructively within the framework of the Aboriginal and Torres Strait Islander Act, 1974 and the Aboriginal Heritage Act, 1972. The Special Rapporteur enjoins the federal and provincial governments to uphold the rights of aboriginal peoples to their sacred areas.

41. **Brazil.** The Special Rapporteur is concerned about allegations of several murders and threats against the lives of indigenous leaders of the Xucuru people in north-eastern Brazil in connection with the demarcation and formal designation of the Xucuru’s territory as indigenous land according to federal law. Squatters and settlers on the indigenous lands are apparently involved in this violence, which has not been adequately investigated by the local authorities. The Special Rapporteur calls upon the Government of Brazil to take urgent preventive measures to protect the Xucuru people and their leaders and ensure that the process of land demarcation is carried out within the framework of the law and with due respect for the human rights of all concerned parties.

42. **Mexico.** During a visit to several indigenous areas in April 2002, the Special Rapporteur was informed by indigenous villagers in Chiapas that threats of violence continued in communities to which a number of displaced persons had returned after the Acteal massacre in December 1997. The relatives of persons detained after the massacre complain that those accused did not receive fair hearings, whereas indigenous organizations argue that the persons who had instigated the deed have not been identified or even questioned by the authorities, and that the weapons used in the attack are still in the hands of the alleged culprits. The event still needs to be fully clarified.

43. Violence also erupted in Agua Fría, State of Oaxaca, Mexico, in May 2002, when 26 indigenous labourers were ambushed and murdered on their way back from work in a nearby forest, ostensibly by persons from a neighbouring village. The massacre is related to a long standing land dispute, in which the interests of private loggers and the inefficiency and corruption of government authorities play a role. The case has not yet been concluded. Nor, for that matter, has the case of human rights lawyer Digna Ochoa been solved. Ms Ochoa, who was murdered in her office by unknown assailants in October 2001, was widely respected for her defence of the environmental rights of indigenous farmers in the State of Guerrero. A

constructive human rights approach to judicial matters requires the Mexican authorities to make renewed efforts to elucidate these killings, to punish the perpetrators and, above all, to make concerted efforts to prevent further violence in indigenous areas.

III. CONCLUSION

44. **The Special Rapporteur notes with regret that violent acts against indigenous persons and communities in different parts of the world have not ceased. They are usually linked to social conflicts over land rights and use of resources. While there is progress regarding legislation concerning indigenous peoples, very often the laws include provisions that actually limit the full enjoyment of all human rights by these peoples. There is an “implementation gap” between the laws themselves and their effective application at the local level. Institutional mechanisms to ensure their adequate implementation are not always available to indigenous communities. Much too often, powerful economic and political interests actually override the laws themselves, leaving indigenous communities without due protection of their human rights. It is urgent that this issue be addressed fully and the Special Rapporteur intends to cover the problem of administration of justice in his next report to the Commission on Human Rights.**

45. **Government authorities, indigenous peoples’ organizations and human rights associations have been most helpful in providing the Special Rapporteur with information and documentation in the preparation of this report, and he wishes to gratefully acknowledge their cooperation.**
