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土著问题

人权和土著问题

土著人民人权和基本自由情况特别报告员
鲁道夫·斯塔文哈根先生的报告

增 编

对墨西哥的访问^{*}

^{*} 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，
仅以原文和英文分发。

内 容 提 要

本报告是根据人权委员会第 2003/56 号决议提出的，说明土著人民人权和基本自由情况特别报告员 2003 年 6 月 1 日至 18 日正式访问墨西哥的情况。

墨西哥土著人民目前约占其总人口的 12%，在许多乡镇地区为多数人口，特别是在东南部，他们同样也散布在城镇地区。

土著人民的人权在许多方面容易受到侵犯。在许多土地冲突和土著地区政治冲突方面，人们看到侵犯人权的情况，特别是在司法行政方面。对土著人民的歧视表现在人和社会发展指标低下、赤贫、社会服务设施不足、投资规模和生产计划、以及财富和收入在土著人和非土著人之间的分配极不平衡。

2001 年的宪法改革在土著人关注的事项方面未能满足土著组织运动的愿望和要求，宪法保护土著人民人权的范围有所减少，还难以恢复对话，以实现 Chapas 省的和平。

特别报告员建议，墨西哥政府紧急重视防止和解决土著地区的社会冲突，彻底改革土著司法制度，在土著人民积极参与之下，实施有利于土著地区的综合社会经济政策，特别重视移民、流离失所者、以及妇女和儿童，修订 2001 年的宪法改革，以便在 Chiapas 省实现和平，满足土著人民关于承认和尊重其人权的要求。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS
PEOPLE, RODOLFO STAIVENHAGEN, ON HIS MISSION TO MEXICO
(1 TO 18 JUNE 2003)**

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Introduction

1. The Commission on Human Rights, in resolution 2001/57, which established the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, encouraged Governments to give consideration to the possibility of inviting the Special Rapporteur to visit their countries so as to enable him/her to fulfil the mandate effectively.
2. The Government of Mexico, the Special Rapporteur's country of origin, was the first to invite the Rapporteur to visit. Aware of the challenge involved in carrying out a mission of investigation in his own country, the Special Rapporteur held consultations with all the parties concerned to analyse the possible obstacles to and benefits of a mission. In response to requests from the communities, the Mexican Government's interest and confirmation from the United Nations that it was appropriate to accept the invitation, he visited Mexico from 1 to 18 June 2003.
3. The Special Rapporteur wishes to thank the Government of Mexico, the National Commission for the Development of the Indigenous Peoples and in particular the head of the Commission, Ms. Xóchitl Gálvez, for their efficiency in organizing the section on contacts with government institutions and their logistical support. In particular, he thanks the numerous indigenous organizations for their time and the valuable information provided and for the interest they showed in his visit. He wishes to thank the office of the High Commissioner for Human Rights in Mexico and the Mexico office of the United Nations Development Programme (UNDP) for their excellent work and for organizing a wide-ranging and varied programme of meetings. He also wishes to thank the Inter-American Institute of Human Rights for its cooperation, and in particular Diego Iturralde of the Institute for his support during the mission.
4. The indigenous population of Mexico currently accounts for approximately 12 per cent of the total. Although proportionally less large than it was, it increased in absolute terms to almost 13 million in 2000. It is spread unevenly through the country, being mainly concentrated in the States of the south and south-east. Although predominantly rural, in recent years it has increased considerably in urban areas, some of which have programmes for the indigenous population. In numerous municipalities, particularly Oaxaca, Guerrero and Chiapas, indigenous people are in the majority. Traditionally, experts have used ethnolinguistic criteria to classify the indigenous population, which they currently divide into 62 ethnic groups.
5. This report on the situation of indigenous people in Mexico is based on information received from various sources and on interviews with federal, State and municipal leaders and representatives of indigenous communities, human rights associations and non-governmental organizations.

I. PROGRAMME OF THE VISIT

6. The Special Rapporteur visited Chihuahua, Sonora, Jalisco, Oaxaca, Chiapas, Guerrero and the Federal District where he held consultations with government authorities at the federal, State and municipal levels. In Mexico City he met Mr. Vicente Fox Quezada, President of the Republic; Mr. Santiago Creel, Minister of the Interior; Mr. Víctor Lichtinger, Minister of the Environment; Mr. Florencio Salazar, Minister of Agrarian Reform; Dr. Isaiás River, Agrarian

Procurator; Ms. Xóchitl Gálvez Ruiz, Director of the National Commission for the Development of Indigenous Peoples; Mr. Luis H. Álvarez, Coordinator for Dialogue and Peace in Chiapas; Ms. Mariclaire Acosta, Under-Secretary for Human Rights and Democracy of the Ministry of Foreign Affairs; Mr. Herbert Taylor, General Coordinator of the Puebla Panamá Plan; and deputies and senators on the Commissions on Indigenous Affairs and the Peace and Concord Commission (COCOPA) of the Mexican Congress.

7. In his visit to the various States, the Special Rapporteur held meetings, inter alia, with Tarahumara authorities in Chihuahua; Yaqui, Mayo, Seri, O'odham, O'otham, Kikapú and Cucapá leaders in Sonora; Nahuatl and Wixarika leaders in Jalisco; organizations and representatives of the Zapotec, Mixtec and Mixe communities in Oaxaca and the indigenous leaders and human rights defenders in the Tehuantepec Isthmus. In Chiapas, after interviews with the State, military and religious authorities, he held meetings with representatives of human rights organizations, associations of indigenous women and leaders of various communities. He also visited the communities of Masohá Chuc'ha, municipality of Tila in the north, Nahá in the Lacandona forests and Nuevo San Gregorio in the Montes Azules Biosphere Reserve. In Tlapa, Guerrero, he met representatives of the indigenous Amuzgos, Mixtecos, Nahuatl, Tlapanecos and mestizos. He also found out about the situation of the original and immigrant indigenous communities of the Federal District.

8. The Special Rapporteur had a meeting with the President of the National Human Rights Commission, Dr. José Luis Soberanes, and with the presidents of the State Commissions. He also held consultations with the representatives of the United Nations agencies in Mexico, with representatives of non-governmental organizations and members of academic institutions.

II. GENERAL BACKGROUND AND CONSTITUTIONAL ACKNOWLEDGEMENT OF THE MULTICULTURAL NATURE OF MEXICO

9. A century ago, the indigenous communities that made up the majority of the population in Mexico, hard hit by the loss of their communal lands and by the poverty, exploitation and oppression under which they lived, were one of the key social forces which were to precipitate Mexico's agrarian revolution in 1910. The 1917 Constitution initiated a process of agrarian reform which in the course of time benefited some 3 million peasants, for the most part indigenous, grouped under various landholding arrangements in agrarian communities, *ejidos* (units of communal land) and small properties. The agrarian reform, however, soon lost impetus, and numbers of landless farmers and migrant day labourers increased again, their situation aggravated by population pressure on limited natural resources.

10. The 70 years of political control exercised by the Institutional Revolutionary Party (PRI) up to the election of President Vicente Fox Quezada in 2000, brought the institution of strong oligarchies, often accused of municipal and State nepotism and corruption. Agribusiness interests, together with the growing concentration of land in the hands of big business, put pressure on the communities which were increasingly unable to survive on the produce of their land. In 1992 the Constitution was reformed, opening the way to the privatization of indigenous communal lands as part of a globalization-encapsulating economic development process, including the North American Free Trade Agreement, which has brought great changes to the rural world in which most indigenous people live.

11. During the twentieth century the Mexican State based its indigenous policy on education, agrarian reform and the highways and communications infrastructure, with a view to “incorporating the Indians into the nation”. The indigenous communities that did not succumb completely to this acculturation process maintain their cultural identity as indigenous peoples conscious of what they are. The human rights situation of the indigenous peoples is part of this context. Although some progress has been made in this regard, there are seriously backward areas where sufficient political will has not been applied. The national debate on these problems acquired particular relevance with the armed uprising of the Zapatista National Liberation Army (EZLN) in 1994, protesting against “500 years of oblivion”, the subsequent dialogue which led to the signing by the Government and EZLN of the San Andrés Agreements on indigenous identity and culture, and the constitutional reform of 2001 which has been strongly challenged (see below III.G).

12. The new article 2 of the Constitution (anticipated in a 1992 reform) states that the Mexican Nation is single, indivisible and multicultural and based originally on its indigenous peoples; the communities composing an indigenous people are those forming a social, economic and cultural unit, established on a territory and acknowledging their own authorities in accordance with their customs and practices. The right of indigenous peoples to self-determination is to be exercised in a constitutional framework of independence ensured by national unity. Indigenous peoples and communities are to be recognized in the constitutions and laws of the federal States ... which are to establish the characteristics of self-determination and autonomy that best express the situations and aspirations of the indigenous peoples of each State; however, legislation on indigenous matters has only been promulgated in some States (Chihuahua, Nayarit, Quintana Roo, Oaxaca, San Luis Potosí), for the most part prior to the reform of the Constitution.

13. Having completed its historical mandate, the National Institute for Indigenous Affairs, established in 1948 to implement indigenous policy, became the National Commission for the Development of the Indigenous Peoples (CDI) in 2003, with the goal of directing, coordinating, promoting, supporting, encouraging, providing follow-up and evaluating programmes, projects, strategies and public action for the integrated and sustainable development of indigenous peoples and communities, of being a consultative body and of assisting in the exercise of the self-determination and autonomy of the indigenous peoples and communities. In 2003, Congress adopted the General Act on the Linguistic Rights of Indigenous Peoples and the National Institute of Indigenous Languages was established. Mexico has signed the main international human rights instruments, and in 1990 ratified the ILO Indigenous and Tribal Peoples Convention No. 169.

14. Most of the indigenous population lives in the poorest municipalities and States, with the lowest indices of human and social development, where subsistence farming is commonplace in a rough and difficult environment and the land does not provide enough to feed the family, increasingly forcing people to move away, even abroad, to meet their needs. The great majority of indigenous people in these regions are smallholders and day labourers. In 2002 Mexico occupied the fifty-fourth position out of 173 countries with a Human Development Index (HDI) of 0.796. The three southern States with the largest indigenous populations (Chiapas, Guerrero and Oaxaca) have the lowest HDI (literacy rate, life expectancy at birth index and GDP) in Mexico.

15. In small rural communities with few resources, traditions are conserved to a greater degree and the cultural identity of the indigenous peoples finds more intensive expression - in language, social organization and institutions, spirituality and worldview, rites and ceremonies, medicine, oral literature and other expressions of art. The bracketing of poverty with the indigenous population is the result of a complex historical process which violated the fundamental human rights of indigenous peoples for centuries.

III. PRIORITY HUMAN RIGHTS CONCERNS OF THE INDIGENOUS PEOPLES OF MEXICO

16. At the present time violations of the human rights of indigenous people frequently take place when levels of tension and dispute are running high, particularly in the countryside and over agrarian matters and local and regional political power struggles especially. The Special Rapporteur was repeatedly told of conflicts in indigenous communities, with acts of violence and interventions by the public authorities which may constitute human rights violations. According to the reports received, many of these violations go unpunished and lead to the aggravation of conflicts and the resurgence of violence.

A. Agrarian disputes and tensions: land and resources

17. One of the main causes of the conflicts is the question of land. While the agrarian reform benefited more than 3 million peasants as from 1917, it left in its wake innumerable unresolved problems. Social and economic inequality was maintained through corruption and deceit to benefit large-scale ownership, and added to growing population pressure on agricultural resources. An increasing number of poor peasants lack access to land, and are obliged to earn their living as agricultural day labourers, migrant workers within Mexico and in the United States, and emigrants to urban centres. This is also due to the fact that there has been no effective policy of support for the peasant economy for decades.

18. Peasant struggles for land and resources have been made more acute by the ambiguities of agricultural rights and title deeds, disagreements as to the limits between *ejidos*, communities and private properties, conflicts over the use of collective resources such as woods and water, illegal encroachment and occupation of communal land by loggers, stock-breeders and private farmers, accumulations of property in the hands of local *caciques* (bosses), etc. The defence of the land, initially by institutional, judicial and political means, may lead to clashes with other peasants or with private owners, public authorities and the forces of order (police, military). In this context, there are reports of persistent human rights violations for which the local or State authorities and forces of law and order are on occasion not blameless, either by omission or by commission.

19. On 31 May 2002, 26 members of the Xochiltepec, Oaxaca, community were killed at Agua Fría by members of the neighbouring Teojomulco community. According to the National Human Rights Commission (CNDH), this was the result of an omission on the part of the federal and State authorities, and the lack of recognition of ownership and possession of land occupied by indigenous communities. The Commission also mentions the impunity encouraged by the failure to act of the Office of the State Attorney-General and the Office of the Attorney-General, and the lack of judicial safeguards ensuring due process and judicial protection for the victims of violence originating in agrarian conflicts and disputes over forestry resources. The National

Commission concludes that agrarian affairs suffer from a systematic failure to enforce and dispense justice, delays in procedures for resolving conflicts, slow court procedures and rulings with ingrained defects, seriously affecting the right of communities to land and increasing the risk of a socially explosive situation.

Violence and human rights

In the Huastec region, according to an observation mission, the fight by the indigenous communities for recognition and title to their lands have left dozens of people dead over the last three decades.

Another report states that out of a total of 32 violations of the collective rights of the Indian peoples registered in 2002 and affecting the Zapotec, Mixe, Mixtec, Triqui, Huichol, Tarahumara, Yaqui, Cucapá, Cochimí, Kumiai, Kiliwa, Tzeltal, Chol, Tojolabal, Maya, Mazahua, Otomí, Tepehuano and Tlapaneco peoples, 19 cases in 12 States involved violations of the collective right to land and territory and the use of natural resources.

In Guerrero, several indigenous communities complain of encroachment on and expropriations of land they own, the arbitrary detention and torture of a number of peasants by army personnel and dozens of deaths in connection with a conflict over a piece of forest land.

In the Sierra Sur, Oaxaca, the main disputes over land boundaries between communities have led on several occasions to violence, resulting in deaths and injuries.

The Minister for Agrarian Reform told the Special Rapporteur during his visit of 13 agrarian “hot spots” in Mexico involving indigenous communities, some of which are being resolved by negotiation between the parties.

20. In some areas the indigenous communities have no legal security of tenure, as a result of the slow pace and corruption typical of agrarian procedures and the interests of various individuals. The Special Rapporteur was told of cases involving indigenous peoples including the Yaquis of Sonora, the Huicholes of Jalisco, the Tarahumaras of Chihuahua and the Huaves of Oaxaca. The Programme for the Certification of Ejido Rights (PROCEDE), set up to resolve these problems, has not helped to improve the tenure situation, according to the reports received. Two emblematic cases typifying some of these points are described below.

21. The Special Rapporteur visited the Montes Azules Biosphere Reserve in which, under a presidential decree of 1972, a small number of Lacandona families were given over 600,000 hectares of tropical rainforest, thus creating the “Lacandona Community”, a large part of which was licensed to logging companies and cattle farms. Numerous settlements of Choles, Tzeltales, Tzotziles, Tojolabales and others remained outside the Community, however; they were the result of the spontaneous colonization of the forest from the 1950s onwards, encouraged at the time by the Government itself. In 1978 the Montes Azules Biosphere Reserve was created, taking in part of the Lacandona Community, and these settlements were deemed illegal. On the pretext of conserving the environment, the communities have been threatened with removal from the Reserve. The lack of clarity in the Government’s policy has given rise to

clashes between communities, creating continual tension and potential violence for several years. The indigenous people mobilized to defend their agrarian rights, and in the 1990s their movement was put down by the Government, resulting in various violations of their human rights. The Government set up an inter-institutional conciliation commission and gives its assurance that it no longer intends to displace these communities, some of which lead an extremely precarious existence lacking any type of infrastructure or social services.

22. The Special Rapporteur was also informed about the situation of the Cucapás in Baja California, a small indigenous group that traditionally lives off fishing. They face serious restrictions on their economic activity imposed by the Government to protect the declining fish population of weakfish and croaker, the basic food of the indigenous people, which is also fished on a large scale by non-indigenous fishing cooperatives. The Cucapás allege that they are suffering the consequences of too strict an implementation of the Environment Act, including lawsuits, harassment and the confiscation of their boats, gear and products. The National Human Rights Commission recommended that the Cucapás should participate in a negotiated solution to the conflict which would allow them to continue to practise their traditional economic activity. Although the Government is seeking a solution, no agreement had yet been reached in September 2003.

23. Mexico suffers from serious environmental problems. Massive deforestation, progressive desertification, soil erosion, polluted water, the destruction of coastal environments as a result of uncontrolled property speculation in tourist centres (such as the “Riviera Maya” along the Caribbean coast), are phenomena which have been worsening in recent decades. Among the many indigenous communities to be found in practically all the areas affected are the Mayas of Quintana Roo, the Huaves in Oaxaca, the Lacandones and Tzeltales in Chiapas and the Amuzgos, Nahuas and Tlapanecos in Guerrero. The presence of biogenetic resources has been noted in many indigenous areas and has attracted the attention of researchers and businesses. In the absence of an adequate legal framework, bio-prospecting and commercial exploitation may violate the rights of the Indian peoples.

24. Elsewhere, the forest resources of many communities (Tepehuans in Durango, Tarahumaras in Chihuahua, Huicholes in Jalisco, etc.) are frequently exploited by private economic interests with the connivance of the agricultural and political authorities. The protection of the environment and natural resources has in recent years mobilized numerous indigenous organizations and communities throughout Mexico which confront the local *caciques* (the official or de facto authorities who arbitrarily wield economic and/or physical power). Some indigenous defenders of resources and the environment have been persecuted and harassed for their activities, for example, Griselda Tirado of the Totonaca Indigenous Organization in the State of Puebla, who was assassinated in August 2003.

The Tarahumara community of Coloradas de la Virgen in Chihuahua has for many years been defending its communal forests from incursions and depredations by *caciques* with links to drug trafficking. In February 2003 a community leader was arrested unlawfully and his case has not yet been settled.

The communities of Santa María Yavesia in the Sierra Norte of Oaxaca report that their primary forest is being destroyed by timber companies.

B. Political disputes and tensions

25. Other conflicts in the indigenous regions have eminently political causes, being closely related to the exercise of local power and in a number of cases directly linked to access to and the handling of public resources. They take the form of disputes over control of municipal governments, development programmes, technical assistance agencies, provision of services or distribution of subsidies, etc.

For several years now, two gangs have been fighting over control of the office of municipal president in the Mixtec community of Santiago Amoltepec, Oaxaca. It is reported that the conflict has already left 11 dead, 15 injured, several armed incursions, 22 houses burned and cattle and crops stolen.

26. In several of the cases reported, the election and/or appointment of authorities and officials - and their continuance in office - has played a central role in these scenarios. Although in Oaxaca tradition and custom are respected in electing local authorities in 418 out of a total of the State's 517 municipalities, various post-election conflicts occur and sometimes generate tensions and divisions in the municipalities. For example, in 2001, 19 town halls were taken, there were 5 deaths and 18 supplementary elections were called. In La Montaña de Guerrero, numerous violations of human rights of the region's indigenous population took place at the hands of the municipal authorities or members of the police or the army, as, for example, in Tehuaxtitlán and Xochistlahuaca.

In La Montaña de Guerrero, a number of indigenous communities decided in 1995 to establish a Community Police as an alternative to the established State and municipal police forces, "with the sole aim of taking security back out of the hands of criminals" and so that the indigenous authorities could deal justice "in accordance with our customs and practices". The Regional Coordinator of Community Authorities of La Montaña and Costa Chica de Guerrero complains that the State and federal authorities have tried to dismantle the Community Police and that in doing so they have committed various abuses against members of the indigenous communities (threats, harassment, arbitrary detentions, framings), although there have also been complaints about how the Community Police itself has acted. This case brings to the fore a matter of great topicality in Mexico, namely, discussion of the practice of internal regulatory systems, the application of criminal positive law and respect for individual guarantees in human rights.

Among the Tzeltales of Bachajón, in the municipality of Chilón, Chiapas, a community effort is being made to apply a legal system of usages and customs to solve conflicts and ensure justice locally in communities. Compliance with this system has been achieved in a number of cases through negotiations with municipal and State government and judicial authorities, with help from "problem solvers".

27. A number of human rights conflicts and violations concern offences such as drug trafficking. Some indigenous peasants, as a result of poverty and isolation, have become involved in criminal activities that can lead to social breakdown and violence in the

communities. The punishment of such activities sometimes gives rise to violations of fundamental civil rights, as has been the case in the Sierra Tarahumara and among the Huicholes in Nayarit.

28. In the course of the last year the Federal Government has redoubled its efforts to solve the problem of the “hot spots” and to find negotiated solutions to particularly conflict-ridden situations, as in the case of Bernalejo, Zacatecas, among the Yaquis in Sonora, in Chimalapa, Oaxaca, and other instances. At times, however, it is the municipal or State agrarian authorities in addition to the interests of the local *caciques* that stand in the way of solutions. Particularly pertinent here is the involvement of the agrarian courts, which have received reports of numerous cases of corruption adversely affecting indigenous communities (e.g. the Huaves on the Tehuantepec Isthmus were divested of 30,000 hectares of land).

C. Indigenous people in the justice system

29. It is precisely in the enforcement and dispensation of justice that one sees how vulnerable the indigenous peoples are; they report that they are discriminated against, harassed and abused (E/CN.4/2002/72/Add.1). The reports received indicate that many indigenous suspects are helpless when facing a public prosecutor or judge since they do not speak or understand Spanish and there is no interpreter into their own language, although this right is laid down by law. Official defence lawyers operating in indigenous areas are few in number and generally poorly trained, and for the most part people have neither the resources nor the opportunity to contract the services of a defence lawyer.

30. The detention of suspicious or presumed criminals without an arrest warrant, pre-trial detention for periods exceeding the statutory limit, house searches, thefts of victims’ belongings and other abuses and denial of due process are widespread practices among the municipal and State police, and sometimes police patrols and even army personnel. A recurrent topic is the physical abuse and torture of indigenous detainees and the ineffectiveness of complaining about it. There are written and aural accounts of indigenous people who have died in unexplained circumstances while in the hands of the authorities. The Special Rapporteur received numerous complaints in this regard in the course of his mission.

31. Trials involving indigenous people are frequently riddled with irregularities, not only because of the lack of interpreters and trained defence lawyers but also because the public prosecutor and judges are usually unaware of indigenous legal customs. On occasion the judgements handed down are out of all proportion to the offences, as in cases of environmental or health offences or breaches of federal laws on weapons and telecommunications.

32. The abuses experienced by indigenous prisoners have forced the National Commission for the Development of the Indigenous Peoples (CDI), the National Human Rights Commission (CNDH) and some State governments to establish programmes for release on bail which have benefited numerous detainees in various parts of Mexico. CDI monitors, with inadequate means, the strict application of the law to indigenous defendants. A similar programme operates in the

State of Oaxaca. A study of indigenous prisoners in Federal District prisons shows that none had been assisted by a translator, while 90 per cent said that they had not received an adequate defence.

33. Despite the progressive improvement of the situation of indigenous people in the justice system, much remains to be done. Indigenous courts have been established in several States to deal with the communities' needs for justice, but in many areas indigenous organizations and communal authorities claim the right to apply their own legal customs, which are respected in some States; the judiciary, which has called for a judicial reform in the near future, has taken little interest in the subject to date. CDI offers cultural expertise in some cases that can be taken into account by the court on the defendant's behalf.

The five municipalities which go to make up the Loxicha region in the Sierra Sur of the State of Oaxaca have been the scene of violent conflicts since 1996, when an armed group called the Revolutionary People's Army appeared in the area for the first time. Following a clash between this body and the forces of law and order which produced a number of casualties on both sides, a process of repression was initiated against the inhabitants of Loxicha and more than 150 indigenous people were arrested. Although the majority benefited from an amnesty act in 2000, some defendants are still in prison. Numerous violations of the detainees' human rights have been reported, including denial of due process, illegal detentions, torture, thefts of belongings, enforced disappearances, extrajudicial executions, enforced displacements and convictions for offences not committed.

The initial operations revealed the presence of paramilitary groups and secret prisons, and showed that police and army informants, locally known as "*entregadores*", were at work. As a consequence of the clash three Combined Operations Bases (BOM) were set up, manned by the army and the police, which have helped to reduce the violence. NGOs are still seeking the release of 14 indigenous prisoners whose human rights were clearly violated during their trials. The National Human Rights Commission and the Inter-American Commission on Human Rights have taken up the irregularities and the abuses committed during the conflict.

34. A recurring pattern in the regions in conflict is that those involved in protests, denunciations, resistance and social mobilization are treated as criminals: this frequently leads to accusations of numerous offences, the fabrication of offences that are difficult or impossible to prove, the illegal detention of the accused, physical abuse, delays in judicial proceedings from the preliminary investigations onwards, etc. There are reports of arrests, raids, police harassment, threats to and prosecutions of community authorities and leaders, the officials and members of indigenous organizations and their defence counsel. "Transitional disappearances" - where individuals are illegally deprived of their freedom for a period of time - are also reported, as means of disrupting legitimate social activity and intimidating those involved.

The People's Indigenous Council of Oaxaca reports harassment and threats to its leaders for defending communal lands. In October 2003 an identified armed group raided the community of Yaviche, killing one person and wounding a further nine.

In the Mixe municipality of San Miguel Quetzaltepec a political conflict led to a number of violent clashes between two gangs, leaving several dead and injured.

A popular protest against mismanagement by the authorities in the municipality of Unión Hidalgo, Oaxaca, led to repression against the Citizens' Council of Unión Hidalgo in which one person was killed and several wounded. The leaders of the Citizens' Council are currently facing legal proceedings for their part in the social conflict, and stand accused of common offences which they assert that they did not commit (in December 2003 one of them was released).

In the context of a municipal political conflict, several community leaders in Guevea de Humboldt, Oaxaca, have been prosecuted and their rights violated. In another case, a Huave was prosecuted for a supposed environmental crime while a Zapotec deaf-mute was illegally deported to Guatemala along with a group of immigrants with no papers.

The Coordinating Committee of Colonias Unidas in Salina Cruz, Oaxaca, was harassed and some of its members prosecuted for helping to uphold land tenure and obtain social services amidst rapid urban development.

Violent clashes and human rights violations have taken place between two opposing groups in the community of San Isidro Vista Hermosa, Oaxaca, on account of a political conflict.

35. Although the injured parties go first to the administrative or judicial authorities for a solution, conflicts that have not been settled or have been mismanaged by the authorities may lead to de facto measures as a form of protest and pressure. This generates clashes, violence and abuses of authority, and gives rise to criminal legal proceedings, thus becoming a breeding ground for human rights violations.

36. Corruption and impunity are also to be found in the justice system. Many indigenous people have given up on the public prosecutor's office, the courts and even the public human rights bodies since they have no confidence in them. There are also reports of abuses and even offences (e.g. violations) committed by army personnel on the indigenous civil population in conflict zones and areas of social unrest.

37. The situation of indigenous inmates in several prisons is a matter for concern. In prisons of the Mixtec and Costa region of Oaxaca many indigenous prisoners say that they have been tortured or that psychological pressure was brought to bear on them when they were detained. Generally speaking, they have no trained interpreters or official defence counsel. There are irregularities in the preliminary investigations or they are framed. The prisons, generally overpopulated, lack health services, doctors, psychologists, telephones and adequate food.

D. The conflict in Chiapas

38. As a result of the EZLN uprising in 1994 the collective and individual human rights of indigenous people in many communities were violated. The failure to meet indigenous demands has also caused strains between various social and political organizations in the region that have led to extreme violence and serious human rights violations in which some government authorities are not blameless. As in other such conflicts, this has polarized the ideological and political positions of the contending parties, NGOs and public opinion in general.

39. The 1995 negotiations did not culminate in a peace agreement and provide a solution to the Zapatista proposals; latent conflict continues, making the protection of human rights in the area a highly precarious business. The current Coordinator for Dialogue and Negotiation in Chiapas has been unable to re-establish contact with EZLN despite the action undertaken, according to the Government, to resume dialogue, and he has concentrated on promoting development in indigenous communities. There are, however, two issues of special concern to the Special Rapporteur: displaced persons and reports of paramilitary activity and an excessive military presence.

Internally displaced persons

40. More than 12,000 persons have been displaced by the conflict. Some received aid from the Government or from national and international humanitarian organizations. Generally speaking, their conditions of existence are extremely difficult. As a result of negotiations between the Government and the Displaced Persons' Commission, a start was made on the return or resettlement of some hundreds of families who receive material support and whose security it has been endeavoured to protect by means of reconciliation agreements between opposing groups. Pursuant to the recommendations made by the Representative of the Secretary-General on internally displaced persons in 2002, the Government has set up an inter-ministerial Commission and has taken some action, though it admits that the financial resources available to it are limited. This effort came late and to date has been inadequate. Fear and insecurity continue to exist among the displaced, and halfway through 2003 the problem is still extant.

41. In other indigenous regions of Mexico there are also displaced persons who are never mentioned. These are people who were relocated without their consent to build a dam or some other project many years ago and are still waiting for the compensation the Government offered them.

The paramilitary and militarization

42. The violence amidst which the indigenous communities of Chiapas live is partly the aftermath of action in the 1990s by paramilitary groups linked to local and State authorities which played a violent role in the region's political and social conflicts with their toll of murders, injuries, disappearances and displacements. Although they have kept a lower profile under the present administration, it is reported that they have not been disbanded or disarmed.

43. The Government authorities stoutly maintain that there are no paramilitary groups in Mexico. Following the Zapatista uprising, the army presence in Chiapas increased considerably and there have been many complaints about the militarization of indigenous areas. There is speculation as to the number of troops in the area, and the Ministry of National Defence reports that 15,000 soldiers are currently based in military region VII. The presence of military camps and bases near indigenous communities, and military patrols and checkpoints on the roads, contribute to a climate that is ripe for provocation and friction with the civilian population. Under the current administration the army has made efforts to expand its “social work” among the population. In 2001 the Government ordered the Mexican Army to fall back from the seven military positions requested by EZLN in order to resume dialogue, and released the majority of the prisoners involved in the conflict.

The Acteal massacre

The slaughter of 46 unarmed civilians in Acteal in December 1997 by a group of individuals armed with high-powered weapons is probably the most serious and dramatic incident that has occurred in the conflict in Chiapas. The National Human Rights Commission established that various public officials in the State government were responsible by commission or omission. Many people in the municipality of Chenalhó were arrested, charged and tried for these murders. Although some were subsequently released for lack of evidence, it is reported that others remain unjustly imprisoned and regard themselves as victims of religious intolerance.

The human rights organizations assert that the individuals who masterminded the massacre are still free and unpunished. Six years after the events, the crime has not been fully clarified nor has justice been done, while the population affected continues to suffer the consequences.

44. The presence of paramilitary groups has been reported, in Oaxaca, Guerrero and other States, contributing to an environment of insecurity and harassment for indigenous communities amidst environmental, agrarian, political and social conflicts, sometimes linked to guerrilla groups or organized crime, and the presence of the Mexican Army. In other areas (for example, in the Tarahumara Sierra) the indigenous communities accept the presence of the military because they help to restrain the violence associated with conflicts sparked off by livestock, logging and drug-trafficking interests.

45. Many human rights organizations informed the Special Rapporteur that the military on occasion participate in civilian public security operations and criminal investigations that fall outside their constitutional mandate: numerous checkpoints and searches on main and secondary roads, for example, arbitrary arrests and detention; body searches and inspection of possessions, raids on communities and properties, intimidating interrogations, death threats, extrajudicial or summary executions and sexual harassment and abuse of indigenous women, to mention only some of the complaints.

Some cases reported

In January 1994 three indigenous peasants were killed by members of the Mexican Army in the Ejido Morelia, Altamirano, Chiapas.

In 1997 and 1998, public security personnel of the State of Chiapas, backed up by the Army, carried out operations in communities in the municipality of El Bosque; several people died and many were detained, some of whom were tortured. Those responsible have never been punished.

In June 1998 members of the Mexican Army, allegedly in a clash with an armed group, killed 10 people, wounded others and arrested 21 civilians in the community of El Charco, Guerrero. The National Human Rights Commission noted various abuses on the part of the Army.

It is reported that in April 1999 three indigenous persons (including a minor) were executed and two women were raped by soldiers in Tlacoachistlahuaca, Guerrero.

To date these offences have not been clarified and the culprits have not been put on trial.

E. Rights of indigenous women, children and migrants

46. The situation of indigenous women and children is a matter of particular concern. Chiapas, Guerrero and Oaxaca are the most backward States in matters of reproductive health. In Oaxaca, an investigation of 100 indigenous women revealed a total of 209 violations of sexual and reproductive rights relating to pregnancy, birth, post-partum and abortion, and cervical cancer. The risk of dying in childbirth is more than twice as high for an indigenous woman as for a non-indigenous woman. Women in Chiapas have suffered disproportionately from violence in its different forms.

47. The few data available on indigenous children are alarming. According to official figures, 56 per cent of the indigenous children in Mexico suffer from malnutrition and at least 690,000 under 4 years of age have serious nutritional and growth problems. Infant mortality is much more frequent among indigenous children than in the average child population.

48. The Special Rapporteur received numerous communications about the lamentable situation of indigenous migrants; they migrate fundamentally for economic reasons, and women and children in this group are particularly vulnerable. In many cities, including the Federal District, indigenous migrants who lack any form of security or support are involved in begging, street vending and some poverty-related crime and are frequently subjected to abuse and extortion. Many of them practically live in the streets and have no housing or shelter of their own. The municipal authorities lack the resources to provide them with more than a minimum of assistance. In some regions where agribusiness flourishes (as in Baja California), indigenous day labourers survive in appalling conditions and the Government has launched aid projects. The indigenous people from various parts of the country who attempt to cross the border to the United States and die in the attempt also merit attention.

F. Education, language and culture

49. In the 1960s the Ministry of Public Education inaugurated an indigenous educational curriculum at official primary schools, which eventually had several thousand bilingual teachers. A teaching method was designed with contents and methods suited to indigenous cultures, and primers were produced in the majority of indigenous languages, but the training of the bilingual teachers proved inadequate. The curriculum never received the necessary support and resources from the education authorities to become a genuine educational option for indigenous children. At the present time, the Intercultural Bilingual Education System covers 1,145,000 pupils from 47 indigenous peoples, with 50,300 teachers at 19,000 schools. The Ministry of Public Education estimates that 73.5 per cent of pupils complete bilingual primary education as compared with 86.3 per cent nationally. In response to insistent requests from indigenous organizations, three indigenous universities have been established (another is planned), as has the National Institute of Indigenous Languages.

Twenty-five per cent of the indigenous population over 15 years of age is illiterate, women in a greater proportion than men. Thirty-nine per cent of the indigenous population between 5 and 24 years of age does not attend school.

50. To help preserve and spread indigenous cultures and guarantee indigenous cultural rights, community radio stations operate in certain areas, some with support from the National Commission for the Development of the Indigenous Peoples and private organizations. They work under difficult conditions and the Ministry of Communications has not provided them with the facilities they should have. The Government is currently in talks with the Mexican Network of Community Radio Stations and legislative proposals for ensuring the stations' operation are under study.

G. Constitutional reform and reconciliation with the indigenous peoples

51. The real importance of the wide-ranging debate on the rights of indigenous peoples to which the constitutional reform of 2001 gave rise becomes clear in the light of the tensions and disputes mentioned above and the impact on Mexican society of the EZLN uprising and its aftermath. The San Andrés Agreements between EZLN and the Federal Government in 1996 pointed to a political way out of the conflict in the form of the legislative initiatives drawn up by the Peace and Concord Commission (COCOPA) of the National Congress. Since this was not taken under the previous administration, President Fox decided in 2000 to pursue it as an initiative of the new Government. The ensuing constitutional reform included some aspects of what was known as the COCOPA Act, but departed significantly from it in other aspects of fundamental importance to the indigenous peoples.

52. As a result, the reform was rejected by the official national indigenous movement and the States with the largest indigenous populations did not ratify it. More than 300 indigenous municipalities later submitted constitutional challenges to the Supreme Court of Justice, seeking annulment of the procedure, but the Court declared them inadmissible. The indigenous peoples

felt betrayed and sidelined by these manoeuvrings. The fact that Congress had not carried out a wide-ranging consultation on the constitutional reform, as it should have done in accordance with the commitments Mexico had made in ratifying ILO Convention No. 169, also prompted complaints to ILO.

53. The reform of the Constitution has given rise to the most diverse legal interpretations. The Mexican Academy of Human Rights considers that the text approved “denatured constitutional recognition of the indigenous peoples”, in particular because it assigns such recognition to the State legislatures, “thus making indigenous matters a local affair”. The Academy, whose opinion is widely shared, concludes that there are “adequate legal grounds for indigenous opposition to the text approved in 2001” and that the text should be revised. Another organization considers that “the decision of the Supreme Court of Justice shows the inability of the courts to consider the case on its merits and leaves it to indigenous communities, peoples and organizations with no legal resources to oppose the constitutional reform”.

54. During the years of conflict several developments of importance to the indigenous peoples took place. Some communities in the areas of EZLN influence and other regions, decided to set up “autonomous municipalities” outside existing institutional arrangements. They appoint their own authorities and apply their own usages and customs to solve conflicts and maintain social order, i.e. they exercise their right to self-determination and autonomy at a local level. The autonomous municipalities have had serious operational problems, in particular because they are not recognized by the State and federal authorities, because they lack the capacity to generate their own resources and because in some instances they have come up against opposing local interests and this has given rise to conflicts and tensions, particularly when the State authorities have tried to dismantle them.

55. In September 2003, EZLN announced the establishment of “Good Government Boards” in regions with communities that are Zapatista bases, now known as *Caracoles*, in order to strengthen the practice of regional autonomy and establish local bodies for administration and dialogue with Mexican society and the Government. This may doubtless be interpreted as a peace signal on the part of EZLN, opening a window of opportunity in the search for a peaceful solution to the conflict while respecting the human rights of the indigenous peoples. It represents a creative application of the constitutionally guaranteed right of the indigenous peoples to self-determination.

IV. CONCLUSIONS

56. Despite the Mexican State’s long history of pro-indigenous policy over the twentieth century, the accumulated setbacks suffered by the indigenous population have plainly put it at a disadvantage vis-à-vis the rest of the Mexican population, facing discrimination and social exclusion and with low social and human development indices. Up until a few years ago, the indigenous peoples were not acknowledged in Mexican legislation nor did they enjoy specific rights as such. Accordingly, their human rights in particular have been violated and ignored.

57. The constitutional reform of 2001, a late and adulterated product of the San Andrés Agreements between the Federal Government and EZLN, formally recognizes the right of the indigenous peoples to self-determination but hems it round with restrictions which

make it difficult to implement it in practice. For this reason the reform has been challenged by the official indigenous movement which insists that it should be revised as a necessary condition for achieving peace in Mexico and ensuring the human rights of the indigenous peoples. Furthermore, the reform did not respect the principles of ILO Indigenous and Tribal Peoples Convention No. 169 (1989), ratified by Mexico, particularly as regards the obligation of consulting the indigenous peoples.

58. The protection of the human rights of the indigenous peoples has as its backdrop a high level of persistent social tension, frequently accompanied by violence, over agrarian, environmental and political problems which recur in almost all the indigenous regions, for the most part rural. These conflicts turn principally on the protection of communities' lands and resources and the control of local political power.

59. Apart from the conflict zone in Chiapas, there are other strife-torn regions (Oaxaca, Guerrero) where, because of guerrilla attacks, the police and military presence has been stepped up and, sometimes, paramilitary groups have been active. These situations have given rise to numerous violations of the human rights of indigenous peoples and communities.

60. The forces of public order (municipal, State and federal police and the Mexican Army) and the justice system frequently intervene in these conflicts. Indigenous people are the most conspicuous and vulnerable victims of human rights abuses in the workings of the judicial system, and are subjected to violations of the right to life and physical integrity, security, due process and individual guarantees. An alarming tendency to treat protest and social dissent as a crime has been observed in the conflicts, to which should be added considerable impunity and corruption in the agrarian, criminal and civil justice system, all of which gives the impression that, despite official rhetoric to the contrary, for the majority of Mexican society the indigenous peoples are expendable.

61. Discrimination against indigenous people is also visible in the distribution of wealth and public goods and services, the main victims being indigenous women and children (particularly girls), and indigenous migrants in urban areas. The resources earmarked by the Government for development programmes in indigenous regions have always been inadequate, and this makes for low economic, social and human development indices. The political parties pay little attention to the indigenous problem which is also a matter of low priority on legislative agendas at the federal and State level. Despite efforts to promote the development of the community and channel services to indigenous regions, there have never been sufficient resources, nor have national approaches been a matter of priority. No sooner had the Government announced the ambitious Plan Puebla Panamá (PPP) in 2000 than the indigenous organizations questioned its possible effects on the human rights of their peoples. Although the Plan has still had no material results in the field, its announced approaches and projects continue to cause alarm.

62. In 2003, legislation on the linguistic rights of indigenous people was passed and a new State institution was established: the National Commission for the Development of the Indigenous Peoples. Present State policy towards the indigenous peoples is designed to produce negotiated solutions to the conflict "hot spots", to promote and support productive activities and provide various social services to the communities. It does not depart

significantly from the trend that has characterized indigenous policy for more than half a century, but it is very much restricted by the limitations and cuts in the public budget and the clear fact that the problem of the indigenous peoples is not one of high priority for the Mexican State. Indigenous bilingual and +intercultural education has been one of the most visible results of indigenous policy in Mexico, and certainly contributes to the cultural rights of the indigenous peoples; the indicators for this educational sector, however, are still below the national average.

V. RECOMMENDATIONS

63. The present situation of the indigenous peoples of Mexico requires the Government to adopt a series of urgent measures which should also involve a number of other entities. The Special Rapporteur details below recommendations for action in various areas.

Constitutional legislation

64. The Special Rapporteur recommends that the National Congress should reopen the debate on constitutional reform in indigenous matters with a view to establishing clearly all the fundamental rights of the indigenous peoples in accordance with existing international legislation and the principles adopted in the San Andrés Agreements.

65. He also recommends that the integrity of the lands of the indigenous groups should be protected under the terms of article 27 of the current Constitution and the Agrarian Act.

66. On the basis of the Constitution as the minimum standard, and pending further reform the State legislatures should draw up, in close consultation with the indigenous peoples, legislation recognizing, protecting and promoting the fundamental human rights of the indigenous peoples in each State.

Peace process

67. The pursuit of a negotiated peace in Chiapas should be resumed as a high priority item on the domestic policy agenda of the Federal Government.

68. The Special Rapporteur recommends that the State should respect the existence of the “*Caracoles* and Good Government Boards”, and be constantly ready to collaborate with these bodies as required, in order to facilitate a peaceful solution to the conflict in Chiapas.

69. The Special Rapporteur recommends that the Zapatista National Liberation Army (EZLN) should renew contact with the various Mexican State authorities in order to reactivate a dialogue which could lead to a just and lasting peace that fully respects the fundamental rights of the indigenous peoples.

ILO Convention No. 169

70. Convention No. 169 should be implemented in all legislation and by all bodies concerned with the rights of the indigenous peoples.

71. **Federal and State officials should be trained (in labour, agrarian, judicial, etc. matters) along with the organizations of the national system of ombudsmen and civil society organizations pursuant to Convention No. 169.**

72. **Federal and State legislation should be adapted to the provisions of Convention No. 169 where appropriate.**

Agrarian and environmental conflicts

73. **The conservation and protection of the land, territories and resources of the indigenous peoples and communities should take priority over any other interest in the solution of agrarian conflicts.**

74. **It is recommended that interdisciplinary working groups representative of the peoples, civil society and the Government should be established to review cases of agrarian conflict throughout Mexico, with a view to proposing adequate machinery for the solution of each case, ensuring coordination between the different levels of Government, the existence of adequate resources, measures of compensation and respect for the indigenous peoples' forms of conflict resolution.**

75. **No indigenous community should be relocated against its will from the Montes Azules Biosphere Reserve. Any relocation scheme for the communities settled in the Reserve must be agreed among all the parties by consensus.**

76. **The indigenous communities should take part in the management, administration and control of protected natural areas in their territories and regions, taking into account community environmental regulations.**

77. **New ecological reserves should be established in indigenous regions only after consultation with the communities affected, and the Government should respect and support the decision and the right of the Indian peoples to establish community ecological reserves on their territories.**

78. **Any project under the Plan Puebla Panamá which may affect indigenous regions and/or communities should be the object of prior consultation with the latter and, if implemented, the communities' rights and interests and possible participation in such projects should be respected.**

79. **Indigenous groups and communities should have priority access to natural resources for the purpose of direct consumption and subsistence, ahead of any economic or commercial interests.**

80. **Suitable laws governing bio-prospecting in indigenous territories in a manner that respects the cultural and natural heritage of the Indian peoples should be drawn up as swiftly as possible.**

Internally displaced persons

81. A national body should be established as a matter of priority to deal with persons internally displaced for any reason, and should be provided with the necessary resources to care for their needs, including, where necessary, compensation for damage.

Justice

82. The system of justice for indigenous people should be thoroughly reviewed at the national level, with broad-based and flexible criteria and extensive participation by the indigenous people.

83. Agrarian justice should also be reviewed as it affects the collective rights of the indigenous communities and peoples, bearing in mind traditional methods of land use and customary forms of solving conflicts and disputes.

84. More specifically, it is recommended that the office of the agrarian procurator should maintain closer contact with indigenous agrarian groups; the personnel (inspectors, agrarian lawyers and interns) working in areas where there are indigenous people need to have the right profile; there need to be more bilingual personnel; and they need to be effective in defending and advising indigenous people on agrarian questions before the courts.

85. The agrarian courts, in all cases involving indigenous people, should have available official translators and defence counsel familiar with the culture and circumstances of the indigenous communities. It is a matter of urgency to consolidate, train and extend the coverage of bilingual translators in courts and public prosecutors' offices, and official defence lawyers in indigenous areas.

86. It is a matter of urgency to review the case files of all indigenous persons prosecuted in federal, civil and military courts so as to identify and, where necessary, remedy any irregularities, particularly as regards environmental, agrarian and health offences.

87. The National Commission for the Development of the Indigenous Peoples should be assigned a greater role in the expert assessment and early release of indigenous prisoners. The Special Rapporteur also recommends closer work, in matters of justice for indigenous people, with the institutions ensuring and dispensing justice, in all areas, with the judiciary itself, and in advisory services to State and municipal bodies, with civil society organizations.

88. The national system of ombudsmen (National and State Human Rights Commissions) should pay increased attention to indigenous human rights, with particular stress on the judicial system.

89. All police personnel from any force, military personnel or civil authority guilty of the physical or mental torture of indigenous or non-indigenous detainees should be prosecuted and punished, while torture as an offence should be incorporated into the criminal codes of the States.

90. Any offence by a member of the military committed against a civilian should without exception be heard in the civil courts.
91. The federal and State judiciary and the national system of ombudsmen should ensure that legislation and justice are not used in the interests of *caciques* and local authorities to treat legitimate protest or social dissent as a crime or penalize it.
92. Any reliable report of violations of indigenous women/girls should be officially investigated by the public prosecutor's office even where no official complaint has been made.
93. Indigenous law (legal custom) should be acknowledged and respected in all judicial bodies where indigenous people or communities are involved and should be incorporated into a new conception of indigenous justice.
94. Indigenous communities and peoples that apply traditional legal customs should do so in strict compliance with the universal individual human rights established in international and national legislation, with special attention to the rights of women.
95. General amnesty laws should be promulgated at the federal and State levels for indigenous prisoners and individuals prosecuted for political and/or social activities.
96. The Federal Government and the State Governments should acknowledge, respect and support community police services, indigenous courts and other forms of conflict-solving practised among the indigenous peoples.
97. The killing of human rights defenders should be declared a federal offence and prosecuted in the federal courts.

Militarization and armed groups

98. The Government should take urgent steps to disband, disarm and punish armed paramilitary or civilian groups that are operating in indigenous regions (and are not covered by special legislation).
99. When the indigenous communities so request, the army should fall back in the environs of indigenous communities; the army presence and activities in indigenous areas should be strictly compatible with its constitutional duties.

Indigenous migrants

100. A special protection scheme should be devised for indigenous migrants in urban areas and agribusiness regions, with particular attention paid to women, children and indigenous people from Central American countries passing through Mexico.
101. In the bilateral Mexico-United States discussions on migration, particular attention should be given to indigenous migrants.

Education and culture

102. **The bilingual intercultural education system in Mexico should be institutionally strengthened and provided with adequate resources to accomplish its objectives efficiently.**

103. **Legislation should be drawn up to permit free access by indigenous communities and peoples to radio, television and other information systems, and the relevant permits supplied without constraints, amending legislation where necessary.**

United Nations system

104. **The Special Rapporteur recommends that the Office of the United Nations High Commissioner for Human Rights should pay increased attention to the human rights of indigenous peoples in its programme of cooperation with the Mexican Government, and also recommends that the United Nations specialized agencies should pay more attention to the rights of indigenous peoples in the areas of their competence.**
