

Distr.
GENERAL

E/CN.4/2005/88/Add.2
10 November 2004

ARABIC
Original: SPANISH

المجلس الاقتصادي والاجتماعي



لجنة حقوق الإنسان
الدورة الحادية والستون
البند ١٥ من جدول الأعمال المؤقت

قضايا السكان الأصليين

حقوق الإنسان وقضايا السكان الأصليين

تقرير المقرر الخاص، السيد رودولفو ستافينغاهن، المعني بحالة حقوق الإنسان
والحرريات الأساسية للسكان الأصليين

إضافة

بعثة إلى كولومبيا*

* ستوزع خلاصة هذا التقرير بجميع اللغات الرسمية. ويرد التقرير في مرفق هذه الخلاصة وسيوزع باللغة الأصلية التي ورد بها وبالإنكليزية.

خلاصة

يُقدم هذا التقرير وفقاً لقرار لجنة حقوق الإنسان ٥٦/٢٠٠٣ ويتعلق بالزيارة الرسمية التي قام بها المقرر الخاص المعني بحالة حقوق الإنسان والحريات الأساسية للسكان الأصليين إلى كولومبيا في الفترة من ٨ إلى ١٧ آذار/مارس ٢٠٠٤.

وقد حدثت أوجه تقدم دستورية في كولومبيا خلال الأعوام الأخيرة بشأن الاعتراف بحقوق السكان الأصليين. ومع ذلك، لا تزال هناك تحديات كبيرة يتعين على الدولة مواجهتها لحماية حقوق الإنسان والحريات الأساسية للسكان الأصليين وتعزيزها بشكل فعال. فالثغرة القائمة بين دستورية القواعد وتطبيقها الفعال وبين أداء المؤسسات قد حدثت من نطاق التطورات التي أدخلت على دستور عام ١٩٩١.

وحصل المقرر الخاص على شهادات عديدة بشأن حالة النزاع التي يعيشها البلد وما خلفته من آثار مدمرة على السكان الأصليين الذين عانوا من حالات الاغتيال والتعذيب، والتشرد على نطاق واسع، والاختفاء القسري، وتجنيد الشباب تجنيداً قسرياً في وحدات المقاتلين، واغتصاب النساء واحتلال أقاليم السكان الأصليين من جانب جماعات العصابات، والجماعات شبه العسكرية وغيرها من العناصر المسلحة غير المشروعة. وقد تم الإبلاغ عن تسليح بعض جماعات السكان الأصليين. ومما يثير بوجه خاص قلق المقرر الخاص حالة جماعات معينة شديدة الصغر على وشك الزوال بسبب اغتيال قادتها وقتل وتهديد سكانها وتشتيتهم قسراً.

ويسلم المقرر الخاص بضرورة تطبيق المبادئ الدستورية المؤسسة في مجال حقوق الإنسان تطبيقاً ملائماً، وهي المبادئ التي قد تهددها بعض الاقتراحات التشريعية الجديدة. ويمكن أن ينطوي تقييد اختصاصات المحكمة الدستورية وتأسيس الوصاية على مخاطر جمة لحماية حقوق السكان الأصليين بفعالية.

وقد أكدت السلطات الحكومية للمقرر الخاص التزامها بالتصدي بفعالية للمشاكل الاجتماعية والاقتصادية التي يواجهها أكثر من ٧٠٠ ٠٠٠ فرد من السكان الأصليين في البلد. ويعترف المقرر الخاص بما للقضايا العاجلة من أهمية جوهرية مثل التشرد الداخلي القسري لأعداد كبيرة من السكان الأصليين، واستغلال الموارد الطبيعية في أقاليمهم، وتدخين أراضيهم للقضاء على المحاصيل الزراعية غير المشروعة، واستشارة السكان الأصليين مسبقاً في المسائل التي تمسهم، لاسيما فيما يتعلق بالتنمية الاقتصادية.

ومن الأمور المثيرة للقلق بوجه خاص آثار التخريب الناتجة عن النزاع المسلح والتي تصيب السكان الأصليين. ولذلك، يوجه المقرر الخاص نداءً لإعادة تنشيط عملية السلم لدعم احترام القانون الإنساني الدولي وحقوق الإنسان واتخاذ التدابير اللازمة لوضع حد لتجنيد القصر من جانب الجماعات المسلحة.

وعلى أساس النتائج التي خلص إليها من زيارته، يوصي المقرر الخاص، في جملة أمور، بالقيام بما يلي: ضمان توفير الأغذية وتوصيلها بدون عوائق إلى جماعات السكان الأصليين في مناطق النزاع، وبخاصة إلى أكثر السكان حاجة إليها؛ تعبئة التعاون الدولي لوضع برنامج يولي الاهتمام على وجه السرعة لجماعات السكان الأصليين المهتدين بالزوال، لا سيما في منطقة الأمازون؛ احترام جميع الجماعات المسلحة لأقاليم السكان الأصليين المحايدة والمتروعة السلاح وإنشاء مناطق سلم للسكان الأصليين تكون خالية من أية عملية عسكرية ويتم وضعها تحت إشراف المجتمع الدولي؛ إيلاء النياحة العامة الأولوية للتحقيق في جميع البلاغات المتعلقة بارتكاب تجاوزات وانتهاكات من جانب أفراد القوات المسلحة والشرطة الوطنية ضد أفراد جماعات السكان الأصليين وتطبيق القانون عليهم؛ إنهاء برامج من أمثال شبكة المخبرين، والجنود الفلاحين و"الجنود ليوم واحد"، من أجل الأطفال والشباب من السكان الأصليين، وقيام الهيئات المختصة في الدولة بتنفيذ تدابير الحماية على النحو الواجب، وهي التدابير التي طلبتها لجنة البلدان الأمريكية لحقوق الإنسان لصالح الجماعات المختلفة من السكان الأصليين.

وفي إطار التدابير الجديدة المعتمدة لمكافحة الإرهاب، يوجه المقرر الخاص نداءً لعدم اعتقال أي فرد من أفراد السكان الأصليين من جانب القوات المسلحة دون أن يكون قد صدر مسبقاً أمر بذلك من هيئة قضائية مختصة. وبالإضافة إلى ذلك، يوصي المقرر الخاص باحترام اختصاصات المحكمة الدستورية احتراماً كاملاً وبخاصة تلك المتعلقة بإجراءات الوصاية، باعتبارها واحدة من الآليات الرئيسية للدفاع عن حقوق الإنسان للسكان الأصليين.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF
INDIGENOUS PEOPLE, MR. RODOLFO STAVENTHAGEN, ON HIS
MISSION TO COLOMBIA (8 TO 17 MARCH 2004)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction and background	1 - 7	5
I. SCHEDULE FOR THE VISIT	8 - 10	6
II. LEGAL AND INSTITUTIONAL FRAMEWORK	11 - 22	6
III. HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLE IN COLOMBIA: PRIORITY ISSUES	23 - 80	8
A. The armed conflict in indigenous areas	23 - 45	8
B. Violence, drug trafficking and human rights	46 - 52	13
C. The environment, land and human rights	53 - 64	14
D. Access to justice and indigenous jurisdiction	65 - 69	17
E. Situation of indigenous women	70 - 71	17
F. Sustainable development and recognition of the indigenous identity	72 - 74	18
G. Extension of basic social services	75 - 80	18
IV. CONCLUSIONS	81 - 89	19
V. RECOMMENDATIONS	90 - 115	20
A. Recommendations to the Government	90 - 111	20
B. Recommendations to the armed groups	112	22
C. Recommendations to the indigenous peoples	113	22
D. Recommendations to the international community	114 - 115	22

Introduction and background

1. Pursuant to Commission on Human Rights resolution 2001/57 of 24 April 2001, which established his mandate, and at the invitation of the Colombian Government, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Colombia from 8 to 17 March 2004.
2. The Special Rapporteur would like to thank the Government of Colombia and in particular the Office of Ethnic Affairs of the Ministry of the Interior, for their assistance before and during his visit. Special thanks are due to the many indigenous organizations for the interest they showed in his visit and for their cooperation. He also commends the Office of the High Commissioner for Human Rights in Colombia for its excellent work and the extensive and varied schedule of meetings it prepared.
3. Officially, there are 84 indigenous peoples in Colombia, with a total population of around 785,000; some estimates put the figure at around 1 million, however, with more than 90 ethnic groups. They are spread through all the departments of the country, which makes for great demographic and cultural diversity. Three peoples, the Wayuu, the Paez and the Embera, have over 50,000 members, while more than 30 communities have fewer than 500. They include farmers, gatherers and fisherfolk, rural indigenous communities and small nomadic groups. There is also a growing urban indigenous population.
4. Colombia's indigenous peoples have enjoyed something of a revival in recent years, for various reasons, including the restoration of their homelands, their increasing integration into the life of the nation and the emergence of organizations committed to the defence of indigenous rights and of leaders capable of establishing objectives for self-development and autonomy. In addition, Colombia has a constitutional, legislative and institutional framework designed in part to protect indigenous peoples' individual and collective rights, promote their economic and social development and foster their cultural identity.
5. Now, however, Colombia's indigenous people find themselves in a serious, critical and profoundly worrying human rights situation. A great many communities suffer from the unrelieved violence of an armed conflict that has a significant impact on their daily lives. The actual physical and cultural survival of some of the more vulnerable indigenous communities, particularly those in the Amazon region, is threatened.
6. Despite the existence of a protective legal framework, the rule of law is being undermined by a consistent pattern of violations of the human rights of indigenous peoples and communities, attributable in part to the dynamics of the internal conflict, the establishment in many parts of the country of illegal armed groups with links to regional and local political power structures, and the powerful economic interests associated with drug trafficking and the exploitation of natural resources. It needs to be said that some of the actions taken in the past year as part of the military strategy to combat subversion and terrorism have also given rise to allegations of human rights violations in several parts of the country.

7. This report contains the Special Rapporteur's assessment of the human rights situation of indigenous people in Colombia and is based on information obtained from various sources and an exchange of views with State, judicial, military, departmental and municipal authorities, leaders and representatives of indigenous communities and representatives of human rights and non-governmental organizations.

I. SCHEDULE FOR THE VISIT

8. The Special Rapporteur visited Sierra Nevada de Santa Marta, in the department of César, the departments of Cauca and Putumayo, and the capital, Bogotá, where he held consultations with government authorities at the national and departmental levels. In Bogotá, the Special Rapporteur met senior government officials, including the President, Mr. Álvaro Uribe; the Vice-President, Mr. Francisco Santos; the Minister of the Interior and Justice, Mr. Sabas Petrelt; the Minister of Foreign Affairs, Ms. Carolina Barco; the Director of the Presidential Programme for Human Rights, Mr. Carlos Franco; the Director of the Human Rights Department of the Ministry of the Interior, Mr. Rafael Bustamante; the Director of the Office of Ethnic Affairs of the Ministry of the Interior, Mr. Jesús Ramírez; and the Director of the Human Rights Office of the Ministry of Defence, Colonel Castillo. The Special Rapporteur also met representatives of the Social Solidarity Network, the Family Welfare Institute, the Colombian Rural Development Institute (INCODER), the Ministry of Education and the Ministry of Health.

9. In the course of his tour of the various regions, the Special Rapporteur met departmental and local officials, members of civil-society and grass-roots associations, and representatives of more than 30 indigenous communities, including the Inga, the Wayuu, the Quichua, the Pasto, the Paez, the Embera, the Yanakona, the Kankuamo, the Arhuaco, the Yuko and the Wiwa.

10. The Special Rapporteur had meetings with legislators, Constitutional Court judges, representatives of the Office of the Procurator-General, and the Ombudsman, Mr. Volmar Pérez Ortiz. He also had discussions with representatives of United Nations agencies, human rights NGOs and academic institutions.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

11. The institutional framework for the protection and promotion of the rights of Colombia's indigenous peoples is based primarily on the 1991 Constitution, which recognizes the multicultural and multi-ethnic make-up of the country.

12. The principal gain for indigenous people in this Constitution was the recognition of their traditional reserves and respect for their cultures, languages and traditions, which were long-standing claims. In order to implement these provisions, land was granted to indigenous communities under Act No. 160 of 1994, through the establishment, extension, rehabilitation and restructuring of reserves. The number of recognized indigenous reserves now stands at 647; these cover a total of 31,066,430 hectares, hold 85,818 families or 441,550 people, and comprise some 30 per cent of the national territory.

13. The territorial planning organization law establishing the area and boundaries of the indigenous territorial entities and assigning the respective powers to these entities and the State has yet to be passed. Under the bill awaiting congressional approval, the indigenous territorial entities “shall enjoy cultural, political, administrative and financial autonomy in the handling of their own affairs” and “shall be governed by indigenous councils formed in accordance with the usage and custom of those peoples and communities”.

14. The law recognizes the indigenous councils, or “cabildos”, the traditional political authorities entrusted with administration and government, as special public entities.

15. The principle of the territorial, political and judicial autonomy of indigenous people established in the Constitution has been upheld in several Constitutional Court rulings recognizing indigenous people as subjects of fundamental rights.

16. The Constitution also establishes a special indigenous jurisdiction as a separate domain in which indigenous law is recognized and exists side by side with the ordinary jurisdiction of positive law.

17. In the area of economic development, the Constitution establishes the right to prior consultation on a free and informed basis, in accordance with International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which has been ratified by Colombia; this is now one of the most keenly pursued (and apparently least observed) indigenous rights. Some dozen laws and regulatory decrees have now been enacted to apply the relevant provisions of the Constitution in the legislation governing indigenous peoples. However, many communities told the Special Rapporteur of shortcomings in the implementation of, and effective compliance with, the current legislation.

18. The Special Rapporteur met the full bench of the Constitutional Court, a body which plays a crucial role in interpreting constitutional provisions on indigenous rights in its rulings and in *amparo* actions in defence of human rights. The proposal currently before Congress to curtail the Court’s jurisdiction and restrict the scope of *amparo* proceedings is therefore a cause of deep concern. In the Special Rapporteur’s view, were the proposal to succeed, it would considerably weaken the national mechanisms for the protection of indigenous communities’ human rights.

19. The Office of Ethnic Affairs of the Ministry of the Interior is the linchpin in the coordination of public policy on indigenous people. It cooperates with ministries and with State and private bodies working in this area to formulate the policies affecting indigenous communities and ensure respect for indigenous rights. The objective of State policy on indigenous affairs is the defence, support, reinforcement and consolidation of ethnic and cultural rights, having due regard for the basic principles of participation, decentralization and autonomy within the framework of a social State based on the rule of law.

20. The Special Rapporteur was also informed about many programmes and activities carried out by, inter alia, the Presidential Programme for Human Rights and International Humanitarian Law, the Social Security Network, the Colombian Rural Development Institute and the ministries

of education, the environment and health, in response to the needs and demands of Colombia's indigenous peoples. He was given information on programmes to aid internally displaced people, to extend the public health system to cover the entire country and to address outstanding issues relating to the protection of reserves.

21. In addition to these efforts, a dynamic indigenous movement has emerged in the last few decades and has made Colombians in general aware of indigenous concerns, aspirations and claims; it has been instrumental in the legislative advances described above, and is now campaigning for peace and respect for indigenous human rights. The Special Rapporteur was told of various organizations, such as the National Indigenous Organization of Colombia (ONIC), the Organization of Indigenous Peoples of the Colombian Amazon (OPIAC), the Associations of Traditional Indigenous Authorities (AATI) and the Colombian Movement of Indigenous Authorities (AICO), as well as the regional councils such as the Cauca Indigenous Regional Council (CRIC) and many cabildos and local associations, all of which are now key interlocutors of the government authorities, political actors and civil society.

22. Yet, despite this extensive legal and institutional framework, the country still faces serious human rights problems that affect its indigenous peoples on a daily basis.

III. HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLE IN COLOMBIA: PRIORITY ISSUES

A. The armed conflict in indigenous areas

23. Although Colombia has a long history of political violence in rural areas, indigenous regions were, until around 20 years ago, relatively free of armed conflict. Beginning in the 1980s, however, the guerrilla fronts of the Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (FARC-EP) (Revolutionary Armed Forces of Colombia - People's Army) and the Ejército de Liberación Nacional (ELN) (National Liberation Army), and the paramilitary groups belonging to the Autodefensas Unidas de Colombia (AUC) (United Self-Defence Groups of Colombia), stepped up their operations in the indigenous regions as they became involved in the spread of illicit crops to those areas. Military pressure from the Colombian army also forced them back into indigenous areas. This development is illustrated by the violence and serious violations of indigenous human rights in the Cauca region, of which the Special Rapporteur has been given ample evidence and documentation.

24. According to the High Commissioner's office in Colombia, numerous violations of human rights aimed at indigenous peoples were reported in 2003. During this period, more than 100 members and leaders of indigenous groups were murdered; one of the worst affected groups in this regard was the Kankuamo people of Sierra Nevada de Santa Marta. There is also a disturbingly high incidence of forced displacements, whose impact on indigenous communities increased during 2003.

25. Political violence against indigenous peoples increased during the 1990s, prompting increasing opposition to the war. Over the past 15 years, more than 2,660 cases of violations of

human rights and international humanitarian law aimed at indigenous peoples have been reported. These acts of violence are attributable primarily to the guerrillas and AUC (paramilitary groups which have been linked with the army and government authorities). The rate of violence in indigenous municipalities is 100 per cent higher than the national average, the hardest hit being the Kankuamo and Wiwa peoples of the Sierra Nevada, the Kofan people in Putumayo, the Chimila in Magdalena, and the Korebaju, Betoje and Nasa, and the Tule and Embera-Katio in the Urabá region.

26. Where there are several armed groups operating, communities in indigenous regions frequently find themselves literally in the crossfire. They may be viewed as military objectives by one side or another and are sometimes forced to work for one or other of the groups, which immediately exposes them to reprisals. The Special Rapporteur was told that the army has posted a mountain battalion in the Sierra Nevada, which the indigenous communities see as a threat to their safety. Where the ground is constantly shifting in this way, the violence against indigenous people mounts and the humiliations and abuses multiply.

27. What is particularly serious is the fact that the armed groups make no distinction between combatants and non-combatants. The civilian population is increasingly victimized and all the warring parties are responsible to a greater or lesser degree for the violations of international humanitarian law that have taken place during the armed conflict. Yet for reasons of security the people of San Pedro de la Sierra have expressed a wish for the army to maintain a permanent presence, for otherwise they would be obliged to move elsewhere.

28. Reports have been received of several massacres that have occurred in indigenous areas in recent years; these massacres have been attributed to the paramilitaries, the guerrillas and other armed groups. There have also been reports of the air force bombing rural and indigenous communities as part of the Government's military campaign against the guerrillas. The cabildo of Magui, in Nariño, for example, reports that an aerial bomb attack on 12 February 2004 destroyed the local school. On occasion, according to information received during the Special Rapporteur's visit, the military make no attempt to prevent massacres announced in advance by the paramilitaries, as happened in the case of Naya. Some of the armed groups use home-made explosive devices and anti-personnel landmines to terrorize the population, with lethal results. The United Nations Children's Fund (UNICEF) estimates that 170 indigenous people were killed in this way in 2002. The number of municipalities affected by landmines now stands at 422, in 30 departments, according to the Anti-Personnel Landmines Monitoring Centre of the Presidential Programme for Human Rights and International Humanitarian Law.

29. Many indigenous communities report selective killings of their leaders and spokespersons, and of their traditional authorities. Such killings appear to form part of a strategy to decapitate and confuse the indigenous communities, and they certainly hasten their social and cultural disintegration. These are truly acts of genocide and ethnocide against indigenous peoples. Equally worrying are the murders of human rights defenders, possibly encouraged by unfounded statements by senior government officials equating human rights organizations with terrorists.

The Embera-Katio people of Alto Sinú have been subjected to murder, forced disappearances and displacements, intimidation and destruction of their property because of their opposition to the construction of the Urrá hydroelectric dam on their land. The precautionary measures called for on their behalf by the Inter-American Commission on Human Rights have still not been implemented.

The indigenous authorities of Tolima have applied to the Inter-American Commission on Human Rights for precautionary measures following a wave of murders, disappearances and mass displacements of indigenous Pijao as a result of the armed conflict. The Embera-Chami people of the department of Caldas have provided the Special Rapporteur with a detailed list of all the indigenous people murdered since 1998.

30. Investigations show that the majority of these atrocities are attributable to AUC, to a lesser extent to FARC and ELN, and in some cases to the Colombian armed forces. In the Amazon region, the majority of murders of indigenous people are alleged to be the work of AUC (36.7 per cent), FARC (34.3 per cent) and the armed forces (4.8 per cent). In Sierra Nevada, the home of the Kogui, Kankuamo, Arhuaco and Wiwa peoples, the violation of the right to life most often takes the form of massacres or multiple or individual selective killings - tantamount to extrajudicial executions - notably by AUC.

31. On the western slopes of the Sierra Nevada de Santa Marta, an area visited by the Special Rapporteur, the Kankuamo people (3,000 families, 13,000 people and 12 communities), who live inside the "black line" which marks the traditional boundary of their territory, are now in the process of reclaiming their indigenous identity. Their lands have been recognized, but no reserve has yet been established. Guerrilla groups started arriving in the 1980s and AUC set up a base there in the 1990s, with the result that the number of kidnappings and murders escalated to a level far above the rural and regional average, particularly from 1998 onwards. It was then that the massacres of indigenous people, the mass displacements, the blockades and the forced confinement of communities to their villages began. More than 300 families are reportedly still displaced as a result of attacks and threats of various kinds. The accounts given to the Special Rapporteur testified to the continued ethnic cleansing, genocide and ethnocide of the Kankuamo people despite the protective and precautionary measures requested by the Ombudsman and the Inter-American Commission on Human Rights and several urgent appeals by a number of special mechanisms of the Commission on Human Rights.

The Arhuaco people, who oppose the presence of armed groups on their territory, are fighting for the restoration of a "brotherhood zone" and for respect for their human and collective rights. The Special Rapporteur has received reports of violations such as food restrictions, non-respect for traditional authorities, selective killings, forced recruitment of young people, bombing of villages and other abuses. One issue of particular concern is the impact of the conflict on the lives of the Arhuaco women, who have documented for the Special Rapporteur the violence, threats and sexual abuse to which they are subjected. Lastly, Arhuaco leaders and representatives have expressed their opposition to the establishment of a non-indigenous township on their ancestral lands, the construction of the Los Besotes dam and the occupation by the Colombian army of the Cerro Inarwa, a spiritual site sacred to the Arhuaco people.

32. The violence and insecurity have also led to mass displacements in the conflict zones, a phenomenon that, according to the Ombudsman, is the clearest indication of the systematic flouting of international humanitarian law by the armed groups. Though there are no precise

figures, in the areas visited by the Special Rapporteur there are said to be thousands of displaced indigenous people in the departments of Putumayo, Cauca and César, among others.

33. It is estimated that 12 per cent of Colombia's displaced people are indigenous. According to the Centre for Indigenous Cooperation (CECOIN), there were 128 incidents of mass displacement of indigenous people in at least 63 municipalities between 1995 and 2003, affecting 28,000 people, while 12,650 indigenous people were displaced under pressure from the armed groups in 2002. According to the Association of Cabildos of the Nasa People of Putumayo, those displaced by the violence include more than 380 families and more than 78 widows who are heads of household.

34. Forced displacements have swelled the flows of Colombian indigenous refugees into neighbouring countries such as Brazil, Ecuador, Panama, Peru and Venezuela. A number of shocking human rights violations have been reported, including an incursion by paramilitaries into Panama in March 2003, which left several indigenous refugees dead.

35. The situation of displaced people is particularly dire in certain urban areas, including Bogotá. The mayor of Valledupar informed the Special Rapporteur that there are high rates of malnutrition among displaced indigenous people, and even cases of children dying of hunger. The municipality does not have the resources to meet all the needs of the displaced indigenous population. Women heads of household and children suffer the worst consequences of involuntary displacement; many of the women resort to begging and a large number of the children live in the street. Yet, without reliable records, it is difficult to channel humanitarian aid appropriately.

36. The Social Solidarity Network of the Office of the President applies the Directive on Comprehensive Care for the Displaced Indigenous Population, the purpose of which is to provide protection and assistance to displaced indigenous people and facilitate their return or reintegration. It also supports socio-economic and environmental protection measures as part of an agreement signed with the World Food Programme. All the signs are, however, that effective help has thus far reached only a part of the displaced indigenous population. Despite all efforts, the problem of internal displacement in Colombia remains serious, and is compounded by the lack of accurate information on ethnic groups. As the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, suggested after his visit to Colombia in 2000, a system of special measures to protect against the displacement of indigenous communities is needed.

37. The violence is also reflected in the numbers of forced disappearances of indigenous leaders and representatives. In the Sierra Nevada, 44 forced disappearances, 166 extrajudicial executions, 92 cases of torture and 52 kidnappings were reported between 1998 and 2002; two massacres in 2002, in which 12 indigenous Wiwa were killed, resulted in the forced displacement of 1,300 indigenous people and 300 others from the communities of Sabana Grande, Potrerito, El Machín and Marocaso.

The Kankuamo people have been particularly hard hit, suffering forced displacement (300 families), many killings of leaders and others, restrictions on freedom of movement and other violations. In 2003, 44 murders of indigenous Kankuamo were reported to the Office of the Ombudsman, as well as the indiscriminate bombing of the hamlet of Potrerito, in the Wiwa indigenous reserve, which resulted in the destruction of 50 dwellings and the forced displacement of 25 families. Office of the Ombudsman resolution 24/2002, upholding the human rights of the indigenous peoples of the Sierra, has still not been implemented. In July 2004, the Inter-American Court of Human Rights instructed the Government of Colombia to apply forthwith the precautionary measures requested in the case of the Kankuamo of the Sierra Nevada.

38. Among the many accounts received by the Special Rapporteur concerning abuses suffered by the indigenous communities were reports from the Wiwa people of the Sierra Nevada of indiscriminate bombings, killings, arbitrary and unlawful detentions; roadblocks, burning of houses, looting and theft of animals; damage to sacred sites, theft of medical equipment and damage to health centres; and theft of educational materials and damage to schools.

39. The psychological and social trauma such violence causes to the indigenous populations is incalculable. Children under 18, women and older people are at most risk. In late 2003, the media reported a series of suicides among Embera girls in the department of Chocó; these were attributed to the collective depression caused by the horrors of the armed conflict.

40. The main tactics used by the illegal armed groups to subjugate the indigenous population are kidnapping and forced disappearance. In many cases, and increasingly, such incidents are linked with organized crime, possibly drugs-related. In recent years, many kidnap victims have been killed by their paramilitary captors and their bodies sometimes cruelly mutilated. Indigenous people have told the Special Rapporteur that they frequently do not report such incidents to the prosecutor's office or the authorities for fear of reprisals; this points to the existence of close ties between certain armed groups (paramilitaries in particular) and police officers in those places where such incidents occur. There are reports of civilian indigenous people being detained by the armed forces, later to be found dead; the official explanation, where any is given, is that they were "terrorists" who had been "eliminated" in military operations.

41. The Special Rapporteur received reports of mass arbitrary detentions in indigenous communities, carried out by the military, without arrest warrants, under the Anti-Terrorist Statute, which allows the armed forces to perform judicial functions in conflict zones. The President assured the Special Rapporteur that no one is detained without a warrant. Indigenous people report, however, that warrants are sometimes issued by the armed forces themselves at the time of arrest or afterwards. They also state that many of those detained are released a few days later for lack of evidence that they have committed any crime, but by then they have been branded as "terrorists", with all that that entails in terms of risk to their safety - they may, for example, be intimidated or even hunted down by paramilitary groups operating in the area. The Office of the Procurator-General has reported on such incidents in the rehabilitation and consolidation zone of Sucre-Bolívar, and, in a report on mass arrests in 2003 and 2004, states that in many cases no arrest warrant had been issued.

42. In some areas it is reported that the armed groups block access to indigenous communities and seize their food and other supplies, which causes families great hardship. Several such blockades were reported to the Special Rapporteur in the Sierra Nevada and Amazon regions and elsewhere. Humanitarian aid and an end to blockades are urgently needed if these families are to survive with a minimum of food security and basic necessities, despite the armed conflict. However, the lack of security makes it difficult to get essential humanitarian aid to these communities, and to their worst affected members, the women and children.

43. There are many reports of cases of forced recruitment of indigenous youths, and even children, by the armed groups. Although under Colombian law members of indigenous communities are exempt from compulsory military service, the army has nonetheless recruited indigenous youths, who allegedly volunteered, to peasant soldier units; and there are reports of cases of indigenous people enlisting, for a variety of reasons, in one of the rival armed factions. Such actions provoke reprisals against the families or the community as a whole, creating even greater insecurity and bringing further abuses and violations.

44. Colombia's indigenous movement, in its various forms, has made repeated public demands for indigenous reserves and territories to be respected as neutral peace zones by the warring parties. They maintain that the indigenous peoples as such are not involved in the armed conflict or in the drug economy. As the Sierra Nevada Arhuaco put it, "We want them to leave us alone, to stop attacking us and stop evicting us; we want them to leave us out of the armed conflict." Some pilot projects aimed at achieving this have been carried out with international assistance, and in some cases the indigenous communities have managed to get the armed groups to undertake to respect their neutrality. Generally speaking, however, their request has not met the response it deserves.

45. The Government has prepared a national strategy for the protection of the human and collective rights of ethnic groups, and of the indigenous peoples in particular. The overall aim is to safeguard and protect the human rights of the indigenous communities during the armed conflict, make special provision for indigenous peoples, reduce forced displacement, establish a nationwide system of care and introduce the ethnic factor into statistics on violations of human rights and international humanitarian law. The Special Rapporteur recommends that the Government publish regular reports on the progress of this strategy.

B. Violence, drug trafficking and human rights

46. For some 20 years now, there have been close links between the armed conflict and associated violations of the human rights of the indigenous peoples and drug cultivation in indigenous areas. Despite the Government's determination to combat drug trafficking, in compliance with its domestic and international obligations, there seems to have been no overall reduction in the hectareage of illicit crops sown and harvested. The President described the so-called "balloon effect" to the Special Rapporteur - a situation in which a fall in production in one area is offset by expansion in new areas, which makes it difficult to eradicate such crops completely.

47. After a brief boom in marijuana cultivation in the 1970s (the "*bonanza marimbera*"), the drug economy now centres on coca, although it must be said that, as in other Andean countries, traditional coca farming for local use has always been widely practised among Colombia's indigenous communities. It is highly unlikely that there will be any decline in the commercial trade in psychotropic drugs as long as international demand continues to rise.

48. There is ample evidence that the paramilitary and guerrilla groups fund their activities with the income from drug trafficking; it is for this reason that the battle for control of these territories, and of strategic corridors such as Putumayo, which happen to be where the indigenous peoples live, is becoming increasingly violent, exacting an enormous human, social and cultural toll on these communities and indeed on the country as a whole. FARC moved into the Amazon region during the 1970s and the cultivation of illicit crops intensified in the 1980s, which in turn enabled the guerrillas to step up their action: between 1983 and 1990 the number of fronts increased from 27 to 60. In the late 1980s, the paramilitary self-defence groups arrived on the scene and challenged the guerrilla forces for control of coca production. AUC became increasingly active and was responsible for the Mapiripán massacre in 1997, in which members of the armed forces were also involved.

49. In the Government's military policy, the fight against drug trafficking and the war on the guerrilla groups have gradually fused into a single strategy. This has led, in recent years, to a redrawing of the parameters of the internal armed conflict, which is no longer seen as a political and military conflict but is now considered a fight against "terrorism". This has also affected the treatment of the indigenous peoples in conflict zones; their increasing opposition to militarization

is sometimes seen by the military and political authorities as support for “terrorism”. According to the Latin American Human Rights Association (ALDHU), the pressure on the indigenous peoples is mounting, and the withdrawal of FARC, the spread of drug crops to their territories and the presence of paramilitaries and of large numbers of police have increased the threats and danger they face.

50. Several means are employed to eradicate illicit crops, but the Government concentrates mainly on spraying, which it considers to be the most efficient method. Colombia’s Minister for Foreign Affairs told the Special Rapporteur that, despite the criticism levelled at the Government over spraying, it still considers this method of combating the growing of illicit crops to be a “lesser evil” which must be accepted.

Indigenous organizations described to the Special Rapporteur the adverse effects of indiscriminate spraying, including environmental damage to the topsoil, fauna, flora and water, the destruction of subsistence crops and direct damage to human health, including birth defects. The Special Rapporteur was also told that there are technical and scientific studies to substantiate these assertions. The indigenous peoples see the aerial spraying of coca plantations as yet another violation of their human rights and, save for a few occasions when they have given their consent, actively oppose the practice; this position again brands them as guerrilla sympathizers, as happened after the rights marches organized by certain indigenous communities to protest against the spraying. The Office of the Ombudsman has received 318 complaints concerning spraying operations in three municipalities in Putumayo in July 2002 and their effect on 6,070 families and 5,034 hectares of land.

51. The Awa community in Nariño has informed the Special Rapporteur of various kinds of damage caused over the last three years to large tracts of rainforest in several areas of the municipalities of Tumaco and Barbacoas, as a result of spraying with glyphosate. The greatest damage was done, they say, to sources of fresh water, killing native fish and affecting human health, causing aching bones, vomiting, dizziness, fever and other ailments, particularly among children.

52. The Motilon-Bari community of Norte de Santander reports, among other violations, indiscriminate bombings by the security forces in 2003 - an operation known, significantly, as Operation Holocaust - and damage from aerial spraying with glyphosate in the course of the same year. The Organization of Indigenous Communities of Puerto Asís, Putumayo, has also reported the damaging effects of spraying. The Latin American Institute for Alternative Legal Services (ILSA) considers that the Programme for Aerial Eradication of Illicit Coca violates the rights to food security, health and a clean environment. In the Amazon region, the Government has signed an agreement with the indigenous organizations for the eradication of illicit coca crops.

C. The environment, land and human rights

53. Apart from the environmental and cultural impact of illicit crops, spraying and the armed conflict, one of the most sensitive subjects in the area of indigenous people’s human rights is the threat hanging over the biodiversity of the Amazon tropical forest, a region which, despite being sparsely populated, has a high degree of indigenous cultural diversity and is now at serious risk.

54. Indigenous people’s natural environment is currently under great pressure as a result of intensive economic activities such as logging, oil drilling, a range of mining operations (including mining for gold, coal, minerals and saltpetre) and the construction of hydroelectric megaprojects such as the Urrá dam, or of highways connecting the countries and regions of the Amazon.

55. The need for prior, informed consultation with indigenous communities, in accordance with ILO Convention No. 169, has become one of the major issues in the human rights arena. The communities maintain that the mechanism does not operate in the same way in all parts of the country. In the indigenous territories of Antioquia, the Special Rapporteur was told that mining and other projects were launched without prior consultation or the consent of the indigenous communities. On the other hand, the indigenous peoples of the Sierra Nevada, the Wayuu people in Guajira and the Awa in Nariño report that they have made some headway with consultation processes.

56. In Putumayo, the Special Rapporteur was told of the large, uncontrolled waves of migrants prompted by the oil boom, which have pushed ethnic groups back into minimal territorial holdings where their very survival as communities is at risk. The U'wa indigenous people, who live in the departments of Casanare, Arauca, Boyacá, Santander and Norte de Santander, told the Special Rapporteur that they are heading for sociocultural extinction as a result of the policies of colonization, deterritorialization and intimidation applied in State operations to exploit natural resources on their lands, particularly in oil prospecting and drilling.

57. The ecological disaster wrought by these precipitate changes to indigenous people's natural environment, involving billion-dollar investments and multinational economic interests, is second only to the resulting human catastrophe visited upon the indigenous communities and peoples directly affected. In many cases, the destruction of indigenous communities goes hand in hand with the destruction of their sacred sites and of the various manifestations of their cultural heritage that are so important to the preservation of indigenous identity.

Of particular concern are the threats of extinction hanging over several of Colombia's communities. At least 12 small indigenous peoples living in Amazonas find themselves on the brink of extinction as a result of all these processes (armed conflict, illicit crops, environmental destruction, economic megaprojects) and their impact on the population's living conditions (forced displacement, selective killings of leaders, destruction of the subsistence economy, deterioration in health and disintegration of the social fabric of the community and of its particular cultural identity). Among the Amazonian indigenous peoples, 40 per cent are thought to be at high or very high risk.

Some of the most vulnerable groups are the Awa, Kofan, Siona, Paez, Coreguaje, Carijona, Guayabero, Muinane-Bora, Pasto, Embera and Witoto peoples in the departments of Putumayo, Caqueta and Guaviare. Their situation represents a humanitarian emergency of considerable proportions, but the measures taken thus far by the State and various private and international agencies seem inadequate to deal effectively with the crisis.

58. Any resolution of the grave environmental problems in the indigenous regions will depend to a large extent on how the indigenous reserves are managed. Under the Constitution and Act No. 160 of 1994, land is to be granted to indigenous communities through the establishment, extension, rehabilitation and restructuring of reserves. In 2003, the Colombian Rural Development Institute recognized 80 indigenous reserves, covering a total area of 1,125,792 hectares and benefiting 15,155 Wayuu, Embera-Katio, Pijao, Embera-Chamí and Embera families in Bajo Atrato and Putumayo.

59. Yet the Special Rapporteur found that many outstanding claims remain unresolved. The Kankuamo people of the Sierra Nevada, for example, have requested the establishment of a reserve and the Mokana indigenous peoples in Atlántico report that their Tubará reserve, declared

unoccupied in 1886 and appropriated by private interests, has still not been returned to them. Similarly, the Inga people of Putumayo complain that no action has been taken on their various requests for the establishment, extension and rehabilitation of their reserves. There are also reports of tension and conflict arising with settlers, ranchers, cattle farmers and armed groups over ownership of these lands.

60. It is a continuing cause for concern that the indigenous communities, despite the fact that they have legal ownership of the reserves, are not able to protect their territories adequately from invasion or fraudulent conversion or to effectively exercise their right to decide to what use their lands should be put, all the more so as there are powerful outside economic interests vying for control of that land. Conflicts may arise partly because the relevant legislation has not yet been consolidated, partly because the definition of an indigenous reserve does not cover subsoil resources, and partly because the conflict situation described above makes indigenous peoples more vulnerable even within their own reserves. Furthermore, the constitution of indigenous territorial entities, as expressions of indigenous peoples' autonomous rights, has still not been incorporated into the State's institutional framework. The Special Rapporteur is concerned at potential threats to the integrity of the indigenous reserves, and thus to the collective rights of the indigenous peoples, that may arise in the future, and suggests that a broad-based commission should be established to carry out a pilot study of the problem.

61. The Regional Council of Cabildos, which represents four indigenous peoples of the Sierra Nevada, states that its members' interest, as indigenous peoples and ancestral owners of this territory, is in obtaining the use, management and control of their traditional lands by applying the strategies of consolidation of land, reinforcement of indigenous government in all its forms and management of the land in a balanced manner consistent with historical and current reality. The consolidation of land, as a principle and as a policy, is based upon the rehabilitation and extension of existing reserves, the establishment of a Kankuamo reserve and the protection, recovery and control of traditional sacred sites.

62. In 2003, the Government and the Regional Council of Cabildos signed an agreement providing for consolidation of indigenous lands, indigenous government, environmental conservation, the sustainable development of the Sierra Nevada de Santa Marta and inter-agency coordination with regional and local authorities.

63. The territorial changes have also had an impact on the indigenous peoples' subsistence economy. One of the hardest hit groups has been the Wayuu people in Guajira, who complain that legislation, the Government's development priorities and the paramilitary presence have all had an adverse effect on their living conditions. One of the examples they cite is the fact that the Ministry of Mines and Energy has failed to honour an agreement signed in 2002 between the Government and several indigenous cooperatives trading in fuel products on the Colombia-Venezuela border, with the result that AUC, by intimidation and harassment, has managed to set up its own company, to the detriment of the Wayuu indigenous cooperatives. In a letter handed to the Special Rapporteur, the Wayuu community of Manaure demands that the Government comply with the agreement allowing the community to engage in the production and sale of salt, a job performed mainly by women.

64. Similarly, the indigenous Yukpa community of the Perijá mountains on the Venezuelan border submitted a complaint to the Special Rapporteur alleging that its territory is being invaded by non-indigenous peasant settlers who threaten their traditional activities, thus causing them to fear for their survival.

D. Access to justice and indigenous jurisdiction

65. As in other countries of the region, the issue of the administration and functioning of justice is of particular concern to the indigenous peoples. In Colombia, access to justice is closely bound up with land issues, the strengthening of indigenous peoples' authorities and respect for their own jurisdiction.

66. The problems cited in connection with the administration of justice include: the non-recognition by the State authorities of indigenous peoples' ethnic and cultural diversity and of their right to a special jurisdiction, thereby restricting and, in some cases, preventing the exercise of that right; the non-recognition of their autonomy, their government and their own laws and methods of settling disputes within their communities; and the destruction of, non-respect for, and restrictions on access to their sacred sites. The various armed groups display even more blatant contempt for indigenous peoples in this regard.

67. The Constitution recognizes indigenous jurisdiction but the mechanisms to coordinate it properly with the State judicial system are still not in place. Issues yet to be resolved include the recording of the various procedures carried out under indigenous jurisdiction and the protection of individual human rights within it. The Special Rapporteur urges the parties involved to devote particular attention to these issues.

68. In addition to the valuable work being done by the Constitutional Court, mention must be made of the Office of the Ombudsman, which has a division for indigenous peoples, whose coverage has been expanding across the country. The Office of the Ombudsman has taken steps to protect indigenous human rights, one of the most important of which is resolution 24/2002, which takes note of serious violations of indigenous human rights in the region of the Sierra Nevada de Santa Marta and the Serranía del Perijá, and requests the Department of Indigenous Affairs of the Ministry of the Interior to implement an emergency plan to safeguard the fundamental and collective rights of the region's indigenous peoples, in coordination with the indigenous peoples and organizations concerned, and to complete the process of establishing the Kankuamo reserve, the rehabilitation of the Yukpa reserve in El Coso and the extension and rehabilitation of the Arhuaco and Kogui-Malayo reserves.

69. The true scale of the problem far outweighs the scope of these initiatives, however. In terms of coverage, for example, the Office of the Ombudsman needs reinforcement in regions such as Magdalena, Guajira, César and the Valle del Cauca, all of which are known to be epicentres of the conflict and have large Afro-Colombian and indigenous communities, but where there is scant coverage by the Office of the Ombudsman for lack of resources.

E. Situation of indigenous women

70. The situation of indigenous women, who account for 49 per cent of the total indigenous population, is particularly worrying. To begin with, the few indicators available show that women's level of human development (education, nutrition, health, etc.) is lower than that of indigenous men and of the non-indigenous population as a whole. At least 60 per cent of displaced women lack access to health services. Displaced children present high rates of malnutrition, respiratory diseases, diarrhoea and dehydration, and many of them are forced to migrate to urban areas to avoid recruitment by the armed groups.

71. The Special Rapporteur received reports of abuses and violations of the rights of indigenous women, who are frequently subjected to physical violence, usually accompanied by sexual assault, by the armed groups in the socio-political conflict. However, acts of intracommunity and domestic violence

against women, committed by men from their own communities, are also reported. Indigenous women also show low levels of involvement in community affairs and in the political and institutional life of the country.

F. Sustainable development and recognition of the indigenous identity

72. In the area of development, a demand repeatedly put to the Special Rapporteur by indigenous communities - because it has allegedly never been met - concerns the right to prior consultation on a free and informed basis, as guaranteed under the Constitution and in ILO Convention No. 169.

73. Although certain companies, such as Ecopetrol, have stated their intention to comply with this obligation, the information received indicates that there has not been a structured, coherent or negotiated process of consultation with indigenous peoples by State or private bodies operating in indigenous areas, or even by the State when drafting new legislation or policies directly or indirectly affecting them. A legitimate way must be found to launch the necessary consultation process in order to guarantee full respect for indigenous rights and indigenous people's full participation in decision-making in matters that affect their communities' survival and cultural identity.

74. Another issue that repeatedly arises is the demand by some communities for official recognition as indigenous under the Constitution. The Kankuamo of the Sierra Nevada, for example, are calling for a reserve to be established for them, while the Muisca of Cundinamarca are demanding official recognition as an indigenous people on the basis of ancient deeds dating from colonial times. The Mokana people, in the department of Atlántico, also claim recognition as an ethnic group, a status they claim was withdrawn by the Government in 2002.

The Colombian Movement of Indigenous Authorities (AICO) transmitted to the Special Rapporteur, through the indigenous senator Efrén Felix Tarapues Cuaical, a document containing the outline of a development plan for the Pasto people of the Andean paramos on the Colombia-Ecuador border, which includes the following objectives: land and environmental management, support for indigenous culture, creative participation, autonomy for the sake of the people's welfare, and fair trade.

G. Extension of basic social services

75. The Government of Colombia is committed to a social policy of support for indigenous peoples and for their development. The Constitution establishes a general subsidy scheme for the indigenous reserves; these resources are required by law to be directed primarily towards meeting basic needs in the areas of health, education, drinking water, agricultural development and housing. In the absence of proper regulation, however, these funds do not go directly to the communities, who complain that the municipalities unlawfully withhold payment or do not pay out the full allocation, and that the amounts are in any case inadequate and have shrunk considerably in recent years.

76. The law establishes the principle of indigenous bilingual and intercultural education, and shortly before the Special Rapporteur's visit the Government announced that the public health service was to be extended and expanded to cover Colombia's entire indigenous population. This is a major challenge, with many obstacles to overcome. The human, economic and social development indicators for the indigenous population show levels below the national average, particularly in respect of indigenous women and girls. According to a study by the Cauca Indigenous Regional Council, only 50 per cent of school-age children are actually in school, and in Antioquia the figure is less than 40 per cent.

77. For bilingual education to become a reality for all indigenous school-age children in Colombia, a sustained effort will be required, along with extensive resources for, inter alia, teacher training, school construction, production of educational materials, evaluation of results and continuity of teaching methods, all of which are at present compromised by the constraints on the public purse and the various national priorities in resource allocation.

78. The same applies to health services, particularly in the areas of mother-and-childcare, reproductive health for indigenous women, child nutrition (including among the displaced population) and cultural determinants of health among indigenous peoples. In this context, it is worrying to note that the armed conflict has claimed the lives of large numbers of traditional doctors from indigenous communities and that the violence has hampered communities' ability to collect traditional plants and products in the natural environment for use in health care in accordance with indigenous cultural practice. The violence has also frightened off doctors and health workers and affected vaccination campaigns.

79. The Embera Katio people of Alto Sinú informed the Special Rapporteur of their high mortality rate - more than twice the national rate; what is more, their infant mortality rate is 3.2 times the national rate. They are demanding better health care from the State and allege that there is no effective protection for their cultural integrity.

80. Act No. 691 of 2001 guarantees indigenous people's right to health services. To date, according to the Government, more than half a million indigenous people are covered by the subsidized health scheme, and President Uribe has indicated that by the end of his term of office all indigenous people in the country will be covered. Seven health-service providers operate in indigenous areas, but this is not enough and they alone cannot guarantee the realization of indigenous peoples' right to health.

IV. CONCLUSIONS

81. **The precarious human rights situation of Colombia's indigenous peoples reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples, against a background of internal armed conflict involving numerous warring parties whose actions directly affect indigenous communities' chances of survival.**

82. **The spread of narcotics cultivation and trafficking, and efforts to combat that spread, notably by spraying fields from the air, have had an adverse effect on indigenous peoples' environment, economy, social life, health and culture.**

83. **Certain small indigenous communities in the Amazon region are especially vulnerable, and indeed are in real danger of extinction as peoples.**

84. **Of particular concern are the conditions of indigenous people who have been internally displaced or who are refugees from the violence, in particular women and children.**

85. **There have been delays in implementing the constitutional provisions on the establishment and consolidation of indigenous reserves and cabildos. Indigenous jurisdiction is still a fragile part of Colombia's justice system.**

86. **Some economic development programmes, including certain commercial farming, forestry, mining and oil-drilling activities, have had adverse effects on the living conditions of the indigenous communities involved.**

87. **The social and human development indicators of the indigenous peoples are still below the national average. The various State social programmes for indigenous peoples have had little**

impact on their communities owing to the lack of resources, trained personnel or the necessary institutional mechanisms.

88. The indigenous peoples demand that the armed groups respect their neutrality in the internal conflict; they are making efforts to carry through their own development plans, which require support of various kinds that is at present lacking.

89. Specifically, the indigenous organizations and communities demand the application of constitutional principles, the implementation of the relevant legislation and compliance with the rulings of the Constitutional Court and of the international human rights bodies.

V. RECOMMENDATIONS

A. Recommendations to the Government

Conflict, human rights and international humanitarian law

90. The State and the armed groups have an obligation to comply at all times with international humanitarian law and to respect human rights. It is suggested that a broad-based independent commission be established to ensure full compliance.

91. Priority should be given to the indigenous peoples' demand that all the armed groups respect their neutral and demilitarized zones. Indigenous peace zones, free from all military operations and subject to international supervision, should be created as a matter of urgency.

Internally displaced persons

92. The displaced indigenous population, and women and children in particular, should be accorded priority attention by the State and international organizations. Women, particularly mothers, should receive special assistance.

93. It is vital to secure food supplies for indigenous communities, and in particular for the displaced populations in conflict zones, and to ensure the free passage of food aid to the neediest groups.

Legislative measures

94. Regulatory legislation giving full and effective application to the constitutional provisions on the human rights of indigenous peoples should be passed as soon as possible.

95. Any draft legislation, draft constitutional reform or other initiative which introduces into the law provisions that violate indigenous peoples' rights or the principle of diversity should be withdrawn.

96. The other branches of government should fully respect the powers of the Constitutional Court, and refrain from limiting the scope of the *amparo* procedure, which is one of the principal mechanisms for the defence of indigenous peoples' human rights.

Indigenous women

97. The Special Rapporteur recommends the establishment of an effective mechanism for the protection and promotion of the rights of Colombia's indigenous women, with the aim of

forestalling violations of their fundamental rights and promoting their active involvement in decisions affecting their lives and their active development within their communities.

98. Existing programmes on the provision of basic social services should be extended so as to improve the situation of indigenous women and children in rural areas, and in particular displaced women and children, with regard to health and education.

Indigenous rights defenders and human rights defenders

99. Programmes should be set up in conjunction with civil society organizations and human rights defenders active in indigenous affairs, as a means of joining forces to ensure the attainment of the Government's laudable aims in terms of the promotion and protection of the human rights of indigenous people.

Military service

100. Indigenous people should continue to be excluded from the bill on compulsory military service. Congress should not approve any law limiting or restricting the autonomy and freedoms of social and human rights NGOs.

101. Schemes for children and youngsters such as the network of informers, the introduction of peasant soldiers and the "soldiers for a day" programme should be discontinued.

Administration of justice

102. Prosecution services should investigate and apply the law in all complaints concerning abuses and violations committed against members of indigenous communities by members of the armed forces or the police.

103. The relevant State bodies should apply, with immediate effect and without exception, the precautionary measures established by the Inter-American Commission on Human Rights for various indigenous peoples.

104. The Anti-Terrorist Statute should under no circumstances be invoked against any indigenous people charged with an offence as a result of involvement in legitimate action to resist, oppose or protest against violations committed against them by any armed group.

105. No indigenous people should be detained by the armed forces unless a warrant for their arrest has been issued by a competent judicial authority. The duties of the military and the judiciary should be kept strictly separate, including in conflict zones.

The environment and spraying

106. Except where expressly requested by an indigenous community which has been fully apprised of the implications, no aerial spraying of illicit crops should take place near indigenous settlements or sources of provisions.

Sustainable development and basic social services

107. The State should promote and extend the coverage of alternative sustainable development projects, under development plans drawn up by the indigenous communities, and to that end should request the fullest possible international cooperation.

108. No investment or infrastructure projects, harvesting or mining of natural resources or new production projects should be encouraged without full and legitimate prior consultation and the involvement of the indigenous peoples. An agreed approach to the consultation process should be worked out.

109. As part of the plans for free education for all - which the State is under an obligation to provide - the bilingual and intercultural education programme should be reinforced in indigenous areas, and the role of private educational establishments should always be limited to supplementing the work of the State.

110. The Government's plans to provide health service coverage to the entire indigenous population should embrace and protect traditional medicine and its practitioners within the indigenous communities.

111. State entities working with indigenous populations should produce and make use of statistics disaggregated by ethnic group, so that they can focus their work more effectively. It is recommended that they should work out a suitable methodology in cooperation with academic and research institutions.

B. Recommendations to the armed groups

112. The armed groups should refrain from recruiting minors, and those already recruited should be returned to their families immediately and given appropriate care by specialist State institutions.

C. Recommendations to the indigenous peoples

113. The Special Rapporteur urges the indigenous peoples to continue to stand up to the various groups involved in the armed conflict and reaffirm their tradition of peace and mutual respect. He recommends that they continue to try to establish forums for dialogue with civil society and other sectors campaigning for human rights and peace in Colombia.

D. Recommendations to the international community

114. The Special Rapporteur recommends that the United Nations and the international community at large continue to provide cooperation for the construction of a peaceful, just society. He appeals in particular for special attention to continue to be paid to the situation of Colombia's indigenous peoples, applying a strong gender perspective, and for an approach aimed at ensuring respect for indigenous human rights when devising policies and initiatives for the various agencies in the country.

115. Lastly, as a matter of particular urgency, international cooperation should be mobilized to prepare an emergency programme of aid to the indigenous communities in danger of extinction, particularly in the Amazon region. In this context, it is recommended that advice should be sought from the new United Nations focal point on the prevention of genocide.
