ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ

A

ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ

Distr.
GENERAL

A/HRC/4/32/Add.4
26 February 2007

RUSSIAN
Original: ENGLISH

СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА
Четвертая сессия
Пункт 2 предварительной повестки дня

ОСУЩЕСТВЛЕНИЕ РЕЗОЛЮЦИИ 60/251 ГЕНЕРАЛЬНОЙ АССАМБЛЕИ ОТ 15 МАРТА 2006 ГОДА, ОЗАГЛАВЛЕННОЙ "СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА"

Доклад Специального докладчика по вопросу о положении в области прав человека и основных свобод коренных народов г-на Родольфо Ставенхагена

Добавление

ИССЛЕДОВАНИЕ, ПОСВЯЩЕННОЕ ПЕРЕДОВОЙ ПРАКТИКЕ ВЫПОЛНЕНИЯ РЕКОМЕНДАЦИЙ, СОДЕРЖАЩИХСЯ В ЕЖЕГОДНЫХ ДОКЛАДАХ СПЕЦИАЛЬНОГО ДОКЛАДЧИКА*

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, воспроизводится на языке оригинала и на испанском языке.

Резюме

В настоящем докладе представляется исследование Специального докладчика по вопросу о положении в области прав человека и основных свобод коренных народов, посвященное передовой практике выполнения рекомендаций, содержащихся в его общих и страновых докладах, в соответствии с просьбой, сформулированной Комиссией по правам человека в его резолюции 2005/51.

В исследовании излагается ряд общих соображений, касающихся целей и воздействия доклада Специального докладчика, и приводятся конкретные примеры инициатив, выдвинутых в конкретных странах в целях выполнения рекомендаций Специального докладчика при участии международных организаций и учреждений, гражданского общества и коренных народов во взаимодействии с соответствующими правительствами. В заключительной части исследования приводится ряд примеров, касающихся конкретных стран, в которых эти рекомендации привели к конкретным изменениям в государственной политике и законодательстве.

В исследовании сделан вывод о том, что, хотя доклады Специального докладчика и оказывают важное воздействие в некоторых странах, рекомендации, включенные в его доклады, не приводят к автоматическим и быстрым изменениям положения в области прав коренных народов. Целый ряд инициатив, предпринятых за последние годы правительствами, системой Организации Объединенных Наций, гражданским обществом и организациями коренных народов в целях мониторинга и стимулирования выполнения этих рекомендаций, свидетельствуют о том, что, если все остается только на институциональном уровне, то рекомендации осуществляются редко. Их осуществление необходимо форсировать в тесном сотрудничестве с правительством и другими заинтересованными сторонами, включая сами коренные народы. В тех странах, где существуют механизмы последующих действий, институциональные усилия по выполнению рекомендаций, являются более последовательными, и это приводит к конкретным правовым и практическим изменениям.

Этот опыт свидетельствует о том, что, несмотря на успехи, которые могут быть перечислены, общая ситуация с выполнением рекомендаций Специального докладчика плачевна. Правительствам, международным учреждениям и другим соответствующим заинтересованным сторонам еще предстоит сделать очень многое для преодоления "практического разрыва" между международными и внутренними нормами и серьезными нарушениями прав человека, с которыми продолжают сталкиваться коренные народы во всех частях мира.

В исследовании приводится ряд выводов и рекомендаций, направленных на улучшение их осуществления.

Annex

STUDY REGARDING BEST PRACTICES CARRIED OUT TO IMPLEMENT THE RECOMMENDATIONS CONTAINED IN THE ANNUAL REPORTS OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE

CONTENTS

I. INTRODUCTION

1. In resolution 2005/51, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, to begin preparing a study regarding "best practices carried out to implement the recommendations contained in his general and country reports" (para. 9) and to submit a progress report to the Commission at its sixty-second session and the final study at its sixty-third session.

2. Following this request, the Special Rapporteur presented a progress report (E/CN.4/2006/78/Add.4) to the first session of the Human Rights Council in September 2006 containing an overview of the main conclusions and recommendations from his thematic and country reports; a summary of the information received from Governments, international agencies and civil society organizations on the actions being taken; and a plan of work for the preparation of the final study.

3. The Special Rapporteur would like to note that an in-depth study would have required full-time research and additional information. In this context, the present report should be seen by the Council as a general overview of the actions being taken and the challenges ahead that could serve as a first step for a more comprehensive study on the subject matter in the future.

4. Commission on Human Rights resolution 2001/57 establishing the mandate on the situation of the human rights and fundamental freedoms of indigenous people attributes to the Special Rapporteur the responsibility of formulating "recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people" (para. 1 (b)). Such recommendations are included in a number of thematic and country reports. Since his appointment in 2001, the Special Rapporteur has presented six annual reports. In the first, the Special Rapporteur proposed a list of issues on which he wanted to focus his subsequent reports (E/CN.4/2002/97, para. 113), which was endorsed by the Commission (resolution 2002/65, para. 5). Subsequently, the Special Rapporteur prepared thematic reports on the impact of large-scale development projects (E/CN.4/2003/90); access to the administration of justice and indigenous customary law (E/CN.4/2004/80); education (E/CN.4/2005/88); and the implementation of legislation and jurisprudence concerning the rights of indigenous peoples (E/CN.4/2006/78). The Special Rapporteur presents his sixth annual report at the present session of the Council (A/HRC/4/32), which focuses on the state and evolution of the rights of indigenous peoples in recent years.

5. The Special Rapporteur has also submitted reports on his missions to Guatemala (E/CN.4/2003/90/Add.2); Philippines (E/CN.4/2003/90/Add.3); Mexico (E/CN.4/2004/80/Add.2); Chile (E/CN.4/2004/80/Add.3); Colombia (E/CN.4/2005/88/Add.2); Canada (E/CN.4/2005/88/Add.3 and Corr.1); South Africa (E/CN.4/2006/78/Add.2); New Zealand (E/CN.4/2006/78/Add.3). At the current session of the Council, the Special Rapporteur presents reports on his missions to Ecuador (A/HRC/4/32/Add.2) and Kenya (A/HRC/4/32/Add.3).

6. In preparing his final study, the Special Rapporteur used the information included in the replies to a questionnaire distributed in October 2005 which he received from the Governments

of Argentina, Belarus, Canada, Chile, Denmark, El Salvador, Estonia, Finland, Germany, Lebanon, Mexico, the Philippines, the Russian Federation, Switzerland and Tunisia. The Special Rapporteur received replies from the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the World Food Programme (WFP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Institute for Training and Research (UNITAR), the International Labour Organization (ILO), the World Bank, as well as the country offices of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia, Guatemala and Mexico, and the OHCHR Regional Office for Latin America and the Caribbean, in response to another specific questionnaire addressed to the United Nations agencies and programmes.

7. This study is also based on the information compiled during the Special Rapporteur's participation in a number of visits, seminars and meetings, including the International expert seminar on the implementation of the Special Rapporteur's recommendations, organized by Rights and Democracy in Montreal, Canada, in October 2006. The Special Rapporteur received written contributions from a number of indigenous organizations, NGOs and individual experts. He acknowledges the cooperation received and wishes to thank all the people and organizations that supported this research.

8. The study first presents a number of general considerations concerning the objectives and impact of the Special Rapporteur's report, and makes a number of preliminary conceptual clarifications concerning the scope of the study. The second part of the study provides a number of examples of initiatives led by international organizations and agencies, civil society and indigenous peoples to follow up on the recommendations of the Special Rapporteur's reports, in cooperation with the Governments concerned. The third part analyses a number of instances in which these recommendations have promoted specific changes in State policies and legislation. The study concludes with a number of conclusions and recommendations to enhance implementation.

II. GENERAL CONSIDERATIONS ON THE OBJECTIVES AND SCOPE OF THE SPECIAL RAPPORTEUR'S RECOMMENDATIONS

9. In its resolution 2005/51 the Commission on Human Rights specifically limited the scope of the study to the recommendations contained in the Special Rapporteur's "general and country reports". The emphasis on "best practices" is particularly relevant in order to ascertain the effectiveness of the Special Rapporteur's mandate and the cooperation of the relevant stakeholders, particularly States, with this special procedure.

10. The "best practices" approach presents methodological limitations related to the difficulty of establishing clear relations of causality between the Special Rapporteur's recommendations and policy and practical changes that have actually taken place. The Special Rapporteur's work is informed by and builds upon existing international standards regarding indigenous rights, including treaties, customary law and "soft law"; the decisions and recommendations of international human rights bodies responsible for monitoring those norms, which have developed a specific jurisprudence concerning indigenous peoples; and other special procedures of the

Human Rights Council (see E/CN.4/2002/97, paras. 6-33, and E/CN.4/2006/78, paras. 7-13, 51-79). Therefore, the recommendations made by the Special Rapporteur cannot be seen in isolation, but are rather part of the wider system of international norms, actors and procedures that interact to promote the rights of indigenous peoples.

11. Examples of this interaction are manifold. The Special Rapporteur's thematic reports have been used as a source in the reports of the Inter-American Commission on Human Rights and also in the activities of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights. His reports have also been used in the work of other special procedures of the Human Rights Council. For instance, the thematic report on the impact of major development projects is a tool for ongoing discussions within OHCHR concerning the impact of business on human rights, and for the work of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises. In addition, the Special Rapporteur's country reports have been used by the United Nations treaty bodies in the preparation of their concluding observations concerning State compliance with the human rights conventions they have ratified.

12. Similarly, the Special Rapporteur's recommendations are related to social, political and legal processes at the domestic level. The different issues highlighted by the Special Rapporteur, particularly in his country reports, are derived from his independent assessment of already existing discussions and demands concerning the rights of indigenous peoples in the countries he visits. As a consequence, the implementation of the Special Rapporteur's recommendations cannot generally be seen in isolation from ongoing efforts by government actors, civil society organizations and indigenous peoples themselves to promote solutions to the substantive human rights issues that the recommendations seek to address.

13. The human rights situation of indigenous peoples is derived from complex historical processes and structural phenomena, and therefore the actions and strategies required to improve this situation are necessarily multifaceted. In a number of cases, the effective protection of indigenous rights requires specific legal, institutional and even constitutional reforms to guarantee them or to solve conflicts with other existing norms at the domestic level, and the implementation of these recommendations may be relatively easy to assess. In other instances, particularly when addressing broader or systemic conditions affecting the enjoyment of basic human rights by indigenous peoples, the Special Rapporteur's recommendations are phrased differently. The implementation of the recommendations must be measurable, and a system of benchmarks should be set to evaluate progress, with the participation of indigenous peoples themselves.

14. The impact of the Special Rapporteur's work on the protection of the rights of indigenous peoples is not measured necessarily only along the implementation/non-implementation continuum. His missions in several countries and the specific recommendations in his country reports have in some cases had a direct impact. Some of the participants in the Montreal expert seminar pointed out that the Special Rapporteur's country visits and reports possibly constitute one of the more effective, practically oriented lines of action of the various activities undertaken within his mandate.

15. Specifically, indigenous peoples themselves become involved in the visits of the Special Rapporteur. Typically, he holds consultations with indigenous organizations and individuals at the national, regional and community levels. These meetings have provided him not only with valuable information, but have also promoted a space for dialogue between indigenous peoples, Governments and other actors at the national level. In New Zealand, the visit was reportedly seen as a basic point of reference by indigenous organizations, irrespective of the level of implementation of the specific recommendations by the Government. The visit by the Special Rapporteur to Colombia was also seen by indigenous organizations as a crucial event for their empowerment. An expert at the Montreal seminar pointed out that the visit encouraged the consolidation of a distinct human rights agenda for indigenous peoples, and helped reinforce the relationships with human rights NGOs.

16. Though not on official mission, the Special Rapporteur visited Norway twice during his mandate at the invitation of the Saami Parliament and the University of Tromsø. In 2006, after lengthy negotiations, the Parliament adopted the Finnmark Act, a new law regarding the management of the Saami traditional reindeer-herding areas in the north of the country. The Special Rapporteur has been informed both by government officials and Saami spokespersons that his presence in the country during crucial stages in the process was considered a positive contribution to the adoption of the law.

17. The relatively high impact of country reports in public debates and policymaking concerning the rights of indigenous peoples at the national level, as well as the concrete character of some of the recommendations allow for a detailed analysis of their follow-up by the Governments and other actors concerned. Indeed, as this study shows, the most relevant "best practices" in the implementation of the Special Rapporteur's recommendations relate to those in the various country reports.

18. One of main conclusions of the Montreal expert seminar was that the implementation of recommendations included in the Special Rapporteur's thematic reports has been limited in comparison to those in the country reports. This is partly due to their different objectives. Thematic reports aim at providing an overview of evolving domestic and international legal norms and policies, as well as the major challenges regarding the rights of indigenous peoples, with a view to calling international attention to areas of special concern. Their recommendations are not addressed to specific States, and government institutions do not often feel directly concerned about their implementation. It has been pointed out, however, that the Special Rapporteur's thematic reports are increasingly seen as authoritative sources for different purposes at the national and international levels. For instance, the Special Rapporteur's recommendations have served as a tool in the formulation of national policies, such as in the case of the Spanish Strategy of Cooperation with Indigenous Peoples (Estrategia de la Cooperación Española con los Pueblos Indígenas, ECEPI), to which the Special Rapporteur was requested to give an input.

19. Finally, while the "best practices" study commissioned by the Commission on Human Rights constitutes a useful tool to assess the impact and effectiveness of the Special Rapporteur's recommendations, he cannot conclude these general considerations without noting that, as described in the thematic report presented to the current session of the Human Rights Council, despite the many efforts deployed, indigenous peoples around the world continue to

suffer serious and systematic violations of their rights, a situation that will persist as long as the root causes of these violations remain unaddressed. In many cases, instead of "best practices", the Special Rapporteur finds only "good intentions".

III. FOLLOW-UP OF RECOMMENDATIONS

20. In a number of countries, specific initiatives have taken place to follow up on the Special Rapporteur's recommendations. These initiatives have involved international organizations and agencies, civil society and indigenous peoples, in cooperation with the Governments concerned. These initiatives have been key in promoting "best practices" in the implementation of the Special Rapporteur's recommendations in the countries concerned, and provide positive examples that could be applied to other countries.

A. OHCHR project in Mexico and Guatemala

21. In 2005, the OHCHR country offices in Mexico and Guatemala, in cooperation with the respective Governments, initiated the project Promotion and protection of human rights of indigenous peoples in Central America with special focus on Guatemala and Mexico. One of the main objectives of this project is to provide support to both Governments in implementing the recommendations of the Special Rapporteur's country reports, particularly by setting up human rights protection and monitoring standards to measure the implementation of the recommendations, the developments in the legal system, and the changes in the human rights situation of indigenous peoples and of women in particular.

22. In the framework of this project, OHCHR has promoted training courses for members of the Government, the judiciary and indigenous organizations on the rights of indigenous peoples. The project also promoted the dissemination of the reports by way of printed and audio materials in Spanish and indigenous languages. In 2006 two research projects on the recognition of traditional indigenous law in the official legal system were initiated in Mexico, following up the Special Rapporteur's recommendations on indigenous law and access to justice, and on the situation of the rights of indigenous women.

23. OHCHR Mexico and its counterparts in the Government have organized a number of meetings to evaluate the state of implementation of his recommendations, including one with high-level government officials in 2006, and a national consultation with indigenous and human rights organizations in January 2007. The project also supported the follow-up visit undertaken by the Special Rapporteur to the "La Parota" hydroelectric project and other indigenous communities in the State of Guerrero in August 2006.

24. Similar meetings have taken place in Guatemala, where, at the invitation of the Government, the Special Rapporteur conducted a follow-up mission in May 2006. During his visit, he met with the President's full Cabinet, as well as with several governmental agencies and committees; members of parliament and the judiciary; indigenous and civil society organizations and representatives of the United Nations Country Team (UNCT). He further participated in a national workshop with more than 100 representatives of indigenous and civil society organizations, which presented him with a full assessment of the state of implementation of the recommendations of his country report.

25. In 2006 OHCHR Mexico conducted a survey on actions taken by government institutions, the legislative and judicial branches, as well as national human rights institutions at the federal and state levels to implement the Special Rapporteur's recommendations concerning that country. This information has been submitted to the Special Rapporteur and will also be presented in meetings with government officials. In Guatemala, the Office has assisted the Presidential Commission on Human Rights (Comisión Presidencial de los Derechos Humanos, COPREDH) in the elaboration of indicators to improve monitoring of the Special Rapporteur's recommendations.

26. The OHCHR binational project has also helped further the action of OHCHR country offices in the field of indigenous rights in those two countries. In Mexico, the Office identified the administration of justice in the State of Oaxaca as one of the priority areas for 2005. In planning the different activities in this area, consideration was given to the Special Rapporteur's recommendations in his report on administration of justice and indigenous law.

B. Other OHCHR projects

27. Following the example of the project in Mexico and Guatemala, OHCHR launched the "Andean Project", in 2006, aiming at working with the Governments of Bolivia, Ecuador and Peru in reinforcing the existing protection of the rights of indigenous peoples and mainstreaming indigenous issues in the work of the UNCTs. One of the lines of work of the project is the implementation of recommendations by United Nations treaty bodies and special procedures as regards the rights of indigenous peoples, including the Special Rapporteur.

28. In 2006, the OHCHR Andean Project, the UNICEF Regional Office and the United Nations Development Fund for Women Andean Regional Office started a study on the best practices and obstacles regarding the implementation of the Special Rapporteur's thematic recommendations in Ecuador, Bolivia, and Peru.[1] The study will pay special attention to the recommendations concerning indigenous children and women, in connection with the recommendations to these countries of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The study, which is expected to be concluded in 2007, intends to promote the mainstreaming of the Special Rapporteur's thematic recommendations in policymaking and United Nations programming, including concerning the Millennium Development Goals.

29. In Ecuador, the Andean Project has led the first efforts to establish a follow-up mechanism to the Special Rapporteur's report on the visit to that country in April/May 2006. These efforts involve indigenous organizations through the Permanent Advisory and Consultative Council of the United Nations and Organizations, Nationalities and Indigenous Peoples of Ecuador. The Council was established in the context of the Human Rights Strengthening (HURIST)

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[1] One of the first initiatives undertaken by the Andean Project was the dissemination of the information concerning the Special Rapporteur's mandate and activities. See OACNUDH-Comité Andino de Servicios, *Mandato del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, Lima, 2006.

programme, a joint initiative implemented at country level by OHCHR and UNDP that endeavours to mainstream human rights in the work of the UNCT.

30. In his report on Colombia, the Special Rapporteur signalled the existence of serious conflicts as a result of faulty consultation processes in development projects in indigenous *resguardos* (reserves), and called upon the Government to work out "[a]n agreed approach to the consultation process" (E/CN.4/2005/88/Add.2, para. 108). OHCHR Colombia is currently considering the establishment of a specific programme on promoting the right to consultation which would engage indigenous and Afro-descendant communities, government ministries and agencies, and the Office of the Ombudsman.

31. In the report on his visit to Chile, the Special Rapporteur recommended that OHCHR should organize a follow-up meeting "to identify ways in which the United Nations system can assist the State authorities in implementing the recommendations set out in this report" (E/CN.4/2004/80/Add.3, para. 82). Since the report was made public in 2004, indigenous organizations have approached the Office on several occasions to seek its support in advancing the Special Rapporteur's recommendations,[2] and the OHCHR Regional Office for Latin America and the Caribbean participated in various activities aimed at the dissemination and follow-up of the Special Rapporteur's recommendations. In 2006, the OHCHR Regional Office included these objectives as part of the Action 2 Project on strengthening the capacities of UNCT Chile to promote and protect human rights. For 2007, the project has planned various regional consultations with government actors and indigenous organizations concerning the state of implementation of the recommendations.

32. As in the case of Chile, the Special Rapporteur recommended to OHCHR that it provide technical cooperation to the Philippines for the promotion and protection of indigenous peoples' rights (see E/CN.4/2003/90/Add.3, para. 67 (j)). This recommendation, which has been endorsed and followed up by indigenous organizations, has not yet been implemented due to the lack of a technical cooperation project between OHCHR and the Government of the Philippines.

C. Follow-up initiatives by international agencies

33. A number of international agencies have used the Special Rapporteur's thematic and country recommendations in their programmatic work. UNESCO, which took an active part in the preparation of the Special Rapporteur's thematic report on indigenous education,[3] has reportedly used the recommendations in that report in defining its general programmes, particularly with regard to the promotion of bilingual education and the development of

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[2] José Aylwin, "Implementación de las recomendaciones del informe de misión a Chile del Relator Especial de la ONU sobre los derechos humanos y las libertades fundamentales de los indígenas, Sr. Rodolfo Stavenhagen: experiencias y aprendizajes". Paper prepared for the International expert seminar on the implementation of the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Montreal, 5-7 October 2006).

[3] Expert Seminar on Indigenous Peoples and Education: "Indigenous Education in the 21st century", organized jointly by OHCHR and UNESCO (Paris, 18-20 October 2004). The proceedings of the seminar are reproduced in document E/CN.4/2005/88/Add.4.

culturally appropriate curricula. The UNDP Regional Initiative on Strengthening Policy Dialogue on Indigenous, Highland and Tribal Peoples' Rights and Development (RIPP) has worked on access to justice, a question highlighted in the Special Rapporteur's second annual report, in Cambodia, the Philippines, Thailand and Viet Nam. UNHCR took note of the concern expressed by the Special Rapporteur regarding political violence against indigenous leaders in Colombia in the elaboration of its country assessment.[4]

34. In Guatemala, in keeping with the Special Rapporteur's recommendation, the Thematic Group on Indigenous and Multicultural Issues has continued operating as an inter-agency group of UNCT, involving indigenous peoples in its activities (see E/CN.4/2003/90/Add.2, para. 86). International agencies have further continued their cooperation in training indigenous peoples' organizations, a best practice that was also encouraged in the Special Rapporteur's report (ibid., para. 87). Similarly, various agencies of UNCT in Colombia are working together with the Kogui, Wiwa, Arhuaco and Kankuamo in the Sierra Nevada de Santa Marta region to elaborate a "humanitarian diagnosis" of these peoples. This initiative aims at shedding light on their human rights situation taking into account their own perspectives and priorities.

35. Finally, the Special Rapporteur's reports have also informed the activities of the Inter-Agency Support Group providing technical assistance to the United Nations Permanent Forum on Indigenous Issues concerning the different issues covered at its annual sessions.

D. Follow-up initiatives by civil society

36. At the Montreal expert seminar indigenous leaders and experts concluded that they cannot wait for Governments to implement the recommendations of the Special Rapporteur. Rather, indigenous peoples and their support organizations, in cooperation with governmental and other non-governmental actors, should take a leading role in putting these recommendations into practice. A growing number of experiences in countries that the Special Rapporteur has visited provide examples of how indigenous peoples have appropriated these reports and used them as practical tools in the defence of their rights.

37. A concern expressed by indigenous organizations in many of the countries visited by the Special Rapporteur is the lack of information among indigenous communities about his reports and recommendations. In order to address this shortfall, a number of indigenous organizations have promoted publication of the Special Rapporteur's reports. In the Philippines, Tebtebba published a book in 2002 which reproduced the Special Rapporteur's report on the country, as well as general information on the mandate. The book was widely disseminated nationally and abroad, and has helped indigenous peoples in other countries to make the best use of a mission by the Special Rapporteur.[5] International NGOs working in the area of indigenous rights have

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[4] UNHCR, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees* (March 2005), para. 116.

[5] Victoria Tauli-Corpuz and Erlyn Ruth Alcantara, *Engaging the UN Special Rapporteur on Indigenous People: Opportunities and Challenges. The Philippine Mission of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Manila, Tebtebba-Indigenous Peoples' International Centre for Policy Research and Education, 2002.

focused on the activities undertaken by the Special Rapporteur.[6] Amnesty International (Canada) disseminated sections of the Special Rapporteur's report on major development projects as part of a national campaign to publicize the impacts of these projects on indigenous communities in the country. In Chile, the Lafkenche Mapuche published an abridged version of the Special Rapporteur's report and of the Chilean official response in 2005.

38. In Mexico, the Citizen Observatory of Indigenous Peoples (Observatorio Ciudadano de los Pueblos Indígenas, OCPI), established by the Mexican Academy of Human Rights, one of the main human rights NGOs in the country, in cooperation with the UNESCO Chair on Human Rights of the National Autonomous University of Mexico, monitors the implementation of the Special Rapporteur's recommendations after his visit to Mexico in 2003 to the States of Chiapas, Guerrero, Oaxaca, Puebla, Veracruz and Yucatán, the States with the highest density of indigenous populations in the country. The Observatory launched a nationwide campaign to promote knowledge of the Special Rapporteur's mandate and the recommendations of his report and evaluate the state of implementation of these recommendations through an information request system (SISI) about the different governmental programmes and projects aimed at the implementation of the recommendations, which is available to the general public via the Internet.[7]

39. Indigenous and civil society in a number of countries have also regularly promoted follow-up of the Special Rapporteur's recommendations though national consultations. In the Philippines, a national meeting, "Indigenous Peoples, the UN Declaration on the Rights of Indigenous Peoples and the Second Decade Programme of Action", was held in Manila in August 2005 and evaluated the state of implementation of the Special Rapporteur's recommendations following his visit to the country. A second meeting was held in February 2007, with the participation of the Special Rapporteur. A similar experience was the Open Forum, "Closing the Implementation Gap", held in Ottawa in October 2006, organized by the Assembly of First Nations (AFN), the Native Women's Association of Canada (NWAC), the Grand Council of the Crees (Eeyou Istchee), Amnesty International (Canada) and the Canadian Friends Service Committee, which the Special Rapporteur attended.

40. Other relevant initiatives regarding the follow-up to the recommendations of the Special Rapporteur's country reports have been the organization of independent human rights observation missions to assess the state of implementation of these recommendations. An important initiative in this regard was the organization of the International Mission of Verification on the Humanitarian and Human Rights Situation of Indigenous Peoples of Colombia (IMV) in Colombia in October 2006. IMV was an initiative of the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC), in cooperation with several indigenous and civil society organizations at the national and international levels. IMV visited the Sierra Nevada de Santa Marta and the Departments of

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[6] See e.g. "Bridging the Gap Between Law and Reality", *Cultural Survival Quarterly*, vol. 30, No. 1 (a special issue devoted to the seminar organized at the University of Arizona in cooperation with the Special Rapporteur in October 2005 on the implementation of domestic and international norms regarding the rights of indigenous peoples).

[7] http://www.amdh.com.mx/ocpi.

Arauca, Cauca, Córdoba and Guaviare, and produced specific reports on the findings in those areas.

41. In other cases independent observation missions have focused on specific aspects of the Special Rapporteur's recommendations. In the case of Chile, Human Rights Watch and the International Federation of Human Rights conducted separate missions in 2004 and 2006, in cooperation with indigenous and civil society organizations, as a follow-up to the Special Rapporteur's recommendations concerning the criminal policy regarding Mapuche social protest in the south of the country, which in a number of cases has led to members of Mapuche communities receiving long prison sentences under the anti-terrorist legislation.

IV. BEST PRACTICES IN THE IMPLEMENTATION OF RECOMMENDATIONS

A. Canada

42. One of the most important developments that have taken place in recent years in Canada concerns reparations to victims of the Residential School system. Under this system several generations of Aboriginal children were compelled to attend schools far from their communities, leading to widespread psychological suffering, physical abuse and loss of identity. The system has been the object of an increasing number of court cases in recent years (see E/CN.4/2005/88/Add.3, paras. 60-61). The Special Rapporteur recommended that "special attention be paid to the nexus between the Residential Schools restitution process, the transgenerational loss of culture and its attendant social problems" (ibid., para. 102). This recommendation reportedly helped advance the negotiations towards the Indian Residential Schools Settlement Agreement, signed by the Government, the claimants, AFN and various Churches in May 2006. The agreement includes payments to former students who lived at one of these schools, a system to deal with serious claims of abuse, and an expedited system of compensation for the elderly. The agreement further funds programmes for healing, truth and reconciliation for former students and their families.

43. In the report on his visit to Canada the Special Rapporteur also paid specific attention to the high rates of violence experienced by indigenous women. Approximately 500 Aboriginal women have been murdered or reported missing over the past 15 years, and Aboriginal women are five times more likely to experience a violent death than other Canadian women (ibid., para. 56). In this connection, the Special Rapporteur recommended that "particular attention be paid by specialized institutions to the abuse and violence of Aboriginal women and girls, particularly in the urban environment" (ibid., para. 113). In March 2005, the Government signed a five-year contribution agreement NWAC to run the "Sisters in Spirit" programme. This educational and policy programme aims at addressing violence, particularly racialized and/or sexualized violence, against Aboriginal women through awareness-raising and practical-oriented research, aimed at gaining a better understanding of this phenomenon.

44. Another serious issue affecting indigenous women that was pointed out in the Special Rapporteur's report is the violation of property rights on Aboriginal reserves as a result of gaps in the existing legal regulation (ibid., para. 31). The Special Rapporteur called on the Government to address "with high priority the lack of legislative protection regarding on-reserve

Matrimonial Real Property which places First Nation women living on reserves at a disadvantage" (ibid., para. 112). In June 2006, after a parliamentary committee published a report on the issue, the Government announced its intention to take legal steps to ensure legal protection of Aboriginal women's matrimonial real property. Since then, the Ministry of Indian Affairs, AFN and NWAC have led a process of consultation with representatives of over 630 First Nations to provide input for that proposal.

45. An important recent development is the reform of the Canadian Human Rights Act, whose section 67 exempts any actions taken by band councils and the Federal Government under the Indian Act from the application of the Act and from the system of petitions included in the Act. The Special Rapporteur specifically recommended that "the Canadian Human Rights Commission be enabled to receive complaints about human rights violations of First Nations, including grievances related to the Indian Act; and that section 67 of the Human Rights Act be repealed" (ibid., para. 108). In December 2006 the Government introduced legislation to repeal section 67, and when this reform enters into effect, indigenous peoples and individuals will have the ability to seek recourse with the Human Rights Commission. This measure is expected to increase the protection of indigenous peoples' rights, particularly those of Aboriginal women.

46. Despite these "best practices" in the implementation of the Special Rapporteur's recommendations, participants in the Open Forum held in Ottawa in October 2006 expressed concern about the lack of institutional action in areas covered by these recommendations. A particularly controversial issue, also referred to by Members of Parliament in interviews with the Special Rapporteur, was Canada's negative vote on the United Nations Declaration of the Rights of Indigenous Peoples at the first session of the Human Rights Council, in March 2006. Efforts to reduce the gap in socio-economic indicators between indigenous peoples and the rest of Canadian society have been thwarted by the Government's failure to honour the Kelowna Accord, agreed to in November 2005 by the Federal Government, all the provinces and territories, and all the national Aboriginal organizations. Despite ongoing efforts to negotiate comprehensive land agreements, numerous conflicts still exist as a result of the failure to recognize indigenous property rights over indigenous lands, including the recent case of Caledonia, in Ontario.

B. Chile

47. After the Special Rapporteur visited Chile, the presidential Historical Truth and New Treatment Commission concluded its activities in 2003, and its final report coincides substantively with many of the Special Rapporteur's recommendations concerning the need for important reforms. One of these recommendations (see E/CN.4/2004/80/Add.3, para. 58) is the "prompt ratification" of ILO Convention No. 169, as Chile is one of the few Latin American States that still have not ratified this fundamental instrument. The Government has taken substantive steps in this direction, and in June 2006, on the occasion of the National Day of Indigenous Peoples, formally expressed the commitment to "achieve, as soon as possible" the ratification of Convention No. 169. A recent international human rights observation mission

assessed the state of the ratification process, which now depends on the support of only two senators.[8]

48. Positive signs have been reported concerning the change of the criminal policy towards the so-called "Mapuche conflict" in the south of the country. The judicialization of the many existing conflicts over lands claimed by Mapuche communities in the south, and specifically, the application of the anti-terrorist legislation in a number of cases related to indigenous land claims, received particular attention in the Special Rapporteur's report on his 2003 visit. In this connection, the Special Rapporteur's report recommended not penalizing "legitimate protest activities or social demands by indigenous organizations and communities" and that the anti-terrorist legislation should not be applied in these cases (ibid., paras. 69-70).

49. Despite the Special Rapporteur's recommendations, judicial processes against Mapuche activities continued in recent years, leading to further long prison sentences. A new judicial process initiated in 2005 against members of Mapuche organizations, including some of those already serving prison sentences, for allegedly engaging in criminal "illegal terrorist association", an accusation that became the object of a national and international outcry, prompted the Special Rapporteur to address an open letter to the President of Chile. The Court of Temuco eventually acquitted the defendants, and this acquittal marked a turning point in the judiciary's position concerning the unreasonable application of existing anti-terrorist legislation.

50. A hunger strike initiated in 2006 by the four convicts in the Poluco Pidenco case again brought domestic and international attention to this serious issue, and several mandate holders of the Human Rights Council addressed the Government in that regard. This led to a reconsideration of the criminal policy with regard to the land conflicts in southern Chile, and the recently elected President declared publicly that the anti-terrorist legislation would not be applied again in this context. The Government also introduced an initiative to reform the anti-terrorist law, aimed at excluding from the scope of the crime of terrorism acts against property with no effect on the life and physical integrity of persons or the national security. The law is still pending consideration by the Senate.

51. The Special Rapporteur's recommendation to set up a programme to reduce poverty among the country's indigenous communities (ibid., para. 62) has been the object of special consideration by the Government, notably the inclusion of the total indigenous population estimated to live in extreme poverty (73,500 people) under the system of social protection "Chile in Solidarity" (*Chile Solidario*), launched in 2004. The Government has further continued implementing the programme "Origins" (*Orígenes*), an ambitious development project within the scope of the Indigenous Law (Law No. 19.253), with the support of the Inter-American Development Bank. Phase I of the project ended in 2006 with more than 3,000 projects implemented by the National Corporation on Indigenous Development (Corporación Nacional de Desarrollo Indígena, CONADI), and Phase II will be implemented in the period 2007-2011.

52. The above examples show that Chile has multiplied its efforts to improve the situation of indigenous peoples in recent years. However, these efforts are still thwarted by the limited

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[8] FIDH, *Misión de observación internacional. Chile: Posibilidades de cambio en la política hacia los pueblos indígenas*, No. 456/3 (August 2006).

recognition of indigenous peoples' rights in the existing legal and institutional framework. The constitutional reform adopted in November 2006 failed to include a recognition of indigenous peoples and their rights, and subsequent proposals of constitutional reform fall very short of existing international standards and have not involved indigenous peoples. The Indigenous Land and Water Fund has proved an insufficient mechanism, partly due to the failure of the existing mechanism to affirm ancestral rights and to review irregular adjudication of indigenous lands in the past. Development projects continue to threaten the livelihood of indigenous communities in areas claimed as part of their traditional territories, as in the case of the Pascua Lama project in Atacama, opposed by the Diaguita community of Huasco Alto. Cases of police violence and abuse in indigenous communities have recently been documented, as in the case of the Temucuicui community. Meanwhile, the Mapuche convicted of terrorism continue to serve long prison sentences.

C. Colombia

53. The Special Rapporteur in the report on his visit to Colombia in 2004 expresses his concern about the threat of extinction hanging over 12 small groups of indigenous peoples living in the Amazon region who are experiencing a "humanitarian emergency" as a result of armed conflict, illicit crops, environmental destruction and economic megaprojects (see E/CN.4/2005/88/Add.2, box, p. 16). Particularly worrisome is the situation of the Nukak Maku, an isolated hunter-gatherer community in the Department of Gavire. Their existence has become endangered in recent years as they have become embroiled in armed confrontations between guerrillas, paramilitaries and the Colombian Army, and as their lands have been encroached upon by coca growers. The number of community members that have been displaced from their traditional lands is now estimated at more than 200, approximately 50 per cent of the total population. The Special Rapporteur has addressed urgent appeals to the Government of Colombia on various occasions concerning the forced eviction of the Nukak and the killing of their leaders. The Special Rapporteur, together with the Special Adviser to the Secretary-General on the Prevention of Genocide, is currently involved in a dialogue with the Government concerning this pressing issue.

54. In June 2006, the Government presented a Plan for Integrated Assistance to Vulnerable Communities. The Plan includes special measures to attend to the urgent needs of the Nukak Maku, particularly in the fields of health and food security, as well as the temporary relocation of the displaced population in Puerto Ospina. This movement to areas that do not belong to the Nukak traditional territory has been the subject of controversy, and the recent suicide of a Nukak traditional leader has increased the international focus on the critical situation of this community. In a parallel initiative, OHCHR Colombia, in cooperation with the Office for the Coordination of Humanitarian Affairs, UNDP and UNHCR, has undertaken a comprehensive study on the situation of the Nukak Maku and have advised the Government on further possible actions to address it.

55. Another serious situation analysed in the Special Rapporteur's report on Colombia is the selective killing and forced disappearance of indigenous leaders and traditional authorities, at the hands of both the guerrillas and the paramilitaries. By way of illustration, it offers the specific situation of the Embera-Katio people of Alto Sinú, who have suffered violence and intimidation because of their opposition to the construction of the Urrá hydroelectric dam on their territory,

and who have been granted precautionary measures by the Inter-American Commission on Human Rights (ibid., box, p. 10). In connection with this and similar cases, the Special Rapporteur recommended that State authorities should immediately implement the precautionary measures granted by the Inter-American Commission to various indigenous communities. A positive development in this regard is the establishment of a mixed committee, comprised of government authorities, civil society, representatives of ONIC and authorities of the communities concerned, with OHCHR participating as an observer. The committee undertakes periodic visits to the region to verify the situation of the Embera-Katío and the state of implementation of the Commission's precautionary measures. The committee further requests specific government bodies to take action concerning the implementation of these measures.

56. In addition, in May 2005, the Government reached an agreement with the traditional authorities of the Embera-Katío to ameliorate the situation of the communities affected by the Urrá dam. The agreement consists of different measures in areas like the environment, education, health and food supply, including the elaboration of a plan to replace traditional hunting and gathering activities affected by the construction of the dam. The agreement further incorporates the Government's agreement to hold periodic meetings with indigenous representatives concerning the recommendations in the Special Rapporteur's reports. But much remains to be done to restore the livelihood of this endangered people.

57. Despite these specific cases in which the Government has taken action in favour of particularly vulnerable communities, the overall situation of indigenous peoples in Colombia has not improved since the Special Rapporteur visited the country. The International Verification Mission that visited several indigenous areas in 2006 concluded that indigenous people, and particularly women, are victims of serious human rights abuses and breaches of humanitarian law in the context of the ongoing armed conflict in the country, including selective killings, enforced disappearances, arbitrary detentions, torture and breaches of due process. Ongoing human rights violations against members of the Wiwa people and other communities of the Sierra Nevada de Santa Marta constitute a particularly serious example of this pattern. Indigenous organizations continue to denounce the impact of megaprojects on their traditional territories, as exemplified by the resumption of oil exploitation in the U'wa territory, in the Departments of Santander and Arauca, and the plans to construct a gas pipeline across the Wayuu traditional lands on the border with Venezuela.

D. Guatemala

58. The Special Rapporteur's recent follow-up visit to Guatemala allowed him to observe a number of changes and advances regarding the situation of indigenous peoples in the country in line with some of the recommendations included in the report on his 2002 visit. The Special Rapporteur noted in particular an increasing level of awareness among State authorities of the need to give priority attention to indigenous issues.

59. The Special Rapporteur's report on Guatemala paid special attention to the 1996 Peace Agreements, which include the Agreement on Identity and Rights of Indigenous Peoples. The agreement defines a comprehensive programme of action to advance the recognition and protection of the rights of indigenous peoples (see E/CN.4/2003/90/Add.2, para. 4). Given the comprehensive character of these agreements, and the setback detected in their implementation,

the Special Rapporteur recommended that the Government "carefully review the progress achieved in implementing the Peace Agreements insofar as they affect the indigenous peoples," and take "all appropriate measures to ensure full implementation" (ibid., para. 71). An encouraging development in this regard is the adoption in August 2005 of the Framework-Law on the Peace Agreement (Decree No. 52-2005), with the objective of regulating the implementation and monitoring of State action in this realm, and which makes the implementation of the Peace Agreements a legal commitment of the State.

60. In connection with the Peace Agreements, the Special Rapporteur also welcomed a number of initiatives to seek redress for the atrocities committed during the civil war. In 2004, in implementation of the decision of the Inter-American Court of Human Rights in the *Masacre de Plan de Sánchez* case, concerning a massacre in a Mayan village in 1982 committed by the military, the Government organized a public event at which it acknowledged its responsibility for the atrocity and apologized to the victims and their relatives. The Presidential Commission on Human Rights (Comisión Presidencial de Derechos Humanos, COPREDEH) initiated in February 2006 a process of compensation of the victims of the massacre.

61. The Special Rapporteur's report emphasizes the need to strengthen and prioritize measures to combat the high level of racism and discrimination in the country. There have been a number of court decisions in recent years regarding cases of racial discrimination, which is a crime under the Guatemalan Penal Code. Institutional action in this regard has been reinforced with the establishment of the Presidential Commission to Combat Discrimination and Racism against Indigenous Peoples (Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas en Guatemala, CODIRSA). As a follow-up to a specific recommendation in the Special Rapporteur's report (ibid., para. 67), CODIRSA, with the technical assistance of OHCHR Guatemala, has announced the launching in 2007 of a national campaign for coexistence and elimination of racism and racial discrimination.

62. Another issue of special concern that was pointed out in the Special Rapporteur's report on Guatemala is the situation of serious and systematic discrimination faced by indigenous women. In this regard, the Special Rapporteur recommended the adoption of "special measures", including "greater political, legal and economic support to the Office for the Defence of Indigenous Women [Defensoria de la Mujer Indígena, DEMI]" (ibid., para. 79). A positive development in recent years has been the strengthening of the work of DEMI, with the support of international organizations and agencies, including OHCHR, UNDP, UNICEF and others. DEMI is now a key actor in the national human rights machinery, and requires continuous support to perform its important task.

63. The Special Rapporteur's report further recommends that Guatemala strengthen the educational system as a "national priority", including the extension of bilingual education to all areas of the country (ibid., para. 77). An important measure of the implementation of this recommendation is the establishment of a Vice-Ministry of Bilingual Inter-cultural Education in 2003 and the adoption of Government Agreement No. 22-2004 on the extension of multicultural bilingual education in the education system, including the development of appropriate curricula. In addition, in 2003 Congress passed the Law on National Languages (Decree No. 19-2003), which officially recognizes the Mayan, Garifuna and Xinka languages and promotes their

preservation and use in the Administration. This new legal and institutional framework has been welcomed by indigenous organizations and experts, who now demand its full implementation.

64. Despite these positive examples, and all the efforts deployed, the Special Rapporteur's second visit to Guatemala gave him the opportunity to ascertain that the levels of racism and discrimination against indigenous peoples are still worryingly high, and that the situation of indigenous women and children deserves urgent attention. The implementation of the Peace Agreements, and particularly of the Agreement on Identity and Rights of Indigenous Peoples, is thwarted by insufficient institutional backing and budgetary allocations. The justice system needs support to ensure that victims of human rights violations, and particularly indigenous women, find redress, and indigenous customary law needs to be recognized and incorporated in the work of the judiciary. Despite the acknowledgment of the atrocities committed in the past, the Special Rapporteur perceived that there will be no justice in Guatemala unless all those responsible for these acts are brought to justice.

E. Mexico

65. After a controversial constitutional reform was adopted in 2001, granting more powers to the states, many of the positive developments in the country concerning indigenous peoples' rights have taken place at the state level. Nevertheless, the federal constitutional review on indigenous issues remains at stalemate. State legislatures have followed the Special Rapporteur's recommendation to adopt legislation recognizing and protecting the rights of indigenous peoples (see E/CN.4/2004/80/Add.2, para. 66), including the Law on Indigenous Rights, Culture and Organization of Nayarit, Campeche and Quintana Roo.[9]

66. Important efforts have taken place to promote the implementation of the Special Rapporteur's recommendations concerning the review of the administration of justice in order to address indigenous peoples' specific needs (ibid., para. 82). Various initiatives have taken place to promote the consolidation and extension of the system of bilingual translators in courts, as recommended by the Special Rapporteur (ibid., para. 85). The Federal Government has undertaken a programme of training of bilingual legal aid services, and in Oaxaca students at the Benito Juárez University work as bilingual legal aid lawyers. In Chiapas, the Office of the Prosecutor on Indigenous Justice (*Fiscalía de Justicia Indígena*) was created in 2005, and is staffed by indigenous lawyers who receive special training to ensure that the rights of indigenous peoples are respected in cases involving indigenous communities and individuals. In Querétaro, the Public Prosecutor's Office established a mobile office specializing in indigenous issues. Several states, including the States of México, Michoacán and Puebla, have started programmes to train legal translators and interpreters in indigenous languages.

67. In line with the Special Rapporteur's recommendation to incorporate indigenous law in the judicial system (ibid., para. 93), new "indigenous courts" or "peace and reconciliation courts" have been established in Campeche, Chiapas, Hidalgo, Puebla, Quintana Roo and San Luis Potosí, comprised of members of local indigenous communities, with power to hear civil and family cases, as well as minor criminal cases, on the basis of indigenous law and custom. The

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[9] CNDI, *La vigencia de los derechos indígenas en México* (2006). Electronic book available at: http://cdi.gob.mx/derechos/vigencia_libro/vigencia_derechos_indigenas_mexico.pdf.

National Commission for the Development of Indigenous Peoples (Comisión Nacional para el Desarrollo de los Pueblos Indígenas, CDI) has conducted studies on indigenous law and its "compatibility" with human rights norms and national legislation.

68. The Special Rapporteur's recommendation to review the case files of indigenous persons prosecuted by the different courts in order to "remedy any irregularities" (ibid., para. 86)[10] has been addressed by CDI, which has reviewed thousands of case files and is preparing a census of the indigenous population in national prisons. Similar programmes have been implemented in Hidalgo, Michoacán and Oaxaca.

69. A best practice is the implementation of the Special Rapporteur's recommendation to provide institutional strengthening of and adequate resources to bilingual intercultural education in the country (ibid., para. 102). The Ministry of Public Education has recently expanded bilingual secondary education, already provided in preschool and primary school, through a special course on indigenous peoples taught in several indigenous languages, and a number of "intercultural high schools" and "communitarian high schools", with adapted curricula and teaching in indigenous languages, have been created in areas of Chiapas, Oaxaca and Tabasco. Eight "intercultural universities" have been set up in indigenous regions in the States of Chiapas, Guerrero, México, Michoacán, Puebla, Quintana Roo, Tabasco and Veracruz. The use of indigenous languages in education and in other spheres of public life has also been reinforced by the recently created National Institute on Indigenous Languages, responsible for the implementation of the General Law on the Linguistic Rights of Indigenous Peoples (2003).

70. Many of these best practices are the result of specific governmental and non-governmental initiatives to follow up on the recommendations of the Special Rapporteur (see paragraphs 21-23 and 38 above). Despite these positive steps, many important human rights concerns pointed out in the Special Rapporteur's recommendations have still not been addressed. The existing constitutional framework remains contested by many indigenous peoples and organizations and, notwithstanding the efforts of CDI, the reform has actually led to a lessening of the Federal Government's attention to indigenous issues. The agrarian legal and judicial system is obsolete in relation to the contemporary recognition of indigenous rights over their land and natural resources, and environmental policies have failed to sufficiently involve indigenous peoples, as in the case of the Montes Azules Biosphere Reserve. Development projects continue to threaten indigenous livelihoods, and the lack of clear consultation mechanisms has led to protracted conflicts, such as the case of the La Parota dam. The situation in Chiapas continues in a state of paralysis and human rights abuses by security forces and paramilitary groups have raised serious national and international concern, as exemplified by recent events in the State of Oaxaca.

F. The Philippines

71. Information from different sources indicates that the Special Rapporteur's visit to the Philippines in 2003 has helped strengthen the country's institutional machinery with regard to the rights of indigenous peoples. The Special Rapporteur recommended, for instance, that the work of the National Commission on Indigenous Peoples (NCIP) should be supported "to

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[10] The Special Rapporteur recommended particularly (para. 87) that CDI should be assigned a "greater role" in this regard.

become firmly established as the lead agency in protecting and promoting indigenous rights" with the widest possible participation of indigenous peoples (E/CN.4/2003/90/Add.3, para. 67 (a)). Since then, NCIP, with the support of international governmental and non-governmental donors, has strengthened its different lines of activity, particularly in relation to the delineation and recognition of Certificates of Ancestral Domain Title (CADTs) and the Ancestral Domain Sustainable Development and Protection Plan.

72. The Special Rapporteur's report further recommended that NCIP call for a "National Consultative Assembly" (ibid., para. 67 (a)), with the objective of including indigenous peoples and organizations in the planning and implementation of the Commission's activities. NCIP convened a National Forum in November 2006, leading to the establishment of the Indigenous Peoples Consultative Body (IPCB) operating at the national, regional and provincial levels. The composition of IPCB is tripartite, including representatives of NCIP, indigenous peoples' organizations and NGOs. Despite criticism concerning their membership, the establishment of these bodies has been seen as a positive development towards enhanced participation by indigenous peoples in the making and implementation of NCIP policies.

73. NCIP has strengthened its cooperation with the National Commission on Human Rights (NCHR) on indigenous issues. As recommended by the Special Rapporteur, NCHR has expanded its activities in the area of indigenous rights, including the development of training courses on the content of the Indigenous Peoples Rights Act for the police, the military, and other governmental bodies. Also in line with the Special Rapporteur's recommendation to promote special training programmes regarding the content of the Act (ibid., para. 67 (c)), the Government and civil society have concentrated efforts on training public officials, with special emphasis on members of the judiciary, with the cooperation of the Judicial Academy and the Ateneo Law School.

74. The Special Rapporteur's recommendations to extend education in indigenous areas (ibid., para. 67 (h)) and standardize the rights of indigenous peoples as at all levels of formal schooling (ibid., para. 67 (m)) were well received by the Department of Education, which in 2004 issued a permit to operate primary schools for indigenous peoples (Dep. Order No. 42). These schools can adapt their curriculum and calendar to the particularities of indigenous communities, and also incorporate "para-teachers" from these communities in school teaching activities. Following the holding of the Third National Assembly on Indigenous Education in 2005, the Department of Education is currently embarked on a process of mainstreaming indigenous issues in the general curricula, in cooperation with professors of the University of the Philippines.

75. Significant advances have been reported in the implementation of the Special Rapporteur's recommendation to promote policy-oriented research by universities and civil society organizations regarding the rights of indigenous peoples (ibid., para. 67 (l)). National consultations were promoted in 2004 and 2005 by Tebtebba, the main indigenous research centre in the country, on strengthening the Philippine Chapter of the Indigenous Peoples Global Research and Education Network, an international network of individuals and institutions promoting indigenous research, education and development.

76. Nevertheless, the main areas of concern pointed out in the Special Rapporteur's report on the Philippines remain unaddressed. Despite the many efforts deployed by NCIP and its partners

to promote the delineation and recognition of CADTs, NICP continues to be underfunded, and the rate at which titles are granted every year is still very limited in relation to the number of requests. Increased tension has been detected between the demarcation of indigenous lands and the agrarian reform promoted by the Department of Agrarian Reform, and certain indigenous territories have been identified as agrarian reform areas where individual titles are being granted to individual peasants. Serious human rights violations continue to be reported in relation to indigenous leaders and human rights defenders, a situation which was the subject of particular concern in the Special Rapporteur's report. Non-governmental sources have reported more than 75 cases of recent extrajudicial killings of indigenous individuals, many of which have not been thoroughly investigated.

V. CONCLUSIONS

77. The various cases reviewed in this study suggest that the Special Rapporteur's thematic and country reports have had a different level of impact. Inasmuch as they have the status of official United Nations documents elaborated from an independent viewpoint, thematic reports are part of ongoing discussions and policymaking concerning issues of special relevance for indigenous peoples, and their impact cannot be easily evaluated in terms of the implementation of the specific recommendations.

78. The Special Rapporteur's country visits have generally had a more direct impact on legal, social and political dynamics at the national level in relation to the recognition and protection of the rights of indigenous peoples. These reports, and the visits themselves, have helped promote spaces of dialogue between States and indigenous peoples; have contributed to educating government actors, civil society and the general public on the situation of indigenous peoples in their own countries; and have been appropriated by indigenous peoples and human rights organizations as an advocacy tool.

79. The recommendations included in the Special Rapporteur's reports do not provide a "magic fix", and do not generate automatic and speedy changes in the situation of the rights of indigenous peoples. The level of implementation of these recommendations varies according to different country situations and the issues tackled by those recommendations.

80. Several initiatives have been undertaken over the last years by Governments, the United Nations system, civil society and indigenous organizations to monitor and promote the implementation of the recommendations included in the Special Rapporteur's reports. These experiences demonstrate that, if left for institutional action alone, the recommendations are rarely implemented, but implementation needs to be pushed forward in close cooperation with the Government and other stakeholders.

81. In countries where follow-up mechanisms exist, institutional efforts towards implementation have been more sustained, leading to concrete changes in law and practice. These mechanisms have taken different forms, such as monitoring bodies, national forums and follow-up missions, and have involved a myriad of governmental and non-governmental actors, as well as international agencies.

82. The process of implementation of the Special Rapporteur's recommendations has opened spaces for dialogue between Governments, civil society and indigenous peoples and organizations. In all cases where substantive advances can be reported, indigenous peoples have been actively involved in the process.

83. The comparative analysis of best practices in several countries shows that the effective changes in implementation of the Special Rapporteur's recommendations are more easily detected in relation to recommendations related to the areas of social policy and development, as well as to the strengthening of specific government institutions and policies related to indigenous affairs. However, many of the main recommendations of the Special Rapporteur's reports remain unaddressed, particularly in the fields of legal and constitutional reform and indigenous land and resource rights, including the right of consultation in relation to development projects in indigenous territories.

84. These experiences suggest that, despite the advances that can be identified, the general record of implementation of the Special Rapporteur's recommendations is gloomy. Much remains to be done by the Governments, international agencies and other relevant stakeholders to bridge the "implementation gap" that divides international and domestic norms and the serious human rights violations that indigenous peoples continue to experience in all parts of the world.

VI. RECOMMENDATIONS

A. Recommendations to Governments

85. **Governments should multiply their efforts to promote effective changes in law and policy in implementation of the Special Rapporteur's recommendations, in compliance with international norms recognizing the rights of indigenous peoples.**

86. **Governments should publicize and disseminate the Special Rapporteur's reports and recommendations among government institutions, civil society and indigenous peoples. Production of popular versions in various indigenous languages should be seriously considered.**

87. **Governments should intensify their efforts to train public officials in the rights of indigenous peoples, taking into account the Special Rapporteur's reports and recommendations. The training of judges, prosecutors and public defenders based on these reports should be prioritized.**

88. **The Governments concerned should establish permanent mechanisms to follow up on the recommendations of the Special Rapporteur's country reports. The mechanisms can include the designation of focal points to promote and coordinate efforts of different government departments and agencies such as interdepartmental working groups or specific units.**

89. **Governments are encouraged to undertake periodic evaluations of the state of implementation of the Special Rapporteur's recommendations and to publicize the results.**

90. **Governments should promote the involvement of indigenous peoples in the preparations for and carrying out of the Special Rapporteur's missions. Appropriate mechanisms should be put in place to promote the active participation of indigenous peoples in the implementation of the Special Rapporteur's recommendations.**

91. **The Governments of Mexico and Guatemala are encouraged to continue the systematic follow-up to the recommendations initiated in close collaborations with OHCHR and indigenous peoples and organizations. The Governments of other countries that have been the object of an official visit by the Special Rapporteur are also encouraged to seek the technical assistance of OHCHR and international agencies in the implementation of the recommendations included in the reports on these visits.**

B. Recommendations to other State institutions

92. **National parliaments, as well as national human rights institutions, are encouraged to take an active role in monitoring the implementation by all relevant actors of the Special Rapporteur's recommendations.**

C. Recommendations to indigenous peoples and civil society

93. **Indigenous peoples and organizations, NGOs, academic institutions and other civil society actors are encouraged to strengthen their cooperation in order to foster the implementation of the Special Rapporteur's recommendations. They are also encouraged to use best practices from other countries concerning the establishment of permanent mechanisms and periodic initiatives to monitor the state of implementation.**

94. **Indigenous peoples and their support organizations are encouraged to strengthen their involvement in the Special Rapporteur's general activities, including involvement in his country visits and dissemination of his reports.**

95. **Public media are encouraged to pay increased attention to the Special Rapporteur's reports and visits, and to monitor the state of implementation of his recommendations.**

D. Recommendations to OHCHR

96. **The Special Rapporteur invites OHCHR to incorporate, when applicable, the recommendations of his country and thematic reports in its programme activities, particularly in relation to its field presences.**

97. **OHCHR should continue its assistance to governmental institutions and civil society organizations to ensure follow-up to the Special Rapporteur's reports, taking into account the best practices described in this report.**

E. Recommendations to international agencies

98. **International organizations and agencies, including international financial institutions, should intensify their efforts to implement the Special Rapporteur's recommendations.**

99. **United Nations country teams should designate a focal point to ensure the promotion and coordination of their activities in implementation of the Special Rapporteur's reports.**

100. **International organizations and agencies should take into account the recommendations included in the Special Rapporteur's thematic reports in their programming in areas relevant to the rights of indigenous peoples. The Permanent Forum on Indigenous Issues Inter-Agency Group should also include these reports in the discussions on the topics analysed at the Forum's annual sessions.**

F. Recommendations to the international community

101. **International donors should support indigenous peoples and their support organizations to ensure their involvement in the Special Rapporteur's visits and other activities, as well as in their efforts to promote the implementation of his recommendations.**
