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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

Addendum

**STUDY REGARDING BEST PRACTICES CARRIED OUT TO
IMPLEMENT THE RECOMMENDATIONS CONTAINED IN
THE ANNUAL REPORTS OF THE SPECIAL RAPPORTEUR****

* Reissued for technical reasons.

** The summary of this report is being circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in the language of submission and in Spanish.

Summary

This report presents the study of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding best practices carried out to implement the recommendations contained in his general and country reports, pursuant to the request of the Commission on Human Rights in its resolution 2005/51.

The study presents a number of general considerations concerning the objectives and impact of the Special Rapporteur's report, and provides specific examples of initiatives undertaken in specific countries to follow up on the Special Rapporteur's recommendations that have involved international organizations and agencies, civil society and indigenous peoples, in cooperation with the Governments concerned. The final part of the study incorporates a number of examples concerning specific countries in which these recommendations have promoted specific changes in State policies and legislation.

The study concludes that, while the Special Rapporteur's reports have had an important impact in some countries, the recommendations incorporated in his reports do not generate automatic and speedy changes in the situation of the rights of indigenous peoples. The several initiatives that 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 these recommendations demonstrate that, if left for institutional action alone, the recommendations are rarely implemented. Implementation needs to be pushed forward in close cooperation with the Government and other stakeholders, including indigenous peoples themselves. In countries where follow-up mechanisms exist, institutional efforts for implementation have been more sustained, leading to concrete changes in law and practice.

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 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.

The study contains a number of conclusions and recommendations to enhance implementation.

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**

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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

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.

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) 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

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).

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 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

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.

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

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 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 through 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.

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.

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>.

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 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

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

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 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 Temucucui 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-Katio 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-Katio 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 [Defensoría 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.

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.

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 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.

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

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 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, NIPC 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.**



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Cuarto período de sesiones
Tema 2 del programa provisional

**APLICACIÓN DE LA RESOLUCIÓN 60/251 DE LA ASAMBLEA
GENERAL, DE 15 DE MARZO DE 2006, TITULADA
"CONSEJO DE DERECHOS HUMANOS"**

**Informe del Relator Especial sobre la situación de los derechos humanos y
las libertades fundamentales de los indígenas, Rodolfo Stavenhagen**

Adición

**ESTUDIO SOBRE LAS MEJORES PRÁCTICAS PARA LA APLICACIÓN
DE LAS RECOMENDACIONES CONTENIDAS EN LOS INFORMES
ANUALES DEL RELATOR ESPECIAL***

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe, que figura como anexo del resumen, se distribuye en el idioma original y en español.

Resumen

Este informe presenta el estudio del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas relativo a las mejores prácticas para la aplicación de las recomendaciones que figuran en sus informes generales y por países de conformidad con la solicitud de la Comisión de Derechos Humanos en su resolución 2005/51.

El estudio presenta varias consideraciones generales sobre los objetivos y repercusiones de los informes del Relator Especial y proporciona ejemplos específicos de iniciativas emprendidas en países concretos para dar seguimiento a las recomendaciones del Relator Especial con la participación de organizaciones y organismos internacionales, la sociedad civil y los pueblos indígenas y en cooperación con los gobiernos interesados. La parte final del estudio incluye una serie de ejemplos relativos a países concretos en los que estas recomendaciones han dado lugar a cambios específicos en la legislación y las políticas del Estado.

El estudio concluye que, si bien los informes del Relator Especial han tenido importantes repercusiones en algunos países, las recomendaciones contenidas en estos informes no siempre generan cambios automáticos y rápidos en la situación de los derechos de los indígenas. Las diversas iniciativas emprendidas durante los últimos años por los gobiernos, el sistema de las Naciones Unidas, la sociedad civil y las organizaciones indígenas para promover la aplicación de estas recomendaciones demuestran que, si se dejan exclusivamente en manos de la acción institucional, las recomendaciones rara vez se aplican. La aplicación de las recomendaciones debe ser impulsada en estrecha cooperación con los gobiernos y otros agentes interesados, incluidos los propios pueblos indígenas. En los países donde existen mecanismos de seguimiento, los esfuerzos institucionales para la aplicación de las recomendaciones han sido más sostenidos y han conducido a cambios concretos en las normas y en la práctica.

Estas experiencias sugieren que, a pesar de los avances que se han determinado, el balance general de la aplicación de las recomendaciones del Relator Especial no es halagüeño. Mucho queda por hacer por parte de los gobiernos, los organismos internacionales y otras partes pertinentes para cerrar la brecha en la aplicación de las normas a nivel internacional e interno y poner fin a las graves violaciones de los derechos humanos que los pueblos indígenas continúan sufriendo en todas las regiones del mundo.

El estudio contiene varias conclusiones y recomendaciones para mejorar la aplicación.

Anexo

**ESTUDIO SOBRE LAS MEJORES PRÁCTICAS PARA LA APLICACIÓN
DE LAS RECOMENDACIONES CONTENIDAS EN LOS INFORMES
ANUALES DEL RELATOR ESPECIAL**

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I. INTRODUCCIÓN

1. En la resolución 2005/51, la Comisión de Derechos Humanos solicitó al Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, Rodolfo Stavenhagen, que comenzara a preparar un estudio relativo a "las mejores prácticas para la aplicación de las recomendaciones que figuran en sus informes generales y por países" (párr. 9), y que presentara a la Comisión un informe sobre la marcha de los trabajos en su 62º período de sesiones, y el estudio final en su 63º período de sesiones.
2. En atención a esta solicitud, el Relator Especial presentó un informe sobre la marcha de los trabajos al Consejo de Derechos Humanos en su primer período de sesiones, celebrado en septiembre de 2006 (E/CN.4/2006/78/Add.4), que contenía un resumen de las conclusiones y las recomendaciones principales de sus informes temáticos y por países; un resumen de la información recibida de los gobiernos, los organismos internacionales y las organizaciones de la sociedad civil; y un plan del trabajo para la preparación del estudio final.
3. El Relator Especial desearía observar que un estudio a fondo hubiera requerido la investigación a tiempo completo, así como información adicional. En este sentido, el presente informe debe ser considerado por el Consejo como una descripción general de las medidas adoptadas, así como de los desafíos que continúan existiendo, que puede servir para la realización de un estudio más completo sobre la materia en el futuro.
4. La Comisión de Derechos Humanos, en su resolución 2001/57 por la que se establece el mandato sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, asigna al Relator Especial la responsabilidad de formular "recomendaciones y propuestas sobre medidas y actividades adecuadas para prevenir y reparar las violaciones de los derechos humanos y de las libertades fundamentales de los indígenas" (párr. 1 b)). Estas recomendaciones se recogen en varios informes temáticos y por países. Desde su nombramiento en 2001, el Relator Especial ha presentado seis informes anuales. En su primer informe el Relator Especial propuso una lista de temas en los que deseaba centrar sus siguientes informes anuales (E/CN.4/2002/97, párr. 113). La lista fue posteriormente aprobada por la Comisión de Derechos Humanos (resolución 2002/65, párr. 5). Posteriormente, el Relator Especial preparó informes temáticos sobre las consecuencias de los grandes proyectos de desarrollo (E/CN.4/2003/90); el acceso a la administración de la justicia y el derecho consuetudinario indígena (E/CN.4/2004/80); la educación (E/CN.4/2005/88); y la puesta en práctica de la legislación y de la jurisprudencia relativa a los derechos indígenas (E/CN.4/2006/78). En el presente período de sesiones del Consejo de Derechos Humanos, el Relator Especial presentará su sexto informe anual, que se centra en el estado y la evolución de los derechos de los indígenas en los últimos años (A/HRC/4/32).
5. El Relator Especial también ha presentado informes sobre sus misiones a Guatemala (E/CN.4/2003/90/Add.2); Filipinas (E/CN.4/2003/90/Add.3); México (E/CN.4/2004/80/Add.2); Chile (E/CN.4/2004/80/Add.3); Colombia (E/CN.4/2005/88/Add.2); Canadá (E/CN.4/2005/88/Add.3 y Corr.1); Sudáfrica (E/CN.4/2006/78/Add.2); y Nueva Zelanda (E/CN.4/2006/78/Add.3). En el presente período de sesiones del Consejo, el Relator Especial presentará informes sobre sus misiones al Ecuador (A/HRC/4/32/Add.2) y a Kenya (A/HRC/4/32/Add.3).

6. En la preparación de su estudio final, el Relator Especial ha utilizado la información incluida en las respuestas a un cuestionario distribuido en octubre de 2005 que recibió de los Gobiernos de Alemania, la Argentina, Belarús, el Canadá, Chile, Dinamarca, El Salvador, Estonia, Finlandia, Líbano, México, Filipinas, la Federación de Rusia, Suiza y Túnez, así como las respuestas presentadas al Relator Especial por la Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO), la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO), la Organización Mundial de la Salud (OMS), el Programa Mundial de Alimentos (PMA), la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), el Programa de las Naciones Unidas para el Desarrollo (PNUD), el Fondo de Población de las Naciones Unidas (UNFPA), el Instituto de las Naciones Unidas para la Formación Profesional e Investigaciones (UNITAR), la Organización Internacional del Trabajo (OIT), el Banco Mundial, así como las oficinas locales de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH) en Colombia, Guatemala y México, así como de la Oficina Regional del ACNUDH para América Latina y el Caribe, en respuesta a otro cuestionario específico dirigido a los organismos y programas de las Naciones Unidas.

7. Este estudio se basa asimismo en la información recogida durante la participación del Relator Especial en una serie de visitas, seminarios y encuentros, incluido el Seminario internacional de expertos sobre la aplicación de las recomendaciones del Relator Especial, organizado por Derechos y Democracia en Montreal (Canadá), en octubre de 2006. El Relator Especial recibió también contribuciones escritas de organizaciones indígenas, organizaciones no gubernamentales (ONG) y expertos. El Relator Especial agradece la cooperación recibida y expresa su gratitud a todas las personas y organizaciones que apoyaron su investigación.

8. El estudio presenta, en primer lugar, varias consideraciones generales sobre los objetivos y repercusiones de los informes del Relator Especial, así como una aclaración conceptual preliminar del objetivo del presente estudio. En la segunda parte del estudio se presentan varios ejemplos sobre iniciativas llevadas a cabo por distintas organizaciones y organismos internacionales, la sociedad civil y los pueblos indígenas para promover la aplicación de las recomendaciones del Relator, en colaboración con los gobiernos interesados. En la tercera parte se analizan varios casos en los cuales estas recomendaciones han dado lugar a cambios específicos en las políticas y en la legislación de los Estados. El estudio termina con una serie de conclusiones y de recomendaciones para mejorar la aplicación de las recomendaciones del Relator.

II. CONSIDERACIONES GENERALES SOBRE LOS OBJETIVOS Y ALCANCE DE LAS RECOMENDACIONES DEL RELATOR ESPECIAL

9. En su resolución 2005/51, la Comisión de Derechos Humanos limitó específicamente el alcance del estudio a las recomendaciones contenidas en informes generales y por países del Relator Especial. El énfasis en las "mejores prácticas" es especialmente importante para asegurar la eficacia del mandato del Relator Especial, así como la cooperación de los interesados pertinentes, en particular los Estados, con este procedimiento especial.

10. La perspectiva de las "mejores prácticas" presenta algunas limitaciones metodológicas relacionadas con la dificultad para establecer claras relaciones de causalidad entre las recomendaciones del Relator Especial y los cambios en las políticas y la práctica que se han producido efectivamente. El trabajo del Relator Especial se basa en las normas internacionales existentes en materia de derechos de los indígenas, incluidos tratados, el derecho consuetudinario y el "*soft law*"; las decisiones y recomendaciones de los órganos internacionales de derechos humanos encargados de la supervisión de estas normas, que han desarrollado una jurisprudencia específica relativa a los pueblos indígenas; y otros procedimientos especiales del Consejo de Derechos Humanos (véase E/CN.4/2002/97, párrs. 6 a 33, y E/CN.4/2006/78, párrs. 7 a 13 y 51 a 79). En consecuencia, las recomendaciones formuladas por el Relator Especial no deben ser analizadas de forma aislada, sino más bien como parte de un sistema más amplio de normas, agentes y procedimientos internacionales que interactúan para promover los derechos de los pueblos indígenas.

11. Los ejemplos de esta interacción son múltiples. Los informes temáticos del Relator Especial se han utilizado como una fuente en los informes de la Comisión Interamericana de Derechos Humanos, así como en las diversas actividades del Grupo de Trabajo sobre Poblaciones/Comunidades Indígenas de la Comisión Africana de Derechos Humanos y de los Pueblos. Los informes del Relator Especial han sido utilizados también en la labor de otros procedimientos especiales del Consejo de Derechos Humanos. Por ejemplo, el informe temático sobre las repercusiones de los grandes proyectos de desarrollo ha servido de instrumento en las actividades que actualmente lleva a cabo el ACNUDH en relación con las repercusiones de las actividades comerciales en los derechos humanos, así como en el trabajo del Representante Especial del Secretario General sobre las Empresas Transnacionales. Asimismo, los informes del Relator Especial han sido utilizados por los órganos creados en virtud de tratados de las Naciones Unidas en la preparación de sus observaciones finales relativas al cumplimiento de las obligaciones contraídas por los Estados en virtud de los tratados de derechos humanos que han ratificado.

12. Las recomendaciones del Relator Especial se refieren asimismo a los procesos políticos y jurídicos en el ámbito interno. Los distintos problemas destacados por el Relator Especial, particularmente en sus informes por países, derivan de su evaluación independiente de los debates y reclamos ya existentes en relación con los derechos de los pueblos indígenas en los países que ha visitado. En consecuencia, la aplicación de las recomendaciones del Relator Especial no pueden dissociarse de los esfuerzos que llevan a cabo agentes gubernamentales, las organizaciones de la sociedad civil y los propios pueblos indígenas para promover soluciones a las cuestiones sustantivas de derechos humanos a las que se refieren estas recomendaciones.

13. La situación de los derechos humanos de los pueblos indígenas deriva de procesos históricos y fenómenos estructurales de carácter complejo y, por lo tanto, las medidas y estrategias necesarias para mejorar esta situación son necesariamente de carácter complejo. En varios casos, la protección eficaz de los derechos de los indígenas exige reformas legislativas, institucionales e incluso constitucionales para garantizar estos derechos o para resolver conflictos con otras normas internas, y la evaluación de la aplicación de este tipo de recomendaciones no presenta muchas dificultades. En otros casos, en particular cuando se trata de condiciones más amplias o sistémicas que afectan al goce de los derechos humanos por los pueblos indígenas, las recomendaciones del Relator Especial están formuladas en otros términos. La aplicación de estas recomendaciones debe ser también medible, y deben establecerse sistemas de indicadores

para evaluar los avances en esta aplicación, con la participación de los propios pueblos indígenas.

14. Las repercusiones de la labor del Relator Especial en la protección de los derechos de los indígenas no se mide necesariamente con una escala de aplicación o la falta de implementación. Sus misiones en distintos países, por ejemplo, tienen a veces efectos directos en estos países. Varios participantes en el Seminario de expertos de Montreal indicaron que las visitas a países realizadas por el Relator Especial, así como los informes derivados de estas visitas, constituyen una de las líneas de acción más efectivas y con mayor repercusión en la práctica de las distintas actividades llevadas a cabo en el marco de su mandato.

15. Los pueblos indígenas han participado activamente en las visitas del Relator Especial. El Relator suele celebrar consultas con organizaciones y representantes indígenas a nivel nacional, regional y comunitario. Estas reuniones no sólo han servido para proporcionar informaciones útiles para el Relator Especial, sino también para abrir un espacio de diálogo entre los pueblos indígenas, los gobiernos, y otros agentes en los distintos países. En Nueva Zelanda, la visita del Relator Especial fue considerada un punto de referencia fundamental por las organizaciones indígenas, independientemente del nivel de aplicación de sus recomendaciones por el Gobierno. La visita del Relator Especial a Colombia también se consideró un momento decisivo para su emancipación. Un experto del seminario de Montreal señaló en este sentido que la visita sirvió para promover la consolidación de un programa de derechos humanos de los pueblos indígenas y para reforzar sus vínculos con las ONG de derechos humanos.

16. Aunque no en visita oficial, el Relator Especial visitó Noruega en dos ocasiones durante su mandato, en respuesta a las invitaciones del Parlamento Saami y de la Universidad de Tromsø. En 2006, después de prolongadas negociaciones, el Parlamento adoptó la Ley del condado de Finnmark, que regula la gestión de las zonas de pastoreo tradicional del pueblo saami en el norte del país. Las autoridades del Gobierno como los representantes del pueblo saami han informado al Relator Especial que su presencia en el país en etapas cruciales de este proceso ha constituido una contribución positiva para la aprobación de la ley.

17. Las repercusiones relativamente considerables de los informes por países en el debate público y en la elaboración de políticas relativas a los derechos de los pueblos indígenas a nivel nacional, así como el carácter específico de algunas de estas recomendaciones, permite un análisis detallado de la puesta en práctica de estas recomendaciones por parte de los gobiernos y otros agentes interesados. De hecho, una de las conclusiones del presente estudio es que los ejemplos más importantes de "mejores prácticas" están relacionados con las recomendaciones de los informes por países del Relator Especial.

18. Una de las principales conclusiones del Seminario internacional de expertos de Montreal fue que la aplicación de las recomendaciones incluidas en los informes temáticos del Relator Especial ha sido limitada en comparación con las de los informes por países. Ello se debe en parte a los distintos objetivos de estos informes. Los informes temáticos tienen por objeto presentar un panorama general de las normas y políticas existentes a nivel nacional e internacional, así como de los principales desafíos en lo que respecta a la protección de los derechos de los pueblos indígenas, con el fin de señalar a la atención internacional esferas de especial preocupación. Estas recomendaciones no están dirigidas a Estados concretos y las instituciones gubernamentales no suelen considerar que les compete directamente su aplicación.

Se ha señalado, sin embargo, que los informes temáticos del Relator Especial son considerados fuentes autorizadas en distintos ámbitos nacionales e internacionales. Por ejemplo, las recomendaciones del Relator Especial han servido para la formulación de políticas nacionales, como en el caso de la Estrategia de la Cooperación Española con los Pueblos Indígenas (ECEPI), para cuya elaboración fue solicitada la asistencia del Relator Especial.

19. Finalmente, aunque el estudio sobre las "mejores prácticas" solicitado por el Consejo de Derechos Humanos constituye un instrumento útil para evaluar las repercusiones y la efectividad de las recomendaciones del Relator Especial, éste no puede concluir sus consideraciones sin señalar que, como se indica en su informe temático para el presente período de sesiones del Consejo de Derechos Humanos, a pesar de los numerosos esfuerzos desplegados, los pueblos indígenas de todo el mundo continúan sufriendo violaciones graves y sistemáticas de sus derechos, violaciones que seguirán produciéndose en la medida en que no se ataquen las causas profundas de estas violaciones. En muchos casos, en lugar de "mejores prácticas", el Relator Especial ha encontrado sólo "buenas intenciones".

III. SEGUIMIENTO DE LAS RECOMENDACIONES DEL RELATOR ESPECIAL

20. En varios países, se han llevado a cabo iniciativas específicas para aplicar las recomendaciones del Relator Especial. Estas iniciativas se han llevado a cabo con la participación de organizaciones y organismos internacionales, la sociedad civil y los pueblos indígenas, y en colaboración con los gobiernos interesados. Dichas iniciativas han sido decisivas en la promoción de "mejores prácticas" en la aplicación de las recomendaciones del Relator Especial en los países interesados, y ofrecen ejemplos positivos que podrían aplicarse a otros países.

A. El proyecto del ACNUDH en México y Guatemala

21. En 2005, las oficinas locales del ACNUDH en México y Guatemala, en cooperación con los gobiernos respectivos, iniciaron el proyecto *Promoción y protección de los derechos humanos de los pueblos indígenas en América Central, con especial énfasis en Guatemala y México*. Uno de los principales objetivos de este proyecto es apoyar a estos gobiernos en la aplicación de las recomendaciones del Relator Especial sobre ambos países, en particular estableciendo normas de protección de los derechos humanos y de supervisión para evaluar la aplicación de las recomendaciones, así como la evolución de los sistemas jurídicos y los cambios en la situación de los derechos humanos de los pueblos indígenas, y en particular de las mujeres indígenas.

22. En el marco de este proyecto, el ACNUDH-México ha llevado a cabo cursos de capacitación para funcionarios del Gobierno, el poder judicial y las organizaciones indígenas sobre los derechos de los pueblos indígenas. Asimismo, el proyecto ha promovido la difusión de los informes del Relator Especial a través de materiales escritos y audiovisuales en español y en lenguas indígenas. En 2006, se iniciaron en México dos proyectos sobre el reconocimiento del derecho consuetudinario indígena en el sistema jurídico nacional, en atención a las recomendaciones del Relator Especial sobre el derecho indígena y el acceso a la justicia, y sobre la situación de los derechos de las mujeres indígenas.

23. El ACNUDH-México y sus contrapartes en el Gobierno mexicano han organizado una serie de reuniones para evaluar el estado de aplicación de las recomendaciones del Relator Especial, incluidas una reunión de alto nivel con miembros del Gobierno en 2006 y una consulta nacional con organizaciones indígenas y de derechos humanos en enero de 2007. El proyecto también apoyó la visita de seguimiento llevada a cabo por el Relator Especial al proyecto hidroeléctrico de "La Parota" y otras comunidades indígenas del estado de Guerrero, en agosto de 2006.

24. Se han realizado otras reuniones similares en Guatemala donde, por invitación del Gobierno, el Relator Especial realizó una misión de seguimiento en mayo de 2006. Durante su visita, el Relator se reunió con el Gabinete presidencial en pleno, así como con distintos organismos y comités gubernamentales, miembros del poder judicial y del Parlamento, organizaciones indígenas y de la sociedad civil, así como con representantes del equipo de las Naciones Unidas en el país. El Relator participó asimismo en un foro nacional con más de 100 representantes de organizaciones indígenas y de la sociedad civil, que le presentaron una completa evaluación del estado de la aplicación de las recomendaciones contenidas en su informe del país.

25. En 2006, el ACNUDH-México realizó una investigación sobre las medidas adoptadas por las instituciones gubernamentales, legislativas y judiciales, así como por las instituciones de derechos humanos a nivel federal y nacional, en atención a las recomendaciones del Relator Especial en ese país. Esta información se ha puesto a disposición del Relator Especial y será también presentada en reuniones con representantes del Gobierno. En Guatemala, la Oficina ha prestado apoyo a la Comisión Presidencial de los Derechos Humanos (COPREDH) en la elaboración de indicadores para mejorar la supervisión de la aplicación de las recomendaciones del Relator Especial.

26. El proyecto binacional del ACNUDH ha servido también para reforzar la acción de las oficinas del ACNUDH en estos países en materia de derechos de los pueblos indígenas. En México, por ejemplo, la Oficina determinó que la administración de justicia en el estado de Oaxaca como una de sus esferas de acción prioritarias para 2005. En la planificación de las distintas actividades en este ámbito, se tuvieron en cuenta las distintas recomendaciones formuladas por el Relator Especial en su informe sobre la administración de justicia y el derecho indígena.

B. Otros proyectos del ACNUDH

27. Siguiendo el ejemplo del proyecto de México y Guatemala, el ACNUDH puso en marcha en 2006 el denominado "Proyecto Andino", que tiene por objeto colaborar con los Gobiernos de Bolivia, el Ecuador y el Perú para reforzar los mecanismos existentes para la protección de los derechos de los pueblos indígenas, así como para integrar las cuestiones indígenas en el trabajo de los equipos de las Naciones Unidas en los países. Una de las líneas de trabajo del proyecto es la aplicación de las recomendaciones de los órganos creados en virtud de tratados y de los procedimientos especiales de las Naciones Unidas, incluidos los informes del Relator Especial.

28. En 2006, el Proyecto Andino del ACNUDH, la Oficina Regional del UNICEF y la Oficina Regional Andina del UNIFEM iniciaron un estudio sobre las mejores prácticas y los obstáculos para la aplicación de las recomendaciones temáticas del Relator Especial en el Ecuador, Bolivia

y el Perú¹. El estudio prestará especial atención a las recomendaciones relativas a las mujeres, los niños y las niñas indígenas, y a las observaciones y recomendaciones sobre estos países del Comité sobre los Derechos del Niño y del Comité para la Eliminación de la Discriminación contra la Mujer. El estudio, que se prevé que terminará en 2007, tiene por objeto promover la integración de las recomendaciones temáticas del Relator Especial en las políticas públicas y en los programas de Naciones Unidas, incluidas las actividades relativas a los objetivos de desarrollo del Milenio.

29. En el Ecuador, el Proyecto Andino ha realizado los primeros esfuerzos para establecer un mecanismo de seguimiento del informe del Relator Especial sobre su visita a ese país en abril y mayo de 2006. Estos esfuerzos han contado con la participación de las organizaciones indígenas a través del Consejo Consultivo para las Naciones Unidas de los Derechos Colectivos de Nacionalidades, Pueblos y Organizaciones Indígenas del Ecuador. El Consejo fue establecido en el marco del Programa de Fortalecimiento de los Derechos Humanos (HURIST), una iniciativa conjunta desarrollada por el ACNUDH y el PNUD, que tiene el objetivo de integrar los derechos humanos en el trabajo del equipo de las Naciones Unidas en el país.

30. En su informe sobre Colombia, el Relator Especial señaló la existencia de graves conflictos resultantes de las fallas en los procesos de consulta en los proyectos de desarrollo que se llevan a cabo en los resguardos indígenas, e invitó al Gobierno a establecer "una metodología consensuada para la realización de los procedimientos de consulta" (E/CN.4/2005/88/Add.2, párr. 108). El ACNUDH-Colombia está considerando ahora la posibilidad de establecer un programa específico para promover el derecho a la consulta, con la participación de comunidades indígenas y afrodescendientes, ministerios y organismos gubernamentales y la Defensoría del Pueblo.

31. En el informe sobre su visita a Chile, el Relator Especial recomendó al ACNUDH que organizara "una reunión de seguimiento para determinar las maneras en que el sistema de las Naciones Unidas puede ayudar a las autoridades del Estado en la aplicación de las recomendaciones establecidas en el (...) informe" (E/CN.4/2004/80/Add.3, párr. 82). Desde que el informe fue publicado en 2004, las organizaciones indígenas han recurrido a la Oficina en diversas ocasiones para obtener apoyo en la aplicación de las recomendaciones del Relator Especial², y la oficina regional del ACNUDH para América Latina y el Caribe ha participado en distintas actividades dirigidas a la difusión y el seguimiento de estas recomendaciones. En 2006, la oficina regional incluyó estos objetivos como parte del Proyecto Acción 2 para fortalecer la

¹ Una de las primeras actividades emprendidas por el Proyecto Andino fue la distribución de la información sobre el mandato y las actividades del Relator Especial. Véase ACNUDH-Comité Andino de Servicios, *Mandato del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, Lima (2006).

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". Documento preparado para el Seminario Internacional de Expertos sobre la implementación de las recomendaciones del Relator Especial sobre los derechos humanos y las libertades fundamentales de los indígenas (Montreal, 5 a 7 de octubre de 2006).

capacidad del equipo de las Naciones Unidas en Chile para la promoción y la protección de los derechos humanos. En 2007, el proyecto ha previsto celebrar varias consultas regionales con instituciones del Gobierno y organizaciones indígenas para evaluar la aplicación de las recomendaciones.

32. Como en el caso de Chile, el Relator Especial recomendó al ACNUDH que ofreciera cooperación técnica a Filipinas para la promoción y protección de los derechos de los pueblos indígenas (E/CN.4/2003/90/Add.3, párr. 67 j)). Esta recomendación, que han hecho suya las organizaciones indígenas de ese país, ha tropezado con el obstáculo de que actualmente no existe un proyecto de cooperación técnica entre el ACNUDH y el Gobierno de Filipinas.

C. Iniciativas de seguimiento de los organismos internacionales

33. Algunos organismos internacionales han utilizado las recomendaciones de los informes temáticos y por países del Relator Especial en sus programas. Por ejemplo, la UNESCO, que desempeña un papel activo en la preparación del informe temático del Relator Especial sobre educación indígena³, informa que ha utilizado las recomendaciones de este informe en sus programas generales, particularmente en la promoción de la educación bilingüe indígena y el desarrollo de programas de estudios culturalmente adecuados. La iniciativa regional sobre pueblos indígenas, tribales y de las tierras altas del PNUD (RIPP) ha hecho hincapié en el acceso a la justicia, una cuestión que fue analizada en el segundo informe anual del Relator Especial, en Camboya, Filipinas, Tailandia y Viet Nam. El ACNUR tomó nota de la preocupación expresada por el Relator Especial en relación con la violencia política sufrida por los dirigentes indígenas de Colombia en la preparación de su evaluación sobre este país⁴.

34. En Guatemala, en atención a una recomendación del Relator Especial, el Grupo de Trabajo sobre Cuestiones Indígenas y Multiculturales ha continuado funcionando como un grupo interinstitucional que cuenta con la participación de los pueblos indígenas en sus actividades (véase el informe del Relator E/CN.4/2003/90/Add.2, párr. 86). Los organismos internacionales han continuado su cooperación con las organizaciones indígenas en este país, una buena práctica cuya continuación también fue sugerida por el informe del Relator Especial (ibíd., párr. 87). De manera similar, diversos organismos del equipo de las Naciones Unidas en Colombia están trabajando junto con las comunidades kogui, wiwa, arhuaco y kanhuamo en la Sierra Nevada de Santa Marta para elaborar un "diagnóstico humanitario" sobre estos pueblos. Esta iniciativa tiene por objeto arrojar luz sobre la situación de los derechos humanos de estos pueblos tomando en cuenta sus propias perspectivas y prioridades.

35. Finalmente, en los informes del Relator Especial también se informa de las actividades del grupo de apoyo interinstitucional, que ofrece asistencia técnica al Foro Permanente para las

³ Seminario de Expertos sobre Pueblos Indígenas y Educación: "Educación Indígena en el siglo XXI", organizado conjuntamente por ACNUDH y UNESCO (París, 18 a 20 de octubre de 2004). Los procedimientos del seminario se encuentran en el documento E/CN.4/2005/88/Add.4.

⁴ ACNUR, *Consideraciones sobre la protección internacional de los solicitantes de asilo y los refugiados colombianos* (marzo 2005), párr. 116.

Cuestiones Indígenas sobre las distintas cuestiones examinadas en sus períodos de sesiones anuales.

D. Iniciativas de seguimiento de la sociedad civil

36. En el Seminario internacional de Montreal, los dirigentes y expertos que participaron concluyeron que no pueden esperar que los gobiernos implementen por sí solos las recomendaciones de los informes del Relator Especial. Más bien, los pueblos indígenas y sus organizaciones de apoyo, en cooperación con agentes gubernamentales y no gubernamentales, deberían asumir el liderazgo para avanzar hacia la aplicación de las recomendaciones. El creciente número de experiencias en los países que han sido visitados por el Relator Especial ofrece ejemplos de cómo los pueblos indígenas han hecho suyos esos informes y los han utilizado como instrumentos prácticos para la defensa de sus derechos.

37. Una preocupación expresada por muchas organizaciones indígenas en los países visitados por el Relator Especial es la falta de información sobre sus informes y recomendaciones entre las comunidades indígenas. A fin de superar esta limitación, algunas organizaciones indígenas han promovido la publicación de los informes del Relator Especial. En Filipinas, Tebtebba publicó un libro en 2002 que incluía el informe del Relator sobre el país, así como información general sobre el mandato. El libro circuló ampliamente en el país y en el extranjero, y ha ayudado a los pueblos indígenas de otros países a sacar pleno provecho de las misiones del Relator Especial⁵. Las ONG que trabajan en la esfera de los derechos indígenas han centrado sus publicaciones en las actividades del Relator Especial⁶. Amnistía Internacional-Canadá difundió secciones del informe del Relator Especial sobre los grandes proyectos de desarrollo dentro de una campaña nacional de sensibilización sobre las repercusiones de estos proyectos en las comunidades indígenas del país. En Chile, los mapuche-lafkenche publicaron en 2005 una versión abreviada del informe del Relator Especial y la respuesta oficial del Gobierno.

38. En México, el Observatorio Ciudadano de los Pueblos Indígenas (OCPI), creado por la Academia Mexicana de Derechos Humanos, una de las principales ONG de derechos humanos del país, en colaboración con la Cátedra de UNESCO de la Universidad Nacional Autónoma de México (UNAM), supervisa la aplicación de las recomendaciones formuladas por el Relator

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).

⁶ Véase, e.g. "Bridging the Gap Between Law and Reality", *Cultural Survival Quarterly*, vol. 30 1) (una edición especial dedicada al seminario organizado en la Universidad de Arizona en cooperación con el Relator Especial en octubre de 2005, sobre la aplicación de las normas nacionales e internacionales relativas a los derechos de los pueblos indígenas); Marie Leger, Jennifer Preston and Diana Vinding *Bienvenidos los derechos humanos. Derechos indígenas. El Relator Especial de las Naciones Unidas: experiencias y desafíos*, Copenhagen, IWGIA, 2007 (una publicación con información práctica sobre el mandato y las actividades del Relator Especial).

Especial tras su visita a México en 2003, haciendo hincapié en los Estados de Chiapas, Guerrero, Oaxaca, Puebla, Veracruz y Yucatán, los Estados con la mayor densidad de población indígena del país. El Observatorio lanzó una campaña a nivel nacional para promover el conocimiento del mandato del Relator Especial y las recomendaciones contenidas en su informe y para evaluar el estado de la aplicación de estas recomendaciones mediante un sistema de solicitudes de información (SISI) sobre los diversos programas y proyectos gubernamentales que tienen como objetivo la aplicación de las recomendaciones, que está disponible al público general por una página de Internet⁷.

39. La sociedad civil y los indígenas han promovido también de manera sistemática la aplicación de las recomendaciones del Relator Especial mediante consultas nacionales. En Filipinas, se organizó en agosto de 2005 una reunión nacional titulada "Pueblos indígenas, la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, y el Programa de Acción del Segundo Decenio sobre los Pueblos Indígenas", que evaluó el estado de aplicación de las recomendaciones del informe del Relator Especial sobre este país. Un segundo encuentro tuvo lugar en febrero de 2007, con la participación del propio Relator Especial. Una experiencia similar fue el Foro "Eliminar la brecha en la aplicación", que tuvo lugar en Ottawa (Canadá) en octubre de 2006, organizado por la Asamblea de Primeras Naciones, la Asociación de Mujeres Indígenas del Canadá, el Gran Consejo de los Crees (*Eeyou Istchee*), Amnistía Internacional (Canadá) y el Comité de Servicio de los Amigos Canadienses.

40. Otra importante iniciativa relacionada con la aplicación de las recomendaciones de los informes por países del Relator Especial ha sido la organización de misiones independientes de observación de los derechos humanos para evaluar el estado de la aplicación de estas recomendaciones. Una iniciativa importante en este sentido fue la organización de una misión internacional de verificación a Colombia, en octubre de 2006. La misión fue una iniciativa de la Organización Nacional Indígena de Colombia (ONIC), en cooperación con numerosas organizaciones indígenas y de la sociedad civil a nivel nacional e internacional. La misión visitó la Sierra Nevada de Santa Marta y los departamentos de Arauca, Cauca, Córdoba y Guaviare, y elaboró informes específicos sobre las conclusiones sobre dichas regiones.

41. En otros casos, las misiones independientes de observación se han concentrado en aspectos concretos de las recomendaciones del Relator Especial. En el caso de Chile, Human Rights Watch y la Federación Internacional de Derechos Humanos llevaron a cabo distintas misiones en 2004-2006, en cooperación con organizaciones civiles y de la sociedad civil, en aplicación de las recomendaciones del Relator Especial relativas a la política penal en relación con la protesta social mapuche en el sur del país, que en varios casos ha dado lugar a la imposición de largas condenas de prisión a miembros de comunidades mapuches con arreglo a la legislación antiterrorista.

⁷ <http://www.amdh.com.mx/ocpi/>.

IV. MEJORES PRÁCTICAS EN LA APLICACIÓN DE LAS RECOMENDACIONES

A. Canadá

42. Uno de los progresos más importantes que se han registrado estos últimos años en el Canadá se refiere a la reparación concedida a las víctimas del sistema de internados escolares. En virtud de este sistema varias generaciones de niños indígenas se vieron obligadas a acudir a internados lejos de sus comunidades, lo que fue causa de sufrimientos psicológicos, malos tratos y pérdida de identidad. En los últimos años el sistema ha sido objeto de un número cada vez mayor de causas judiciales (E/CN.4/2005/88/Add.3, párrs. 60 y 61). El Relator Especial recomendó que se prestara especial atención a los vínculos existentes entre el proceso de restitución de los internados, la pérdida transgeneracional de la cultura y los problemas sociales conexos (ibíd., párr. 102). Se ha sugerido que esta recomendación sirvió para avanzar en las negociaciones que condujeron a la firma del acuerdo sobre los internados indígenas entre el Gobierno, los demandantes, la Asamblea de Primeras Naciones (AFN) y distintas denominaciones religiosas en mayo de 2006. El acuerdo incluye compensaciones monetarias para los antiguos alumnos que residían en esos internados; un sistema especial para atender serias alegaciones de abuso; y un sistema acelerado para compensar a los ancianos. El acuerdo provee además fondos para programas que faciliten la curación, la verdad y la reconciliación destinados a los antiguos alumnos y sus familias.

43. En el informe sobre su visita al Canadá el Relator Especial también prestaba especial atención a los altos índices de violencia que experimentaban las mujeres indígenas. En los últimos 15 años aproximadamente 500 mujeres indígenas han sido asesinadas o resultan desaparecidas y las mujeres indígenas tienen cinco veces más probabilidades de sufrir una muerte violenta que el resto de las mujeres canadienses (ibíd., párr. 56). En este sentido, el Relator Especial recomendó que las instituciones especializadas prestaran particular atención a los abusos y violencias cometidos contra mujeres y niñas indígenas, particularmente en el medio urbano (ibíd., párr. 113). En marzo de 2005, el Gobierno firmó un acuerdo de financiamiento por cinco años con la Asociación de Mujeres Indígenas del Canadá (NWAC) para llevar a cabo el programa "Sisters in Spirit" ("Hermanas en el Espíritu"). Este programa educativo, que aspira también a la definición de políticas públicas, tiene por objeto combatir la violencia contra las mujeres indígenas, particularmente aquella por razón de género u origen étnico, a través de la concientización y la investigación práctica, con el fin de conseguir una mejor comprensión de este fenómeno.

44. Otro asunto grave que afecta a las mujeres indígenas señalado en el informe del Relator Especial es la violación de los derechos de propiedad en las reservas indígenas como resultado de los vacíos en la legislación existente (ibíd., párr. 31). El Relator Especial hizo un llamamiento al Gobierno para que diera alta prioridad a la falta de protección legislativa respecto del régimen matrimonial de propiedad inmobiliaria en las reservas que coloca en una situación de desventaja a las mujeres de las Primeras Naciones que viven en las reservas (ibíd., párr. 112). En junio de 2006, después de que un comité parlamentario publicara un informe sobre esta cuestión, el Gobierno anunció su intención de adoptar medidas jurídicas para asegurar la protección de la propiedad inmobiliaria de las mujeres indígenas. Desde entonces, el Ministerio de Asuntos Indígenas, la AFN y la NWAC han llevado a cabo un proceso de consulta con representantes de más de 630 Primeras Naciones para ofrecer aportaciones a dicha propuesta.

45. Otro importante hecho reciente es la reforma de la Ley de Derechos Humanos del Canadá, cuyo artículo 67 exime de la aplicación de dicha ley y de su sistema de peticiones a las acciones llevadas a cabo por los consejos indígenas o por el Gobierno Federal al amparo de la Ley indígena. El Relator Especial recomendó específicamente que se reconociera la competencia de la Comisión Canadiense de Derechos Humanos para recibir quejas relativas a violaciones de los derechos humanos de las Primeras Naciones, incluyendo reclamaciones relacionadas con la Ley indígena; y que se derogara el artículo 67 del Ley de derechos humanos (*ibíd.*, párr. 108). En diciembre de 2006 el Gobierno presentó nueva legislación para abrogar el artículo 67 y, cuando esta reforma entre en vigor, los pueblos y personas indígenas tendrán capacidad para presentar recursos ante la Comisión de Derechos Humanos. Se espera que esta medida aumentará el grado de protección de los derechos de los pueblos indígenas, y en especial de las mujeres indígenas.

46. A pesar de estas "mejores prácticas" en la aplicación de las recomendaciones del Relator Especial los participantes en el Foro Abierto que tuvo lugar en Ottawa en octubre de 2006 expresaron su preocupación por la falta de acción institucional en esferas específicas a que se refieren estas recomendaciones. Un asunto particularmente controvertido, al que también se refirieron distintos parlamentarios en reuniones con el Relator Especial, fue el voto negativo del Canadá en relación con la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas en el primer período de sesiones del Consejo de Derechos Humanos, en marzo de 2006. Los esfuerzos para reducir la brecha que separa a los indicadores socioeconómicos de los pueblos indígenas del resto de la sociedad canadiense se han visto frustrados por la negativa del Gobierno a poner en práctica el Acuerdo de Kelowna, celebrado en noviembre de 2005 entre el Gobierno Federal, todas las provincias y territorios, y todas las organizaciones indígenas nacionales. A pesar de los esfuerzos desplegados para negociar acuerdos generales sobre tierras, todavía persisten numerosos conflictos a raíz de la negativa a reconocer derechos de propiedad indígena sobre los territorios indígenas tradicionales, como es el caso del reciente conflicto en Caledonia, en Ontario.

B. Chile

47. Después de que el Relator Especial visitara Chile, la Comisión presidencial de Verdad Histórica y Nuevo Trato concluyó sus trabajos en 2003, y su informe final coincide substantivamente con muchas de las recomendaciones del Relator Especial relativas a la necesidad de llevar a cabo importantes reformas. Una de estas recomendaciones (E/CN.4/2004/80/Add.3, párr. 58) es la "pronta ratificación" del Convenio N° 169 de la OIT, ya que Chile es uno de los pocos Estados latinoamericanos que todavía no han ratificado dicho instrumento fundamental. El Gobierno ha tomado medidas importantes a ese respecto, y en junio de 2006, con ocasión del Día Nacional de los Pueblos Indígenas, expresó formalmente su compromiso de "conseguir, lo antes posible" la ratificación del Convenio. Una reciente misión internacional de observación de los derechos humanos evaluó el estado del proceso de ratificación, que ahora sólo depende del apoyo de dos senadores⁸.

⁸ FIDH, *Misión de observación internacional. Chile: Posibilidades de cambio en la política hacia los pueblos indígenas*, N° 456/3 (agosto de 2006).

48. Se han registrado señales positivas en relación con el cambio de política penal hacia el denominado "conflicto mapuche" en el sur del país. La judicialización de los numerosos conflictos existentes con respecto a las tierras reclamadas por las comunidades mapuches en el sur, y específicamente la aplicación de la legislación antiterrorista en una serie de casos relacionados con estas demandas, recibió una atención particular en el informe de la visita del Relator Especial en 2003. En este sentido, el Relator Especial recomendó que no se penalizaran "las legítimas actividades de protesta o demanda social de las organizaciones y comunidades indígenas" y que la legislación antiterrorista no se aplicara en estos casos (ibíd., párrs. 69 y 70).

49. A pesar de las recomendaciones del Relator Especial, los procedimientos judiciales en contra de activistas mapuches han continuado en los últimos años, lo que ha conducido a la imposición de nuevas penas de prisión de larga duración. Un nuevo proceso judicial fue iniciado en 2005 contra miembros de las organizaciones mapuches, incluyendo algunos que ya estaban cumpliendo penas de prisión, por un supuesto delito de "asociación ilícita terrorista" acusación que fue objeto de atención nacional e internacional, y condujo a que el Relator Especial dirigiera una carta abierta al Presidente de Chile. El Tribunal de Temuco absolvió finalmente a los acusados, y esta absolución marcó un punto de inflexión en la posición de los tribunales en relación con la aplicación injustificada de la legislación antiterrorista existente.

50. Una huelga de hambre iniciada en 2006 por los cuatro condenados en el caso *Poluco-Pidenco* volvió a llamar la atención nacional e internacional sobre esta seria situación, y varios titulares de mandatos del Consejo de Derechos Humanos se dirigieron al Gobierno a ese respecto. La huelga llevó a que se reconsiderara la política penal en relación con los conflictos de tierras en el sur de Chile, y la nueva Presidenta declaró públicamente que la legislación antiterrorista no volvería a aplicarse en este contexto. Asimismo, el Gobierno introdujo un proyecto de ley para la reforma de la Ley antiterrorista, con el objetivo de excluir del ámbito de aplicación del delito de terrorismo los actos contra la propiedad que no tengan efectos en la vida o la integridad física de las personas o la seguridad nacional. Este proyecto de ley se encuentra todavía pendiente de consideración por el Senado.

51. La recomendación del Relator Especial de establecer un programa de reducción de la pobreza para las comunidades indígenas del país (ibíd., párr. 62) ha sido objeto de especial consideración por parte del Gobierno, que incluyó la totalidad de la población indígena que se estima en situación de extrema pobreza (73.500 personas) en el sistema de protección social "Chile Solidario" inaugurado en 2004. Asimismo, el Gobierno ha continuado con la realización del programa "Orígenes", un ambicioso proyecto de desarrollo dentro del ámbito de la Ley indígena (Ley N° 19253), que cuenta con el apoyo del Banco Interamericano de Desarrollo. La Fase I de este proyecto concluyó en 2006 con más de 3.000 proyectos ejecutados por la Corporación Nacional de Desarrollo Indígena (CONADI), y la Fase II se desarrollará en el período 2007-2011.

52. Los ejemplos señalados muestran que en los últimos años Chile ha multiplicado sus esfuerzos para mejorar la situación de los pueblos indígenas. Sin embargo, estos esfuerzos siguen viéndose frustrados por el limitado reconocimiento de los derechos de los pueblos indígenas dentro del marco legislativo e institucional existente. La reforma constitucional adoptada en noviembre de 2006 no incluyó el reconocimiento de los pueblos indígenas y de sus derechos, y las propuestas posteriores de reconocimiento constitucional distan mucho de las normas internacionales existentes y no han contado con la participación de los pueblos

indígenas. El Fondo de Tierras y Aguas Indígenas ha demostrado ser un mecanismo insuficiente, en parte debido a la falta, dentro de la legislación existente, de reconocimiento de los derechos ancestrales y de mecanismos para revisar la adjudicación irregular de tierras indígenas en el pasado. Los proyectos de desarrollo continúan amenazando la forma de vida de las comunidades indígenas en áreas reclamadas como parte de sus tierras tradicionales, como en el caso del Proyecto Pascua-Lama en Atacama, al que se opone la comunidad diaguita de Huasco Alto. Han sido documentados recientemente incidentes de violencia y abuso en comunidades indígenas por parte de la policía, como en el caso de la comunidad de Temucuicui. Mientras tanto, los mapuches condenados por terrorismo continúan cumpliendo largas penas de prisión.

C. Colombia

53. En el informe sobre su visita a Colombia en 2004 el Relator Especial expresa su preocupación por la amenaza de extinción a la que se enfrentan doce pequeños pueblos indígenas que viven en la región amazónica, que atraviesan una "emergencia humanitaria" como resultado del conflicto armado, los cultivos ilícitos, la destrucción ambiental y los megaproyectos económicos (véase E/CN.4/2005/88/Add.2, pág. 16, cuadro). Particularmente preocupante es la situación de los nukak maku, una comunidad de cazadores recolectores ubicada en el Departamento del Gaviare. La existencia de este pueblo se ha visto amenazada en los últimos años debido a los enfrentamientos armados entre la guerrilla, los paramilitares y el Ejército colombiano, y sus tierras han sido ocupadas con el fin de utilizarlas para el cultivo de la coca. Se estima que el número de miembros de la comunidad que han sido desplazados de sus tierras tradicionales asciende a más de 200, aproximadamente el 50% de la población. El Relator Especial ha dirigido llamamientos urgentes al Gobierno de Colombia en varias ocasiones en relación con el desalojo forzoso de los nukak y el asesinato de sus líderes. Asimismo, el Relator, junto con el Asesor Especial del Secretario General sobre la prevención del genocidio, están dialogando con las autoridades colombianas sobre este grave asunto.

54. En junio de 2006, el Gobierno presentó un Plan de Asistencia Integral a las Comunidades Vulnerables. El plan incluye una serie de medidas especiales para atender las necesidades urgentes de los nukak maku, particularmente en los ámbitos de la salud y la seguridad alimentaria, así como la reubicación temporal de la población desplazada en Puerto Ospina. El reasentamiento en áreas que no pertenecen al territorio tradicional de los nukak ha sido objeto de controversia, y el reciente suicidio de uno de sus líderes tradicionales ha vuelto a atraer la atención internacional sobre la crítica situación que enfrenta esta comunidad. En una iniciativa paralela, la Oficina del ACNUDH en Colombia, en colaboración con la Oficina de Coordinación de Asuntos Humanitarios (OCAH), el PNUD y el ACNUR, llevaron a cabo un completo estudio sobre la situación de los nukak maku y han asesorado al Gobierno sobre posibles medidas para gestionar esta situación.

55. Otra grave situación que fue analizada en el informe sobre Colombia del Relator Especial es el asesinato selectivo y las desapariciones forzadas de dirigentes y autoridades tradicionales indígenas a manos de la guerrilla y los paramilitares. Por ejemplo, en el informe se analiza la situación específica del pueblo Embera-Katío en el Alto Sinú, que ha sufrido actos de violencia e intimidación debido a su oposición a la construcción de la represa hidroeléctrica Urrá dentro de sus tierras tradicionales, que fueron beneficiarias de medidas cautelares otorgadas por la Comisión Interamericana (ibíd., pág. 10, cuadro). En relación con este caso y otros similares, el Relator Especial recomendó que las autoridades del Estado aplicaran inmediatamente las

medidas cautelares otorgadas por la Comisión Interamericana a favor de varias comunidades indígenas. Un acontecimiento positivo en relación con el caso *Embera-Katío* es el establecimiento de una comisión mixta, integrada por autoridades del Gobierno y la sociedad civil, así como por representantes de la ONIC y de las comunidades afectadas, donde participa el ACNUDH en calidad de observador. La comisión mixta lleva a cabo visitas periódicas a la región para verificar la situación de los embera-katío, así como el estado de aplicación de las medidas cautelares otorgadas por la Comisión Interamericana. La comisión mixta solicita además la intervención de organismos gubernamentales específicos en relación con la puesta en práctica de estas medidas.

56. Asimismo, en mayo de 2005 el Gobierno llegó a un acuerdo con las autoridades tradicionales Embera-Katío para mejorar la situación de las comunidades afectadas por el proyecto Urrá. El acuerdo incluye distintas medidas en áreas como el medio ambiente, la educación, la salud y la provisión de alimentos, así como un plan para la sustitución de las actividades tradicionales de caza y pesca afectadas por la construcción de la represa. El acuerdo incorpora asimismo el compromiso del Gobierno de llevar a cabo consultas periódicas con los representantes indígenas en relación con la puesta en práctica de las recomendaciones que figuran en los informes del Relator Especial. Sin embargo, es mucho lo que todavía queda por hacer para restituir la forma de vida de este pueblo amenazado.

57. A pesar de estos casos específicos en los que el Gobierno ha tomado medidas a favor de comunidades particularmente vulnerables, la situación general de los pueblos indígenas en Colombia no ha mejorado desde que el Relator Especial visitó el país. La Misión Internacional de Verificación que visitó varias zonas indígenas en 2006 concluyó que los indígenas, especialmente las mujeres, son víctimas de graves violaciones de los derechos humanos y de las normas de derecho humanitario en el contexto del conflicto armado en el país, en particular asesinatos, desapariciones forzadas, detenciones arbitrarias, torturas y violaciones del debido proceso. Las violaciones de los derechos humanos que enfrentan el pueblo Wiwa y otras comunidades indígenas de la Sierra Nevada de Santa Marta constituyen un ejemplo particularmente grave en este sentido. Las organizaciones indígenas continúan denunciando el impacto de los megaproyectos en sus territorios tradicionales, como es el caso de la reanudación de la explotación petrolífera en el territorio u'wa, en los Departamentos de Santander y Arauca, o de los planes de construcción de un gaseoducto a través de las tierras tradicionales de los wayuu en la frontera con Venezuela.

D. Guatemala

58. La reciente visita de seguimiento del Relator Especial a Guatemala le permitió observar una serie de cambios y avances en relación con la situación de los derechos de los pueblos indígenas en el país en la dirección apuntada por algunas de las recomendaciones incluidas en el informe sobre su visita en 2002. En particular, el Relator Especial observó una mayor sensibilización de las autoridades del Estado acerca de la necesidad de conceder prioridad a la situación de los derechos de los pueblos indígenas.

59. El informe del Relator Especial sobre Guatemala presta especial atención a los Acuerdos de Paz de 1996, que incluyen el Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas. El acuerdo define un completo programa de acción para promover el reconocimiento y la protección de los derechos de los pueblos indígenas (véase E/CN.4/2003/90/Add.2, párr. 4).

Dado el carácter exhaustivo de estos acuerdos, y los retrocesos observados en su aplicación, el Relator Especial recomendó al Gobierno que "revise cuidadosamente los progresos alcanzados en el cumplimiento de los Acuerdos de Paz en cuanto afectan a los pueblos indígenas y que tome todas las medidas adecuadas para asegurar su cumplimiento" (párr. 71). Un acontecimiento esperanzador en este sentido es la aprobación en agosto de 2005 de la Ley marco de los acuerdos de paz (Decreto N° 52-2005), cuyo objetivo es regular la aplicación de los acuerdos y supervisar la acción del Estado en este ámbito y que obliga al Estado a cumplirlos.

60. En relación con los Acuerdos de Paz, el Relator Especial celebra varias iniciativas para buscar reparación por las atrocidades cometidas durante el conflicto armado interno. En 2004, en cumplimiento de la sentencia de la Corte Interamericana de Derechos Humanos en el caso *Masacre de Plan de Sánchez*, relativa a una masacre cometida por el ejército en 1982 en una aldea maya, el Gobierno organizó un acto público en el que asumió la responsabilidad por esos hechos y pidió perdón a las víctimas y sus familiares. La Comisión Presidencial de Derechos Humanos (COPREDEH) inició en febrero de 2006 un proceso de indemnización a las víctimas de la masacre.

61. El informe del Relator Especial subraya la necesidad de reforzar y dar prioridad a las medidas para combatir el alto nivel de racismo y discriminación en el país. En los últimos años se han pronunciado varias sentencias judiciales en casos de discriminación racial, acto que está tipificado como delito en el Código Penal guatemalteco. La acción institucional en este ámbito se ha visto reforzada con la creación de la Comisión Presidencial contra la Discriminación y el Racismo contra los Pueblos Indígenas en Guatemala (CODIRSA). Atendiendo una recomendación concreta formulada en el informe del Relator Especial (ibíd., párr. 67), CODIRSA presentó en 2007 con la asistencia técnica del ACNUDH-Guatemala, una campaña pública para la convivencia y la eliminación del racismo y de la discriminación racial.

62. Otra cuestión de especial preocupación señalada en el informe del Relator Especial sobre Guatemala es la discriminación grave y sistemática que sufren las mujeres indígenas. En este sentido, el Relator Especial recomendó la adopción de "medidas especiales" como "mayor apoyo político, legal y económico a la Defensoría de la Mujer Indígena (DEMI)" (ibíd., párr. 79). Un hecho positivo de los últimos años ha sido el reforzamiento del trabajo de la DEMI con el apoyo de organizaciones y agencias internacionales, en particular el ACNUDH, el PNUD, el UNICEF y otras instituciones. La DEMI se ha convertido en un actor fundamental de la maquinaria nacional de derechos humanos, por lo que es preciso prestarle apoyo constante para que lleve a cabo su importante labor.

63. El Relator Especial recomienda asimismo en su informe que Guatemala considere como "prioridad nacional" el fortalecimiento de un sistema educativo, incluida la extensión de la educación bilingüe a todas las áreas del país (ibíd., párr. 77). Una importante medida para aplicar esta recomendación fue la creación en 2003 de un Viceministerio de Educación Bilingüe Intercultural y la adopción del Acuerdo Gubernamental N° 22-2004 sobre la extensión de la educación multicultural bilingüe en el sistema educativo, que incluye la elaboración de programas de estudios apropiados. Además, el Congreso aprobó en 2003 la Ley de idiomas nacionales (Decreto N° 19-2003), que reconoce oficialmente los idiomas maya, garífuna y xinka y promueve su preservación y uso en la administración. Este nuevo marco jurídico e institucional ha sido bien acogido por organizaciones indígenas y expertos, que ahora exigen su plena aplicación.

64. A pesar de estos ejemplos positivos y de todos los esfuerzos desplegados, el Relator Especial pudo comprobar en su segunda visita a Guatemala que los niveles de racismo y discriminación contra los pueblos indígenas siguen siendo preocupantemente altos, y que la situación de las mujeres y niños indígenas requiere una atención urgente. La aplicación de los Acuerdos de Paz, y en particular del Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas, se ve amenazada por el insuficiente apoyo institucional y la falta de asignaciones presupuestarias. Es preciso apoyar el sistema judicial para garantizar que las víctimas de las violaciones de los derechos humanos, y en particular las mujeres indígenas, encuentren reparación, y el derecho consuetudinario indígena debe ser reconocido e incorporado en el trabajo de los tribunales. A pesar del reconocimiento de las atrocidades cometidas en el pasado, el Relator Especial percibió que no habrá justicia en Guatemala hasta que los responsables de esos actos respondan ante la justicia.

E. México

65. Después de que en 2001 se adoptara una controvertida reforma constitucional, que otorgó más poderes a los Estados en relación con los derechos de los pueblos indígenas, muchos de los cambios positivos en este ámbito se han producido en el plano estatal. Sin embargo, la reforma constitucional federal en materia indígena permanece en un estado de parálisis. Las asambleas legislativas estatales han seguido la recomendación del Relator Especial de adoptar leyes que reconozcan y protejan los derechos indígenas (E/CN.4/2004/80/Add.2, párr. 66), en particular la Ley de Derechos, Cultura y Organización Indígena de Nayarit, Campeche y Quintana Roo⁹.

66. Se han llevado a cabo importantes esfuerzos para poner en práctica las recomendaciones del Relator Especial en relación con la reforma del sistema de administración de justicia para atender a las necesidades específicas de los pueblos indígenas (ibíd., párr. 82). Se han adoptado distintas iniciativas para promover y consolidar y ampliar el sistema de traductores bilingües en los tribunales, como lo recomendara el Relator Especial (ibíd., párr. 85). El Gobierno federal ha organizado un programa de formación de defensores públicos bilingües, y en Oaxaca los estudiantes de la Universidad Benito Juárez trabajan como abogados de oficio bilingües. En Chiapas, se estableció en 2005 la Fiscalía de Justicia Indígena, que está integrada por abogados indígenas que reciben una formación especial para velar por que se respeten los derechos de los pueblos indígenas en casos que entrañen a particulares y comunidades indígenas. En Querétaro, la Fiscalía estableció una oficina móvil especializada en asuntos indígenas. Varios Estados, entre ellos México, Michoacán y Puebla, han iniciado programas de formación de traductores e intérpretes jurídicos en lenguas indígenas.

67. En consonancia con la recomendación del Relator Especial de incorporar el derecho indígena en el sistema judicial (ibíd., párr. 93), se han creado nuevos "tribunales indígenas" o "juzgados de paz y reconciliación" en los Estados de Campeche, Chiapas, Hidalgo, Puebla, Quintana Roo y San Luis Potosí. Integrados por miembros de las comunidades indígenas locales, estos órganos están facultados para dirimir casos de derecho civil y de la familia, así como casos penales de menor cuantía, sobre la base del derecho y las costumbres indígenas. La Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI) ha realizado estudios

⁹ CNDI, *La vigencia de los derechos indígenas en México* (2006). Versión electrónica disponible en: http://cdi.gob.mx/derechos/vigencia_libro/vigencia_derechos_indigenas_mexico.pdf.

sobre el derecho indígena y su "compatibilidad" con las normas de derechos humanos y la legislación nacional.

68. La recomendación del Relator Especial de revisar los expedientes de los indígenas procesados en los distintos fueros con miras a "remediar las irregularidades que pudieran existir" (ibíd., párr. 86)¹⁰ ha sido considerada por la CDI, que ha examinado miles de expedientes y está preparando un censo de la población indígena en las prisiones nacionales. Se están llevando a cabo programas similares en Hidalgo, Michoacán y Oaxaca.

69. Una mejor práctica es la aplicación de la recomendación del Relator Especial de fortalecer institucionalmente y dotar de recursos suficientes a la educación bilingüe intercultural en el país (ibíd., párr. 102). La Secretaría de Educación Pública (SEP) ha expandido recientemente la educación bilingüe, que ya se imparte a nivel preescolar y primario, al nivel secundario de escolarización, mediante un curso especial sobre los pueblos indígenas que se enseña en varias lenguas indígenas, y varias "escuelas secundarias interculturales" y "secundarias comunales", con currículos propios y docencia en lenguas indígenas han sido creadas en algunas regiones de Chiapas, Oaxaca y Tabasco. Se han creado ocho "universidades interculturales" en regiones indígenas de los Estados de Chiapas, Guerrero, México, Michoacán, Puebla, Quintana Roo, Tabasco y Veracruz. El uso de lenguas indígenas en la educación y en otras esferas de la vida pública se ha visto reforzada por la reciente creación del Instituto Nacional de Lenguas Indígenas, encargado de la aplicación de las disposiciones de la Ley general de derechos lingüísticos de los pueblos indígenas (2003).

70. Muchas de estas mejores prácticas son el resultado de iniciativas específicas por parte de actores gubernamentales y no gubernamentales para dar seguimiento a las recomendaciones del Relator Especial (véanse los párrafos 21 a 23 y 38 *supra*). A pesar de estos avances, muchas cuestiones importantes de derechos humanos señaladas en las recomendaciones del Relator Especial siguen todavía pendientes. El marco constitucional existente sigue siendo impugnado por muchos pueblos y organizaciones indígenas y, a pesar de los esfuerzos de la CDI, la última reforma constitucional ha conducido más bien a una disminución de la atención del Gobierno federal a los asuntos indígenas. El sistema de normas y tribunales agrarios es obsoleto en relación con el reconocimiento contemporáneo de los derechos indígenas sobre sus tierras y recursos naturales, y las políticas medioambientales no han tomado en cuenta suficientemente a los pueblos indígenas, como en el caso de la Reserva de la Biosfera Montes Azules. Los proyectos de desarrollo continúan amenazando a las formas de vida indígenas, como en el caso del proyecto de represa de La Parota. La situación en Chiapas sigue estancada, y los abusos cometidos por fuerzas de seguridad y grupos paramilitares han suscitado grave preocupación a nivel nacional e internacional, como lo demuestran los acontecimientos recientes en el Estado de Oaxaca.

F. Filipinas

71. La información recibida de distintas fuentes indica que la visita del Relator Especial a Filipinas en 2003 contribuyó a reforzar la maquinaria institucional en relación con los derechos

¹⁰ El Relator Especial recomendó en particular (párr. 87) que se asignara al CDI un papel más importante a este respecto.

de los pueblos indígenas. El Relator Especial recomendó, por ejemplo, que se fortaleciera la labor de la Comisión Nacional para los Pueblos Indígenas (CNIP) para convertirla en el principal organismo de protección y promoción de los derechos indígenas con la más amplia participación posible de los pueblos indígenas (E/CN.4/2003/90/Add.3, párr. 67 a)). Desde entonces, la CNIP, con el apoyo de donantes gubernamentales y no gubernamentales, ha reforzado sus distintas líneas de actividad, particularmente en relación con la delimitación y el reconocimiento de los Certificados de Título sobre Zonas Ancestrales (CADT) y el Plan de Desarrollo Sostenible y Protección de las Zonas Ancestrales.

72. El Relator Especial recomendó asimismo a la CNIP que convocara una asamblea consultiva nacional (ibíd., párr. 67 a)) con el objetivo de incorporar a los pueblos y organizaciones indígenas en la planificación y ejecución de las actividades de la Comisión. La CNIP convocó en noviembre de 2006 un Foro Nacional en el que se creó el Órgano Consultivo de los Pueblos Indígenas (IPCB), presente a nivel nacional, regional y provincial. El IPCB está integrado por representantes de la CNIP, de organizaciones indígenas y de ONG. A pesar de las críticas que han surgido en relación con la composición de esos órganos, su establecimiento se ha considerado positivo para aumentar la participación de los pueblos indígenas en la elaboración y aplicación de las políticas de la CNIP.

73. La CNIP ha reforzado su cooperación con la Comisión Nacional de Derechos Humanos (NCHR) en relación con las cuestiones indígenas. Siguiendo la recomendación del Relator Especial, la NCHR ha ampliado sus actividades en la esfera de los derechos indígenas, en particular creando cursos de capacitación sobre el contenido de la Ley de los derechos de los pueblos indígenas, para la policía, el ejército y otros órganos públicos. Siguiendo también la recomendación del Relator Especial de promover programas de capacitación específica sobre el contenido de la ley (ibíd., párr. 67 c)), el Gobierno y la sociedad civil han concentrado sus esfuerzos en la capacitación de funcionarios públicos, en especial miembros del poder judicial con la cooperación de la Academia Judicial y la Facultad de Derecho Ateneo.

74. Las recomendaciones del Relator Especial de ampliar la enseñanza en las zonas indígenas (ibíd., párr. 67 h)) y normalizar los derechos de los pueblos indígenas en todos los niveles de la enseñanza escolar (ibíd., párr. 67 m)) fueron bien recibidas por el Ministerio de Educación, que en 2004 permitió la apertura de escuelas de enseñanza primaria para indígenas (Orden ministerial N° 42). Esas escuelas pueden adaptar su plan de estudios y calendario a las características específicas de las comunidades indígenas e incorporar personal "semidocente" de esas comunidades en sus actividades docentes. Tras la celebración de la Tercera Asamblea Nacional sobre Educación Indígena en 2005, el Ministerio de Educación está integrando las cuestiones indígenas en el plan de estudios general, en cooperación con profesores de la Universidad de Filipinas.

75. Se han logrado avances significativos en la aplicación de la recomendación del Relator Especial de promover la investigación de política general por parte de las universidades y de organizaciones de la sociedad civil en relación con los derechos de los pueblos indígenas (ibíd., párr. 67 l)). Tebtebba, el principal centro de investigación indígena del país, promovió la celebración de consultas nacionales en 2004 y 2005 sobre el fortalecimiento de la sección filipina de la Red Mundial de Investigación y Educación de los Pueblos Indígenas, una red internacional de particulares e instituciones que promueve la investigación, la educación y el desarrollo indígenas.

76. No obstante, los principales motivos de preocupación señalados por el Relator Especial en su informe siguen sin ser resueltos. A pesar de los numerosos esfuerzos desplegados por la CNIP y sus asociados para promover la delimitación y el reconocimiento de los CADT, la CNIP sigue disponiendo de una falta de fondos insuficientes, y el número de títulos que se otorgan cada año sigue siendo muy limitado en relación con las solicitudes. Se ha detectado una tensión creciente entre la demarcación de las tierras indígenas y la reforma agraria promovida por el Ministerio de Reforma Agraria, y algunos territorios indígenas han sido calificados como zonas de reforma agraria en las que se han otorgado títulos a determinados campesinos. Continúan denunciándose violaciones graves de los derechos humanos contra dirigentes indígenas y defensores de los derechos humanos, asunto que fue objeto de especial preocupación en el informe del Relator Especial. Fuentes no gubernamentales han denunciado más de 75 casos recientes de ejecuciones extrajudiciales de indígenas, muchos de las cuales no se han investigado exhaustivamente.

V. CONCLUSIONES

77. Los distintos casos analizados en este estudio indican que los informes temáticos y sobre países del Relator Especial han tenido diferentes niveles de efectos. En la medida en que tienen carácter de documentos oficiales de las Naciones Unidas elaborados desde una perspectiva independiente, los informes temáticos forman parte de los debates en curso y de la elaboración de políticas en áreas de especial relevancia para los pueblos indígenas, y sus efectos no pueden evaluarse fácilmente desde el punto de vista de la aplicación de sus recomendaciones específicas.

78. Los informes del Relator Especial sobre sus visitas a países han tenido en general una repercusión más directa en las dinámicas jurídicas, sociales y políticas a nivel nacional en relación con el reconocimiento y la protección de los derechos de los pueblos indígenas. Estos informes, así como las propias visitas, han servido para promover espacios de diálogo entre los Estados y los pueblos indígenas, han contribuido a educar a los agentes gubernamentales, a la sociedad civil y al público en general sobre la situación de los pueblos indígenas en sus propios países, y han sido adoptados por los pueblos indígenas y las organizaciones de derechos humanos como una herramienta de defensa de los derechos indígenas.

79. Las recomendaciones formuladas en los informes del Relator Especial no ofrecen una fórmula mágica, y no generan cambios rápidos y automáticos en la situación de los derechos de los pueblos indígenas. El grado de aplicación de estas recomendaciones varía de acuerdo con las situaciones en los diferentes países y los asuntos abordados en las recomendaciones.

80. Los gobiernos, la sociedad civil y las organizaciones indígenas han emprendido en los últimos años varias iniciativas para vigilar y promover la aplicación de las recomendaciones incluidas en los informes del Relator Especial. Estas experiencias demuestran que, si se abandonan a la acción institucional, las recomendaciones reciben un escaso seguimiento. Se requiere, en cambio, impulsar su aplicación, en estrecha colaboración con los gobiernos y otras partes interesadas.

81. En aquellos países donde existen mecanismos de seguimiento, los esfuerzos institucionales tendentes a aplicar las recomendaciones han sido más sostenidos, y han llevado a cambios concretos en la legislación y la práctica. Estos mecanismos han revestido distintas formas, tales

como órganos de vigilancia, foros nacionales y misiones de seguimiento, y han involucrado a toda una serie de agentes gubernamentales y no gubernamentales, así como a los organismos internacionales.

82. El proceso de aplicación de las recomendaciones del Relator Especial ha abierto espacios de diálogo entre los gobiernos, la sociedad civil y los pueblos y organizaciones indígenas. En todos los casos en los que pueden señalarse avances sustantivos, los pueblos indígenas han participado activamente en el proceso.

83. El análisis comparado de las mejores prácticas en varios países muestra que los cambios efectivos en la aplicación de las recomendaciones del Relator Especial se han dado especialmente en las áreas de política social y desarrollo, así como en relación con el fortalecimiento de las instituciones gubernamentales específicas y las políticas indígenas. Sin embargo, muchas de las recomendaciones principales formuladas en los informes del Relator Especial permanecen sin cumplirse, particularmente en las esferas de la reforma legal y constitucional, y de los derechos indígenas sobre tierras y recursos naturales, incluyendo el derecho a la consulta en relación con proyectos de desarrollo en los territorios indígenas.

84. Estas experiencias sugieren que, a pesar de los avances que pueden observarse, el balance general de aplicación de las recomendaciones del Relator Especial es descorazonador. Todavía es mucho lo que deben hacer los gobiernos, los organismos internacionales y otras partes interesadas para colmar la distancia que existe entre las normas internacionales y nacionales y la realidad de las graves violaciones de los derechos humanos que los pueblos indígenas siguen experimentando en todas partes del mundo.

VI. RECOMENDACIONES

A. Recomendaciones a los gobiernos

85. Los gobiernos deberían redoblar sus esfuerzos para promover cambios efectivos en la legislación y la política, en cumplimiento de las recomendaciones del Relator Especial, de conformidad con las normas internacionales que reconocen los derechos de los pueblos indígenas.

86. Los gobiernos deberían publicitar y difundir los informes y recomendaciones del Relator Especial entre las instituciones gubernamentales, la sociedad civil y los pueblos indígenas. Debería considerarse seriamente la producción de versiones populares en las diversas lenguas indígenas.

87. Los gobiernos deberían intensificar sus esfuerzos para formar a los funcionarios públicos en los derechos de los pueblos indígenas, teniendo en cuenta los informes y las recomendaciones del Relator Especial. Debería darse prioridad a la formación de los jueces, fiscales y defensores de oficio sobre el contenido de estos informes.

88. Los gobiernos interesados deberían establecer mecanismos permanentes para dar seguimiento a las recomendaciones de los informes sobre países del Relator Especial. Estos mecanismos pueden incluir el establecimiento de puntos focales para promover y coordinar

los esfuerzos de los distintos departamentos y organismos gubernamentales, por ejemplo grupos de trabajo interdepartamentales o dependencias específicas.

89. Se anima a los gobiernos a realizar evaluaciones periódicas del estado de aplicación de las recomendaciones del Relator Especial y a divulgar sus resultados.

90. Los gobiernos deberían promover la participación de los pueblos indígenas en la preparación y ejecución de las misiones del Relator Especial. Deberían establecerse mecanismos adecuados para promover la participación activa de los pueblos indígenas en la aplicación de las recomendaciones del Relator Especial.

91. Se anima a los Gobiernos de México y Guatemala a que continúen el seguimiento sistemático de las recomendaciones iniciado en estrecha colaboración con el ACNUDH, los pueblos indígenas y sus organizaciones. También se anima a los gobiernos de otros países que han sido visitados oficialmente por el Relator Especial a que soliciten la asistencia técnica del ACNUDH y de los organismos internacionales para la aplicación de las recomendaciones incluidas en los informes sobre estas visitas.

B. Recomendaciones a otras instituciones del Estado

92. Se anima a los parlamentos nacionales, así como a las instituciones nacionales de derechos humanos, a que vigilen activamente la aplicación de las recomendaciones del Relator Especial por todos los agentes pertinentes.

C. Recomendaciones a los pueblos indígenas y a la sociedad civil

93. Se anima a los pueblos y organizaciones indígenas, ONG, instituciones académicas y otros actores de la sociedad civil a intensificar su cooperación para promover la aplicación de las recomendaciones del Relator Especial. También se los anima a utilizar las mejores prácticas de otros países, en relación con el establecimiento de mecanismos permanentes e iniciativas de vigilancia periódicas del estado de aplicación de estas recomendaciones.

94. Se anima a los pueblos indígenas y a sus organizaciones de apoyo a reforzar su participación en las actividades generales del Relator Especial, incluidas la cooperación con el Relator en sus visitas a los países y la difusión de sus informes.

95. Se invita a los medios de comunicación social a que dediquen más atención a los informes y visitas del Relator Especial y a que vigilen el estado de aplicación de sus recomendaciones.

D. Recomendaciones al ACNUDH

96. El Relator Especial invita al ACNUDH a incorporar, cuando corresponda las recomendaciones de sus informes temáticos y sobre países en sus actividades ordinarias, particularmente en relación con sus oficinas en los países.

97. El ACNUDH debería continuar prestando asistencia a las instituciones gubernamentales y a las organizaciones de la sociedad civil para asegurar el seguimiento de

los informes del Relator Especial, teniendo en cuenta las mejores prácticas descritas en el presente informe.

E. Recomendaciones a los organismos internacionales

98. Las organizaciones y organismos internacionales, incluidas las instituciones financieras internacionales, deberían intensificar sus esfuerzos para aplicar las recomendaciones del Relator Especial.

99. Los equipos de las Naciones Unidas en los países deberían designar un punto focal para asegurar la promoción y coordinación de sus actividades en cumplimiento de las recomendaciones del Relator Especial.

100. Las organizaciones y organismos internacionales deberían tener en cuenta las recomendaciones formuladas en los informes temáticos del Relator Especial al programar sus actividades en los ámbitos de interés para los derechos de los pueblos indígenas. El Grupo de Apoyo Interinstitucional del Foro Permanente para las Cuestiones Indígenas debería también utilizar estos informes en los debates sobre los temas examinados en los períodos de sesiones anuales del Foro.

F. Recomendaciones a la comunidad internacional

101. Los donantes internacionales deberían apoyar a los pueblos indígenas y a sus organizaciones de apoyo para permitir su participación en las visitas y otras actividades del Relator Especial, así como en sus esfuerzos para promover la aplicación de sus recomendaciones.



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**APPLICATION DE LA RÉOLUTION 60/251 DE L'ASSEMBLÉE GÉNÉRALE
DU 15 MARS 2006 INTITULÉE «CONSEIL DES DROITS DE L'HOMME»**

**Rapport du Rapporteur spécial sur la situation des droits de l'homme
et des libertés fondamentales des peuples autochtones,
Rodolfo Stavenhagen**

Additif

**Étude sur les meilleures pratiques recensées pour mettre en œuvre
les recommandations contenues dans les rapports annuels
du Rapporteur spécial***

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au présent résumé, et il est distribué uniquement dans la langue originale et en espagnol.

Résumé

Le présent rapport contient l'étude sur les meilleures pratiques recensées pour mettre en œuvre les recommandations formulées par le Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des peuples autochtones dans son rapport général et dans les rapports consacrés à ses visites de pays, établie par le Rapporteur spécial conformément à la résolution 2005/51 du Conseil des droits de l'homme.

L'étude contient un certain nombre de considérations d'ordre général sur les objectifs et l'impact du rapport du Rapporteur spécial et fournit des exemples d'initiatives visant à donner suite aux recommandations du Rapporteur spécial mises en œuvre dans un certain nombre de pays par des organisations et des institutions internationales, des entités de la société civile, des représentants de peuples autochtones en coopération avec le gouvernement. La dernière partie de l'étude présente des exemples de pays dans lesquels ces recommandations ont conduit à des changements de la politique et de la législation.

L'étude conclut que bien que les rapports du Rapporteur spécial aient eu un impact significatif dans certains pays, les recommandations qu'ils contiennent n'engendrent pas automatiquement des changements dans la situation en ce qui concerne les droits des peuples autochtones. Les diverses initiatives mises en œuvre ces dernières années par les gouvernements, le système des Nations Unies, la société civile et les associations autochtones pour surveiller et promouvoir l'application de ces recommandations montrent que lorsque leur application est laissée aux seules institutions, les recommandations sont rarement suivies d'effet. Une étroite coopération entre le gouvernement et les autres parties prenantes, y compris les peuples autochtones eux-mêmes, est donc nécessaire. Dans les pays où il existe des mécanismes de suivi, les efforts institutionnels visant à assurer la mise en œuvre des recommandations se sont révélés plus soutenus et ont abouti à des changements concrets, au niveau de la législation et dans les faits.

Il résulte de ces expériences qu'en dépit de certains progrès, le bilan global de l'application des recommandations du Rapporteur spécial est peu encourageant. Les gouvernements, les institutions internationales et les autres parties prenantes ont encore beaucoup à faire pour réduire le fossé existant entre la mise en œuvre des normes internationales et les normes internes et les violations graves des droits de l'homme que les peuples autochtones continuent de subir dans toutes les régions du monde.

L'étude contient un certain nombre de conclusions et de recommandations destinées à favoriser une meilleure pratique en la matière.

Annexe

**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**

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

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.

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 culturally appropriate curricula. The UNDP Regional Initiative on Strengthening Policy Dialogue on Indigenous, Highland and Tribal Peoples’ Rights and Development (RIPP) has

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.

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

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

⁵ Victoria Tauli-Corpuz and Eryln 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 through 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

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

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

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 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 Temucucui 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-Katio 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-Katio 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 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

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.

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

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 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.



ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ

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СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА
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**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**

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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)

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

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

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

⁵ Victoria Tauli-Corpuz and Eryln 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 through 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

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 with 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

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 Temucucui 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

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

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.**
