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**INDIGENOUS ISSUES**

**Human rights and indigenous issues**

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

**Addendum**

**Analysis of country situations and other activities of the Special Rapporteur\* \*\***

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

\*\* The reason for the late submission of this report is the need to reflect the latest information.

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## Introduction

1. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people receives a large number of communications providing him with information about allegations of violations of the human rights and fundamental freedoms of indigenous peoples. The main sources of these communications are non-governmental organizations (NGOs), indigenous organizations, intergovernmental organizations and other United Nations procedures concerned with the protection of human rights. The Special Rapporteur pays particular attention to the individual and collective complaints he receives as they offer a crucial channel for victims, their families and communities to have their voices heard.
2. The period under review has, as it was the case last year, shown an increase in the number and substance of the communications received by the Special Rapporteur. Indigenous communities around the world have welcomed the activities carried out by the Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR) to make the mechanism better known to the communities. This has included a systematic updating of the information note on the mandate and the model for submitting information for the Special Rapporteur's attention, both launched in April 2003. According to the feedback received this note has helped indigenous peoples and their communities to understand the possible scope and limitations of the mandate.
3. This addendum to the report of the Special Rapporteur describes 17 country situations and gives an account of actions undertaken by the Special Rapporteur from 15 December 2003 to 31 December 2004 including, in summary form, the replies received from Governments to his communications, as well as observations of the Special Rapporteur where considered appropriate. The report also contains a summary of the activities being carried out by the Special Rapporteur and the Office of the High Commissioner for Human Rights as follow-up to his country missions and information on his activities planned for 2005.
4. The information received during the period under review reveals that important gaps in the promotion and protection of the human rights and fundamental freedoms of indigenous peoples remain unattended in many parts of the world. The violations suffered by a large number of indigenous peoples in all regions of the world have devastating effects on their entire communities. Indigenous peoples face immense obstacles in enjoying their human rights fully and continue suffering perennial prejudice and discrimination. The information received over the past 12 months shows that, in many countries, indigenous peoples are the victims of extrajudicial executions, arbitrary detention, torture, forced evictions and many forms of discrimination, in particular in the administration of justice. In too many places, they also lack access to basic social rights, such as the right to health, food, culturally appropriate education and adequate housing.
5. The plight of indigenous women and indigenous human rights defenders has worsened during the period under review. Indigenous women continue facing multiple forms of discrimination, both as women and as members of the indigenous community. When they fight for the promotion and protection of human rights and claim redress for violations they suffer, indigenous people are often specifically targeted and subjected to threats, intimidation, reprisals and attacks.

6. Section I of the present report gives information on urgent appeals, allegations and the replies by Governments to the Special Rapporteur's letters, as well as observations by the Special Rapporteur where considered appropriate. In cases where the replies were not received or were incomplete at the time of the preparation of the present report, the Special Rapporteur addressed follow-up letters to relevant Governments, recalling the deadline for the incorporation of such responses in the report. It should be emphasized that the summary of communications with Governments discussed in the present report in no way reflects the total extent of the human rights problems indigenous peoples face the world over; some of these are dealt with in the main report (E/CN.4/2005/88).

7. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to reduce considerably the details of communications sent and received. As a result, requests from Governments to have their replies published in their totality could, regrettably, not be met.

8. Section II gives an overview of the activities carried out or promoted by the Special Rapporteur and indigenous organizations as follow-up activities to his recommendations from his visit to the countries. Section III covers other and future activities of the Special Rapporteur, such as future visits to specific countries and communities.

## I. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

### Australia

#### Communication sent

9. On 21 December 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter to the Government of Australia regarding the case of **Cameron Doomadgee**, a 36-year-old aboriginal man who reportedly died while in custody. According to the information received, on 19 November 2004, Cameron Doomadgee who had been arrested allegedly for public drunkenness and locked up in a cell at the Palm Island police station 70 km north of Townsville, was reportedly found dead one hour after his detention. Reports noted that the first autopsy found that he had four broken ribs, a ruptured liver and spleen, and that he had died from internal bleeding. It is alleged that Mr. Doomadgee's injuries were not consistent with a fall on concrete steps at the Palm Island police station, as stated by the police. The Special Rapporteurs requested the Government to provide detailed information on this case and take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons who may be found guilty.

### Bangladesh

#### Communication sent

10. On 2 September 2004, the Special Rapporteur sent an allegation letter to the Government of Bangladesh regarding the situation of the **Jumma Indigenous Tribes** in the Chittagong Hill Tracts, South-East of Bangladesh. According to the information received on 29 July 2004, a group of army personnel from Inland Army Camp, along with a number of

fundamentalists and Bengali settlers, reportedly arrived at Pukur Parh village and allegedly attacked the villagers. **Mr. Mong Mong Marma** was reportedly killed. The same day, the group reportedly also attacked the Chitmaram Buddhist Temple at Chitmaram village, injuring Venerable Chinda Owaisha Bhikkhu and detaining a number of people, including two orphans. In his letter, the Special Rapporteur also included information on allegations received concerning an incident that reportedly occurred on 3 August 2004, in which Islamic groups along with Bengali settlers allegedly killed **Mr. Barun Kumar Chakma**, his wife **Mrs. Subarna Chakma** and injured their son **Kampan Chakma**, at Dhandachora Chakma village.

11. On 13 October 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture, notified the Government of Bangladesh that he had received allegations of human rights violations against a number of persons belonging to the various tribal communities in the Chittagong Hill Tracts, some of which self-identified as indigenous peoples. The reports included the names and ages of more than 80 people from various villages in the area. The information received described a wide range of incidents, including a number of reports from individuals who claimed that they had been subjected to torture and obliged to confess their involvement in terrorist-related activities. Reports were also received containing information about raids in a number of villages by the army and allegations of physical abuses against the villagers in the course of these raids and claims of physical abuses against a member of a Jumma student organization.

#### **Communications received**

12. The Special Rapporteur received a reply from the Government of Bangladesh to the joint allegation letter sent on 13 October 2004, concerning the incidents of alleged torture against members of the tribal community in the Chittagong Hill Tracts. In the letter, the Government said that the contents of the communication had been duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and action.

#### **Observations**

13. The Special Rapporteur thanks the Government for the notification received and invites the relevant authorities to provide him with the information requested so that he can study carefully the basis of the allegations received. The Special Rapporteur remains concerned at the number of reports received concerning allegations of human rights violations against the Jumma people and informs the Government that he will continue paying particular attention to their plight.

### **Bolivia**

#### **Communications received**

14. On 13 January 2004, the Special Rapporteur received a reply from the Government of Bolivia to an urgent appeal sent on 7 May 2003 concerning the attacks that allegedly occurred on 13 March and 23 April 2003 against **Clover Rocha**, a lawyer at the Center of Legal Studies and Social Investigation (CEJIS) in Riberalta. In its reply, the Government reported that the investigations on the above-mentioned case were still going on. The Government noted that **Clover Rocha Rojo** had been accused of being a false lawyer.

## Brazil

### Communications sent

15. On 19 March 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an allegation letter to the Government of Brazil regarding the case of **Mr. Valdez Marinho Lima**, a member of the Xerente indigenous community, and an employee of the National Indigenous Foundation (FUNAI) who were reportedly killed. According to the information received, on 23 February 2004, Valdes Marinho Lima was reportedly shot in the chest by a group of unidentified men thought to be illegal miners, in the Paapiu region of the Yanomami territory. Reports also stated that Mr. Valdez Marinho and six other FUNAI agents were carrying out a mission to the region to investigate complaints about illegal miners made by Yanomami leaders at the Regional Assembly of Indigenous Populations at Roraima in February 2004. It was feared that Mr. Valdez Marinho Lima's death was a consequence of his work as a defender of the rights of the indigenous of the Yanomami community. The Special Rapporteurs requested the Government to provide detailed information on this case and to take any steps necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged crime. The Special Rapporteurs further requested the Government to adopt effective measures to prevent the recurrence of such acts.

16. On 21 December 2004, the Special Rapporteur sent a communication to the Government of Brazil concerning the "Bolsa Familia", a social initiative promoted by the Government aimed at reducing poverty through direct monetary transfers to poor families, creating incentives and conditions for investments in human capital, and its impact for indigenous peoples in the country. The Special Rapporteur, while expressing appreciation for the initiative, extended to the Government his concerns about the obstacles that the programme might encounter in its implementation, impeding its full enjoyment by the indigenous peoples as it had been brought to his attention by a number of organizations in the country. In this context, the Special Rapporteur requested information concerning the implementation of the programme and its impact on the lives of indigenous peoples in the country, as well as on the steps undertaken by the Government to prevent that the need for respect of the cultural diversity of the indigenous in the country does not serve as an additional obstacle for them to receive the benefits of such a programme.

### Observations

17. The Special Rapporteur regrets that at the time this report was finalized he had received no reply from the Government.

## Chile

### Urgent appeals

18. On 5 January 2004, the Special Rapporteur sent an urgent appeal to the Government of Chile concerning the situation of two *lonkos* (mapuche local authorities), **Pascual Pichún** and **Aniceto Norin**, accused of allegedly participating in terrorist activities according to the national laws. The case had already been mentioned in the Special Rapporteur's report on his mission

to Chile (E/CN.4/2004/80/Add.3). According to the updated information received by the Special Rapporteur, the *lonkos* **Pascual Pichún** and **Aniceto Norin** had been sentenced to five years and one day imprisonment. On this occasion, the Special Rapporteur expressed his deep concern at the sentence, which he believed was not in line with the willingness expressed by the Chilean authorities to the Special Rapporteur in the course of his visit to seek equitable solutions to the problems of mapuche peoples. The Special Rapporteur called on the Government of Chile to take all necessary measures to ensure the revision of the case, in full conformity with the laws guaranteeing the right to due process, in accordance with human rights standards.

19. On 22 October 2004, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Chile, expressing concern over the alleged death threats received by **Juana Calfunao Paillalef**, an indigenous mapuche leader of the municipality of Cunco, IX Region. According to the information received, on 26 September 2004 Juana Calfunao Paillalef and her 17-year-old daughter were allegedly attacked at the makeshift house where the family lived after their house burnt down. It was feared that the bullets were shot against their home as a consequence of Juana Calfunao Paillalef's work as an indigenous rights defender as well as one of the founding members of the Ethical Commission against torture. In the context of the existing dialogue with the Chilean authorities, the Special Rapporteur, recalling that a joint urgent appeal regarding this case had already been sent on 23 August 2004, requested the Government to take all the necessary measures in order to protect the right to life of Juana Calfunao Paillalef and her family.

20. On 23 August 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Chile, inquiring about allegations concerning the alleged death threats received by **Juana Calfunao Paillalef**, an indigenous mapuche leader of the Municipality of Cunco and one of the founder members of the Ethical Commission against torture. According to the information received, on 26 June 2004 a fire destroyed Juana Calfunao Paillalef's house. It was alleged that her uncle **Basilio Coñoenao** was killed and that his dead body was moved to the house when the fire was provoked. Reports also stated that the national police of Los Laureles and the regional public prosecutor were informed of several acts of intimidation against Juana Calfunao Paillalef's family but that no security measures were taken. It was also reported that in May 2000 Juana Calfunao Paillalef was detained and lost her infant child as a consequence of abuses of the military police forces. It was feared that the alleged killing of Basilio Coñoenao as well as the acts of intimidation suffered by Juana Calfunao Paillalef are related to issues regarding the demarcation of their community's lands. The Special Rapporteurs appealed to the Government to provide information about the case and information concerning the steps taken by the competent authorities in compliance with the provisions contained in the relevant international legal instruments to guarantee the protection of the rights to life and physical integrity of the person concerned.

### Communications received

21. On 14 January 2004, the Government of Chile stated that the right to due process and the right to legal assistance have been respected, without any form of discrimination, and that indigenous people in Chile are entitled to minimum trial guarantees in compliance with the provisions contained in the relevant international legal instruments. According to the information received, **Pascual Pichún** and **Aniceto Norin** have been convicted of a crime for which Antiterrorist Law No. 18.314 requests a minimum sanction of five years and one day imprisonment.

22. On 27 December 2004, the Government of Chile transmitted information to the Special Rapporteur concerning the case of **Juana Calfunao Paillalef**. In its response, the Government provided information concerning her legal records and informed the Special Rapporteur that the investigation concerning the death of **Mr. Basilio Coñoena** was continuing.

### Observations

23. The Special Rapporteur welcomes the responses by the Government of Chile. In the case of the two *lonkos*, while taking note of the provisions under which the sentence had been dictated, the Special Rapporteur continues to express his concern over the unjustified application of Antiterrorist Law No. 18.314 to activities related to social issues and land rights.

## Colombia

### Urgent appeals

24. On 5 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Colombia, expressing concern at death threats reportedly received by **Gilberto Arlanht Ariza**, an indigenous Kankuamo leader, and **German Acosta** and **Diego Sierra**, students at the Tolima University. According to the information received, after denouncing the difficult human rights situation suffered by the Kankuamo people, Gilberto Arlanht Ariza was attacked on 2 March 2003 by a group of unidentified armed individuals. Reports also stated that German Acosta and Diego Sierra had been accused of taking part in guerrilla activities. It was feared that those alleged threats and information regarding their supposed participation in the guerrilla were a consequence of their participation in the XXXV World Congress of the International Federation of Human Rights Leagues in Quito in March 2004 and their work as defenders of the rights of the indigenous Kankuamo people. The Special Rapporteurs requested the Government to provide information about judicial investigations undertaken in order to ensure the right to freedom of expression of the aforementioned persons.

25. On 13 May 2004, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government of Colombia requesting information regarding the alleged kidnapping of **Diana Fince Uriana**, her 13-year-old daughter, **Reina Fince Pushiana**, and another 11-year-old girl. According to the information received, this action was perpetrated by a paramilitary group that on 18 April 2004 killed at least eight persons and kidnapped several members of the indigenous community of



Wayúu in Bahía Portete (Uribia municipality). It was also reported that the majority of Bahía Portete's population escaped to Uribia and to the neighbouring areas. In the letter, the Government was requested to provide information about the investigation into these murders and to take all essential steps in order to guarantee the protection of the displaced members of the indigenous community of Bahía Portete and the right to life of the kidnapped persons.

26. On 6 August 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Colombia expressing concern at the situation suffered by some indigenous leaders of the Organización Zonal Indígena del Putumayo (OZIP). According to the information received, on 2 and 3 June 2004 **Hermes Meliton Narváez**, President of OZIP, **José Antonio Jajoy Pai**, the treasurer, **Luis Alejandro López Agreda** and **Rosaura Guzman**, respectively general secretary and delegate of the above-mentioned organization, had reportedly received death threats by unknown individuals. It was reported also that they were ordered to give up their leadership role and put an end to the activities of the organization. Reports also stated that in spite of the provisional security measures provided by public authorities, Luis Alejandro López Agreda received more threats of intimidation on 24 June. In the letter, the Government was also informed that José Antonio Jajoy Pai was attending the Fellowship Programme organized by the Office of the United Nations High Commissioner for Human Rights, in Geneva. The Special Rapporteur appealed to the Government to provide information about any measures undertaken by competent authorities to guarantee the protection of the right to life and physical integrity of the individuals concerned and to take appropriate steps in order to protect José Antonio Jajoy's life.

27. On 9 August 2004, the Special Rapporteur, jointly with Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Colombia, expressing concern about the reported death of **Fredy Arias Arias**, coordinator of the Human Rights Programme of the Organización Indígena Kankuama (OIK). According to the information received, on 4 August 2004, Fredy Arias Arias was murdered, allegedly by two members of a paramilitary group on his way home to Valledupar from the headquarters of OIK. It was feared that his death was a consequence of his work as a defender of the rights of the indigenous Kankuamo and it reflects the general situation of insecurity and danger faced by this indigenous community. During his official visit to Colombia, the Special Rapporteur had the opportunity to talk with Fredy Arias Arias and his team. Fredy Arias had expressed his deep concern at the systematic death threats directed at him and the members of his community in the state of Santa Marta Sierra Norte region. In the letter, the Government is requested to provide information about the investigation into this murder, to identify and try those found responsible and to take all necessary steps, in compliance with the provisions contained in the relevant international legal instruments, in order to guarantee the protection of the right to life of the members of the OIK. The Special Rapporteur, on occasion of the International Day of the World's Indigenous Peoples, issued a statement in which he referred to the brutal killing of Fredy Arias.

28. On 31 August 2004, the Special Rapporteur sent an urgent appeal to the Government of Colombia concerning the situation reportedly suffered by **Nasa** indigenous people in the south of Cauca region, following the alleged kidnapping of the indigenous leader **Arquímedes Vitonas Noscue**, mayor of Toribio, **Plinio Trochez**, current governor of the indigenous

*cabildo* (participatory mechanism) in the *resguardo* (reservation) of Toribio, **Gilberto Muñoz Coronado**, coordinator of the Centro de Educación, Capacitación e Ilustración para el Desarrollo Integral de la Comunidad (CECIDIC) and former mayor of Toribio, **Rubén Darío Escue**, deputy governor of San Francisco indigenous *cabildo*, and the driver **Erminson Velasco**. According to the information received, on 22 August 2004, these persons disappeared while going by car from Toribio, Caqueta region, to San Vicente del Caguán municipality in the Alta Mira *resguardo*. Reports also stated that on 24 August 2004, the secretary-general of the Cauca Department was informed by the Codazzi Battalion that the kidnapping was reportedly carried out by a group of armed unidentified people. In the letter, the Special Rapporteur expresses his concern at the instability suffered by the aforementioned community.

### Communications sent

29. On 5 May 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, sent an allegation letter to the Government of Colombia regarding the brutal killing of **Omaira Fernández**, a 16-year-old girl. According to the information received, on 5 May 2003, the victim was reportedly raped and murdered during a police intervention carried out in Tame Council, Arauca. It was reported that they extracted her 6-month-old foetus, tore it apart and threw it in the river with its dead mother. It was further alleged that **Daniel Linares Sánchez**, **Nilson Delgado** and **Samuel Linares Sánchez** were killed under similar circumstances, **Marcos López Díaz** and **Narciso Fernández** were injured and that **Maribel Fernández** and two other girls were raped. According to the information received, the crimes were allegedly perpetrated by members of Navas Pardo Battalion, the eighteenth National Army Brigade. The Special Rapporteur requested the Government to provide detailed information on this case, to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations and to provide an adequate remedy for the victims. The Special Rapporteur further requested the Government to adopt effective measures to prevent the recurrence of such acts.

30. On 4 August 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture and the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, sent an allegation letter to the Government requesting information regarding the alleged acts of intimidation and torture received by **Fredy Loaiza Tique**, an active member of the Colombian Communist Party and of the Union Patriótica and of the Association of Tolima Indigenous Cabildos (ACIT). According to the information received, on 14 January 2004 a group of paramilitary forces belonging to Bloque Tolima of the Autodefensas Unidas de Colombia (AUC) reportedly tortured Fredy Loaiza Tique with a hatchet. Reports also stated that on 23 January 2004, the above-mentioned group of paramilitary forces set fire to Fredy Loaiza Tique's house and that his family was forcibly displaced. The Special Rapporteurs expressed deep concern at reports indicating that though these facts were denounced to the police of Coyaima, no security measures were provided by the relevant authorities to guarantee the right to life and physical integrity of the above-mentioned person. In this context, the Government was requested to take all essential steps in order to guarantee the protection of Fredy Loaiza Tique's family and to provide a clarification of the circumstances of these events.

### Communications received

31. On 28 January 2004, the Special Rapporteur received a reply from the Government of Colombia to an allegation letter sent on 9 December 2003, concerning the killing of more than 150 indigenous Kankuamos in 1999 and the killing of 54 others between January and November 2003, allegedly by the armed forces operating in the region. The Government reported that special measures had been adopted to protect the life and personal integrity of the members of the Kankuamo indigenous community following the request for precautionary measures by the Inter-American Commission on Human Rights. According to the information received, a high-level humanitarian commission visited the Minas population on 19 and 20 December 2003, and one of the main results was the facilitation of the establishment of a process of information and conciliation aimed at strengthening the security and governance of the Kankuamo community. In this context, the Government expressed its commitment to appoint a permanent government delegate in the area as well as the establishment of a follow-up working group on the human rights situation of the Kankuamo indigenous people. Furthermore, the Government transmitted to the Special Rapporteur information concerning programmes and actions taken to protect the human rights situation of the Kankuamo indigenous people, as well as information concerning humanitarian assistance provided to the internally displaced people in the region.

32. On 27 July 2004, the Special Rapporteur received a reply from the Government of Colombia to a joint urgent appeal sent on 5 April 2004, concerning alleged threats received by **Gilberto Arlant Ariza, German Acosta and Diego Sierra**. The Government reported that special measures had been adopted to protect Gilberto Arlant Ariza and to allow him to continue his work. According to the information received, communication facilities have been provided in order to protect Kankuamo people. Regarding the situation of the two students of Tolima University, German Acosta and Diego Sierra, the police department of Tolima stated that several investigations were under way since the public authorities had received a lot of information on the presence of alleged terrorists at the University of Tolima. In this context, the Government stated that it would inform the Special Rapporteur of the findings.

33. On 26 July 2004, the Special Rapporteur received a reply from the Government of Colombia to a joint urgent appeal sent on 13 May 2004, concerning the alleged kidnapping of Diana Fince Uriana, her 13-year-old daughter, Reina Fince Pushiana, and another 11-year-old girl and the murder of a number of members of the family. The Government reported that on 18 April 2004, **Margoth Epinay Ballesteros, Rubén Epinayu and Rosa Fince Uriana**, members of the indigenous community of Wayuú, had been killed by unidentified individuals in Bahia Portete, Uribia municipality. The Security Administrative Department of Guajira also stated that the investigations concerning the disappearance of **Diana Fince Uriana**, her 13-year-old daughter, **Reina Fince Pushian**, and another 11-year-old girl were under way but no official information was available at the time the reply was finalized. The Government also informed that appropriate security measures, like the permanent stationing of army and police personnel in the area, had been adopted in order to protect the indigenous community of Wayuú and to ensure the return of more than 600 displaced persons who had escaped in Uribia, Maicao and Maracaibo (Venezuela).

34. On 20 August 2004, the Special Rapporteur received a reply from the Government of Colombia to a joint urgent appeal sent on 9 August 2004, concerning the reported death of **Fredy Arias Arias**, coordinator of the Human Rights Programme of the Organización Indígena Kankuama (OIK). In its reply, the Government stated that an institutional group in charge of the investigation and prosecution of any persons guilty of the alleged death had been created and some security measures including the permanent posting of police in front of the house of **Jaime Arias Arias** had been adopted, in cooperation with the indigenous leaders.

35. On 23 September 2004, the Special Rapporteur received a reply from the Government of Colombia to a joint allegation letter sent on 9 July 2004, concerning the alleged deaths of **Omaira Fernández, Daniel Linares Sánchez, Nilson Delgado** and **Samuel Linares Sánchez**. In its reply, the Government stated that the *Fiscalía General de la Nación* and the *Procuraduría General de la Nación* were in charge of carrying out the investigations. The Government also informed that another inquiry in connection with the case was undertaken by the *Dirección Seccional de Fiscalías* regarding the forced displacement in the region. Regarding the death of Nilson Delgado, a member of the indigenous community of Genareros, it was reported that he was shot on 31 December 2002 and that an inquiry was taking place. According to the information received by the *Despacho Seccional de la Fiscalía in Cúcuta*, Daniel Linares Sánchez, a member of the indigenous community of Vigía de Arauquita, was murdered on 2 April 2003 but none of the members of Navas Pardo Battalion were present at the moment of the killing. Regarding the brutal killing of Omaira Fernández, the Government stated that the views of that indigenous witness on the alleged crime were not consistent and that no exhumation was carried out.

36. On 7 December 2004, the Special Rapporteur received a reply from the Government of Colombia to a joint urgent appeal sent on 6 August 2004, concerning the reported threats of intimidation received by **Hermes Meliton Narváez, José Antonio Jajoy Pai, Luis Alejandro López Agreda** and **Rosaura Guzman**, indigenous leaders of the Organización Zonal Indígena del Putumayo (OZIP). In its reply, the Government stated that basic personal and family security measures had been provided to the above-mentioned individuals. Regarding the headquarters of the organization, it was also reported that monitoring facilities had been offered with a view to reducing the risks of acts of intimidation. Reports stated that José Antonio Jajoy Pai was attending a six-month fellowship programme.

37. On 8 December 2004, the Special Rapporteur received a reply from the Government of Colombia to an urgent appeal sent on 31 August 2004, regarding the alleged kidnapping of the indigenous leaders of the Nasa indigenous community **Arquímedes Vitonas Noscue, Plinio Trochez, Gilberto Muñoz Coronado, Rubén Darío Escue** and the driver **Erminson Velasco**. In its reply, the Government informed that the kidnapped persons had been released on 9 September 2004.

### **Observations**

38. The Special Rapporteur thanks the Government of Colombia for its prompt responses, which show a real commitment to the mandate. The Special Rapporteur, while taking note of the important efforts carried out to investigate the above-mentioned cases, would like to further

request the Government to analyse how the special measures adopted in cases of death threats have been effective in the protection of the right to life of the above-mentioned persons, within a culturally sensitive manner, and calls upon the Government to ensure that all such measures be agreed upon in consultation with the indigenous communities, with special regard to the possibility of further reprisals by other armed actors.

## Ecuador

### Urgent appeals

39. On 4 February 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Ecuador, enquiring about allegations concerning the attack suffered by **Mr. Leonidas Iza**, President of the Confederation of Ecuador's Indigenous Nationalities (CONAIE). According to the information received, on 1 February 2004, a group of unidentified individuals shot at him and his family, with the consequence that some of his family members were taken to hospital in a serious condition. It was alleged that this crime was a consequence of Mr. Leonidas Iza's work as a defender of the rights of the indigenous and of his participation in the protests against the creation of the North American Free Trade Area. In the letter, the Special Rapporteur requested the Government of Ecuador to provide information about the investigation into this case and to take all necessary steps in order to guarantee the protection of the right to life and freedom of expression of human rights defenders like Mr. Leonidas Iza, in compliance with the provisions contained in the relevant international legal instruments.

40. On 27 February 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Ecuador, enquiring about repeated death threats reportedly received by the members of the **Foundation Pachamama**, which supports the indigenous community of Sarayaku. It was feared that the above-mentioned attacks reflected the general situation of insecurity and danger faced since November 2002 by this indigenous community because of their opposition to the concession given to oil companies, in particular the Compañía General de Combustibles, to start drilling in their territory. According to the information received, several members of the Foundation, among whom two indigenous leaders, **Franco Viteri** and **José Gaulinga**, had been receiving death threats and had been victims of physical attacks. In this context, on 5 May 2003, the Inter-American Commission on Human Rights adopted precautionary measures, subsequently extended for six months, to guarantee the protection of the indigenous people of the Sarayaku community. The Special Rapporteur has often expressed his deep concern at the situation of the indigenous community of Sarayaku (see E/CN.4/2004/80/Add.1). Therefore, he urges the Government to provide information concerning the steps taken by competent authorities in compliance with international legal instruments to protect the members of this community.

41. On 5 March 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an

urgent appeal to the Government of Ecuador regarding the attacks suffered on 29 February 2004 by **Marlon Santi**, president of the Sarakayu association, allegedly as a consequence of his work as a defender of the cultural heritage and human rights of the Kichwa indigenous community. It was feared that Mr. Marlon Santi's aggression could be connected to the victim's intention to attend a meeting in Costa Rica on 3 March regarding the case presented by the indigenous community of Sarakayu to the Inter-American Commission on Human Rights against the Government of Ecuador. In this context, the Special Rapporteur wishes to remind the Government of the previous urgent appeals regarding the campaign of intimidation and defamation suffered by the indigenous community of Sarayaku because of their mobilization against the activities of the Argentinian oil company Compañía General de Combustibles. In the letter, the Special Rapporteurs urged the Government to take necessary measures to ensure the protection of indigenous peoples' human rights defenders, including the right of assembly and protest, in the light of the international norms endorsed by Ecuador.

42. On 17 March 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government of Ecuador regarding death threats reportedly addressed to **Pablo Xavier Ortíz**, academic and adviser of the **Amazango Institute**, an indigenous organization supporting the indigenous community of Sarakayu, in the province of Pastanza. According to the information received, Pablo Xavier Ortíz reportedly received a series of anonymous threatening telephone calls in February 2004. It was feared that these acts of intimidation, as well as those suffered by other organizations supporting the indigenous community of Sarakayu, could be related to the protest against the presence of oil companies in the region. The Special Rapporteurs appealed to the Government once again to provide information concerning any measures taken by the competent authorities to guarantee the protection of the right to life and physical integrity of the aforementioned persons, as well as to improve the situation of the Sarayaku indigenous community.

43. On 21 April 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Ecuador, expressing deep concern at the situation reportedly suffered by the indigenous community of Sarakayu as well as by the organizations engaged in the defence of their rights, including the **Foundation Pachamama** and the **Amazango Institute**. According to the information received, on 6 April 2004, an anonymous threatening telephone call informed the members of **Foundation Pachamama** that a bomb had been placed in the office of the organization. Even though the competent authorities had been informed about the aforementioned acts of intimidation, reports also stated that no investigation had been carried out by the police at the time this report was finalized. The Special Rapporteurs requested the adoption of urgent measures in order to solve the conflict related to the concession given to oil companies to start drilling on the territory of the indigenous communities. In this context, the Government was requested to provide information about the investigation of this case and to take all necessary steps to guarantee the protection of the right to life and freedom of expression, in compliance with the provisions contained in the relevant international legal instruments.

44. On 26 October 2004, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Ecuador regarding **Leonidas Iza**, President of the Confederation of Ecuador's Indigenous Nationalities (CONAIE). According to the information received, on 13 October 2004, Leonidas Iza had reportedly received death threats by unknown individuals. The Special Rapporteurs appealed to the Government to provide information about any measures undertaken by competent authorities to guarantee the protection of the right to life and physical integrity of the individuals concerned and to take appropriate steps in order to protect Leonidas Iza's life.

### **Observations**

45. The Special Rapporteur regrets that at the time this report was finalized, he had received no reply from the Government. The Special Rapporteur would like to express his deep concern at the continuous death threats being allegedly received by indigenous activists, reportedly due to their activities in the promotion and protection of human rights. He calls on the Government to adopt special measures to provide a framework of protection for indigenous human rights.

## **Ethiopia**

### **Urgent appeals**

46. On 28 May 2004, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on violence against women, sent an urgent appeal to the Government of Ethiopia, expressing deep concern about reported killings and other acts of ethnic cleansing perpetrated against the indigenous people of Anuak in the Gambella region. According to the information received, between 13 and 15 December 2003, **424 Anuak** had been killed, allegedly by Ethiopian Government troops in uniform along with local people from highland areas, in Abobo, Itang, Gog and Gambella town in the Gambella region. In addition, reports also indicated that during the same period, over 200 persons were wounded and approximately 85 people remained unaccounted for. It was reported that entire villages have been burnt to the ground, causing the death of some 1,100 persons, Anuak women and girls were systematically raped, several educated men had been subjected to selective, politically motivated extrajudicial executions and several hundred persons, including community leaders, have reportedly been arbitrarily arrested and allegedly been subjected to torture. The Special Rapporteur urged for a clarification of the circumstances of these events and requested the Government to take immediate action in order to ensure the protection of the right to life and physical integrity, in compliance with the provisions contained in the relevant international legal instruments.

### **Observations**

47. The Special Rapporteur regrets that at the time this report was finalized he had received no reply from the Government.

## **Guatemala**

### **Communications received**

48. On 8 January 2004, the Special Rapporteur received a reply from the Government of Guatemala to a joint urgent appeal sent on 9 October 2003, concerning the alleged death of **Eusebio Macario Chicoj**, one of the founding members of the indigenous rights organization Council of Ethnic Communities Runujel Junam (CEFJ). The Government stated that investigations into the murder were ongoing and that, at that time, there were different hypotheses being considered by the Attorney-General.

## **Honduras**

### **Urgent appeals**

49. On 8 June 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Honduras, regarding the situation of **José Idalecio Murillo**, leader of the “Coordinadora Regional de Resistencia Popular”, an organization promoting human rights and environmental issues supported by several indigenous’ human rights defenders belonging to the Civil Council of the Indigenous Organizations (COPINH). According to the information received, on 27 May 2004, four unknown people reportedly shot at José Idalecio Murillo’s house. It was feared that these acts of intimidation, especially against indigenous human rights defenders belonging to the Civil Council of the Indigenous Organizations, were related to the protest campaign against the exploitation of the forest. The Special Rapporteur requested the adoption of all necessary measures in order to ensure the protection of the right to life and physical integrity of the aforementioned individuals, in compliance with the provisions contained in the relevant international legal instruments.

### **Observations**

50. The Special Rapporteur regrets that at the time this report was finalized he had received no reply from the Government.

## **India**

### **Urgent appeals**

51. On 22 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal to the Government of India requesting information about the decision taken on 16 March 2004 by the Narmada Control Authority (NCA), supported by the Chief Ministers of Gujarat, Maharashtra and Madhya Pradesh and other relevant authorities, to allow the height of the Sardar Sarovar dam to be raised from 100 m to 110.64 m. According to the information received, this approval would result in the enlargement of the area brought under water and thereby increase the number of dwellings submerged during the monsoon season, resulting in the flooding of several Adivasi communities



and densely populated villages near and on the banks of the reservoir. Reports also stated that by 3 March 2004, none of the three States of Gujarat, Maharashtra and Madhya Pradesh had submitted the mandatory "Action Taken Reports", required by the "Resettlement and Rehabilitation Subgroup" to give clearance for an increase in height. The Special Rapporteur highlights that the decision to raise the height of the dam might lead to the violation of several human rights, as reflected in international human rights instruments, as it was already underlined in the previous urgent appeal sent to the Government on 29 July 2003. In this context, the Government was requested to submit information concerning the steps taken by the competent authorities in order to guarantee, among others, the right to adequate housing and in particular the right to be free from forced evictions, the right of indigenous peoples to self-determination and their traditional systems of sustenance, the right to the enjoyment of the highest attainable standard of physical and mental health, the need to redress development induced displacement losses and the need to respect certain core obligations.

52. On 15 September 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of India regarding the alleged arrest of **Umakanta Meitei**, an indigenous human rights defender from Manipur. According to the information received, on 9 September 2004 he was arrested, reportedly without charge by a Manipur Police Commando, Central Reserve Police Force, Indian Reserve Battalion. Reports also stated that he suffered injuries to his head, legs and chest, before being released the same day. The Special Rapporteur expressed deep concern that Umakanta Meitei was targeted for his work as a human rights defender and may be at risk of torture or other forms of ill-treatment. Therefore, in the letter the Government was requested to seek clarification of the circumstances with a view to ensuring that the right of Umakanta Meitei to physical and mental integrity was protected.

53. On 20 September 2004, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on violence against women to the Government of India regarding the alleged brutal killing of **Thangjam Manorama Devi**, an indigenous woman from the Imphal East District in Manipur. According to the information received, on 11 July 2004 Thangjam Manorama Devi was raped and killed, reportedly by members of the 17th Assam Rifles. Reports also stated that during the demonstrations following the murder, several people suffered from the tear gas used by the police and one person, **Kangjam Memita**, died as a result of it. The Special Rapporteur expressed concern regarding the allegations of excessive use of force and intimidation by the police and military personnel and regarding the reported mass arrests of indigenous protesters.

### **Communications received**

54. On 23 September 2004, the Special Rapporteur received a reply from the Government of India to a joint urgent appeal sent on 15 September 2004, regarding the alleged arrest of **Umakanta Meitei**, an indigenous human rights defender from Manipur. In the letter, the Government stated that it did not recognize any separate category of its citizens as "indigenous peoples", as there is no internationally accepted definition of an indigenous person. It also noted the lack of universal standards for the definition of "human rights defender".

55. On 11 October 2004, the Government of India submitted a second response to the joint urgent appeal of 29 July 2003, stating that adequate care had been taken to protect and fulfil the human rights of all citizens, including the Adivasi, living in the Narmada valley, when the decision of raising the height of the Sardar Sarovar dam from 95 to 100 m was taken. With respect to adequate housing, the Government states that the award of the Narmada Water Disputes Tribunal provides that every displaced family is to be provided a free housing plot and that the Government of Gujarat extends financial assistance to construct the core house on the allotted residential plot. Every displaced family is provided three choices to select the agricultural land, and the land is allotted as per the consent of the project affected families.

### Observations

56. On 6 October 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, answered the Government of India regarding the reply received on 23 September 2004. In the letter, the Special Rapporteurs noted that the absence of an internationally agreed definition of indigenous peoples does not prevent the international community from constructive action. For this reason, while analysing the information regularly brought to his attention, the Special Rapporteur takes into consideration the four principles, considered in 1995, by the Working Group on Indigenous Populations on the question of definitions. The Special Representative of the Secretary-General specified that any person striving towards the protection or promotion of human rights has to be considered as a human rights defender in the context of that activity. The Special Rapporteur therefore calls on the Government of India to take all the necessary measures to prevent any acts of intimidation against human rights activists collaborating with United Nation mechanisms.

## Indonesia

### Urgent appeals

57. On 5 April 2004, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government of Indonesia, enquiring about the alleged detention of **Mr. Bestari Raden**, a 55-year-old environmental and pro-democracy activist, coordinator of the Environmental Caucus (Kaukus Lingkungan) and member of the Indigenous People's Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN). According to the information received, on 23 March 2004 he was allegedly arrested by soldiers from the Aceh Tenggara District Military Command (Kodim 0108) in Lawe Pakam village, Babul Makmur subdistrict, Aceh Tenggara district, Nanggroe Aceh Darussalam province (NAD) and, at the time the communication was sent, he was still undergoing intensive interrogation. Bestari Raden had reportedly already been previously accused of being a leader of the armed opposition group, the Free Aceh Movement (Gerakan Aceh Merdeka, GAM). In view of past allegations of torture and ill-treatment in military custody in NAD, the Special Rapporteur appealed to the Government to take all necessary measures to guarantee the right of Bestari Raden not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, as well as the right to freedom of expression.

### **Communications received**

58. On 17 June 2004, the Special Rapporteur received a response from the Government of Indonesia to the joint urgent appeal sent on 2 April 2004 regarding the arrest, on 23 March 2004, of Mr. Bestari Raden. In this regard, the Government informed the Special Rapporteur that Mr. Bestari Raden was arrested *inter alia* because of his role in masterminding a rally that degenerated into violence, culminating in the torching of a timber factory belonging to Medan Remaja Timber (PT MRT). The Government provided additional information concerning Mr. Bestari Raden's legal records. His present detention, according to the Government, is motivated by solid evidence of repeated and averred involvement in criminal activities that threaten the security of the State and the safety of ordinary citizens and jeopardize the strengthening of a peaceful environment in the province of Aceh. He is accused of being involved in the abduction of two police officers, who are presumed dead; the murder of another police officer; possession of illegal weapons; several instances of arson against public premises and property; and, with a group of others, a number of instances of extortion against civilians. The Government wished to reassure the Special Rapporteurs that a thorough inquiry into Bestari Raden's activities is still continuing and is being conducted responsibly. It is also stressed that all the necessary measures are being taken to ensure the full protection of his rights, and he has been given due process of law throughout the duration of his detention. According to the Government, the expressions of concern at allegations of torture and ill-treatment against him are unfounded. It is reported that Bestari Raden is currently in the custody of the South Aceh police headquarters, where he was transferred after one month spent in the custody of the local Aceh Tenggara district police station following his arrest. During this time, he has had access to lawyers, no less than five of whom accompanied him during his transfer.

### **Lao People's Democratic Republic**

#### **Communications sent**

59. On 15 September 2004, the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, sent an allegation letter to the Government of the Lao People's Democratic Republic regarding the alleged deaths of five Hmong children. According to the information received, on 19 May 2004, **Mao Lee**, age 14, her sister **Chao Lee**, age 16, **Chi Her**, age 14, **Pang Lor**, age 14 and her brother **Tou Lor**, age 15, were attacked and killed, allegedly by 30 to 40 soldiers in the Xaisomboune military zone. It was alleged that the girls were raped before being killed and the bodies were mutilated by gunshots. In the letter, the Government was asked to provide detailed information on this case and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged crime, as well as to provide an adequate remedy for the families of the victims.

#### **Communications received**

60. On 19 October 2004, the Special Rapporteur received a reply from the Government of the Lao People's Democratic Republic to a joint allegation letter sent on 15 September 2004, concerning the allegations of rape and killings of five Hmong children. In the letter, the Government denied that the incident occurred and stated that the allegations were false and

groundless. It also noted that an equitable policy had been carried out by the Government, aimed at building solidarity among ethnic groups and cohesiveness of the multi-ethnic Lao people. In its reply, it also highlighted the solid presence of Hmong representatives at all levels of the Government.

61. On 10 November 2004, the Special Rapporteur received an additional reply from the Government of the Lao People's Democratic Republic to the joint allegation letter sent on 15 September 2004. It was confirmed that the investigation conducted by the general staff department of the Ministry of National Defence revealed that no evidence or clue of any incident was found. In its letter, the Government indicated that the allegations as well as the video recording publicized by Mr. Vajayang were flawed and merely fabrications intended to harm the reputation of the Lao People's Army. Regarding the incident, it was stated that no complaints had been brought to the notice of Lao authorities at any level.

### **Observations**

62. The Special Rapporteur welcomed the response sent by the Government of the Lao People's Democratic Republic and regrets that despite the information provided, continuous reports on allegations of the human rights violations by the army against the Hmong people continue to be received. The Special Rapporteur would appreciate receiving additional information on any development concerning the human rights situation of the Hmong people as he will continue paying attention to their plight. In this context, the Special Rapporteur is willing to engage with the Government in a direct dialogue. Taking into consideration the information provided in the above-mentioned replies, the Government may want to consider extending an invitation to the Special Rapporteur to visit the area.

## **Mexico**

### **Urgent appeals**

63. On 26 January 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to the Government of Mexico, concerning allegations brought to their attention about the insecurity and danger suffered by the indigenous communities of **Tlalnepantla** in Morelos. According to the information received, members of the Autonomous Popular Council, a local alternative administration entity, suffered several violent attacks, allegedly by the local authorities. Reports also stated that popular protests had taken place as a consequence of the mayor's denial to have local elections held following the indigenous customs. It was alleged that on 26 November 2003, 59 individuals were detained, 2 were injured and several members of the Autonomous Popular Council threatened by the local police. According to the information received, on 14 January 2004, **Gregorio Sanchez** was reportedly killed, 12 people seriously injured and 15 allegedly imprisoned without due process during the police eviction of indigenous people occupying the municipality of Tlalnepantla. The Special Rapporteur requested the Government to provide information about the measures taken to guarantee the aforementioned individuals' human rights.

64. On 29 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government of Mexico, inquiring about the alleged death of **Manuel Posada Chévez**, member of the CCU (Unihidalguense Urban Council). According to the information received, on 10 April 2004, Manuel Posada Chévez was stabbed to death, allegedly by Victor Hugo López López, a municipal policeman of the Unión Hidalgo Council in Oaxaca. The Special Rapporteur expressed his deep concern regarding the reported situation of repression suffered by this community. In this context, the Government was asked to provide detailed information on this case and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged crime, as well as to provide an adequate remedy for the victim's family.

65. On 2 June 2004, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Mexico, expressing concern at the alleged death threats received by **Lucia Genaro Linares**, **Erika Gonzalez Genaro**, and **Adriana Rubio Jorge**, members of the Tlapanec indigenous community. It was feared that these acts of intimidation were a consequence of their official accusation of the municipal authorities of Zapotitlan Tablas, in Guerrero, following the death in jail of an 18-year-old boy, **Sócrates Talentino González Genaro**. According to the information received, Lucia Genaro Linares, Mr. González's mother, was informed by the public authorities that her son, imprisoned on 14 January 2004, had committed suicide. On 10 March, following the exhumation of the body, a forensic examination found that **Sócrates Talentino González Genaro** had died as a result of continuous beatings. It was reported that since Lucia Genaro and other relatives of the victim sued the public authorities, they had received systematic death threats, allegedly by the mayor and the municipal police. In the letter, the Special Rapporteur urged the Government to provide information on this case and to take any steps that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged crime, as well as to provide an adequate remedy for the victim's family.

66. On 3 August 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal to the Government of Mexico, concerning the difficult situation reportedly suffered by **Carmela Chávez** and her two children, **Froilán Pinzón Chávez** and **Nancy Pinzón Chávez**, Na Saavi indigenous of Metlatonoc municipality, State of Guerrero. According to the information received, on 17 April 2004, according to the complaint presented by Lorenzo Guerrero Vásquez, the public prosecutor and the public health director arrested an 8-year-old girl, Nancy Pinzón Chávez, and a 10-year-old boy, Froilán Pinzón Chávez, and detained them for respectively 20 hours and 6 days, reportedly torturing them while in jail. Reports also stated that once they were freed, Carmela Chávez's children were attacked, beaten and threatened. In this context, Carmela Chávez allegedly reported to the police the torture suffered by her children, their illegal detention as well as the acts of intimidation and personal injuries they had suffered. In the letter, the Special Rapporteur expressed his deep concern at the fact that investigations following Carmela Chávez's denunciation were hindered by the state prosecutor of Tlapa de Comonfort and over continuing death threats against the children.

67. On 23 August 2004, the Special Rapporteur, jointly with the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal to the Government of Mexico, regarding the situation of **Eduardo Hernández Sánchez**, a 19-year-old tzotzil indigenous person, **Carlos Navarro Pérez**, a 23-year-old tzeltal indigenous person, **Enrique Hernández Ramos** and his mother, **Romelia Ramos Bermúdez** and **Carlos Velasco**. The Special Rapporteurs also called the attention of the Government to the situation of **Heriberto Gómez** and **María del Carmen Grajales Castillejos**, lawyers of the above-mentioned persons, who had reportedly been detained on 11 August 2004, allegedly as a result of their work as defendants of Eduardo Hernández Sánchez, Carlos Navarro Pérez, Enrique Hernández and Ramos Romelia Ramos Bermúdez. The above-mentioned persons had been detained in the course of a murder investigation and allegedly beaten and subject to torture while in detention. The Special Rapporteurs expressed concern about their physical security.

68. On 17 November, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government of Mexico regarding alleged death threats received by **Raúl Javier Gatica Bautista**, member of the indigenous organization **Consejo Indígena Popular “Ricardo Flores Magón”** on 29 September 2004.

#### **Communications received**

69. On 5 January 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal dated 5 August 2003, regarding the alleged death threats received by **Samuel Alfonso Castellanos Piñon** and other members of the regional office of Action by Christians for the Abolition of Torture (ACAT) and the Indigenous Organization for Human Rights (OIDHO) in Oaxaca. In its reply the Government stated that investigations had begun and protection measures, like the permanent posting of police at the ACAT office and police escorts for the petitioners, had been undertaken in order to ensure the safety of the indigenous organizations' members.

70. On 5 January 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal dated 15 August 2003, regarding the murder of **Griselda Teresa Tirado Evangelio** and various acts of intimidation suffered by her relatives, allegedly linked to her work as a defender of the rights of the indigenous population in the State of Puebla's Sierra Norte region. In the letter, the Special Rapporteur requested, among others, information about the investigation of the murder. The Government stated that the forensic investigations confirmed that Teresa Tirado Evangelio died as a result of the shots received and informed the Special Rapporteur that on 25 August 2003, a suspect was interrogated. The Government informed the Special Rapporteur that the investigations were still ongoing and would inform the Special Rapporteur accordingly.

71. On 15 June 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal sent on 29 April 2004, regarding the reported death of Sr. **Manuel Posada Chévez** and the alleged death threats received by his family. The Government informed the Special Rapporteur that the author of the crime occurred

on 11 April 2004 was Victor Hugo López López, a municipal policeman of the Unión Hidalgo Council and that an order of capture was issued. The Government confirmed that the municipal policeman Victor Hugo López López was indeed the murderer but that he was not on duty at the time the crime was committed. The Special Rapporteur received from the Government further information on the case, noting that the investigation was still ongoing.

72. On 10 July 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal sent on 2 June 2004, regarding death threats allegedly received by **Lucia Genaro Linares, Erika Gonzalez Genaro** and **Adriana Rubio Jorge**, members of the indigenous community of **Tlapanec**, following the death of **Sócrates Talentino González Genaro** while in detention. In its reply, the Government stated that according to the preliminary information, Mr. Gonzalez had committed suicide. The Government informed that in order to verify the preliminary information, an investigation was being carried out. Some of the information provided by these investigations revealed discrepancy in the case of the death of Mr. Gonzalez, including a forensic report which noted that his body presented signs of various trauma.

73. On 2 September 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal sent on 3 August 2004, concerning the situation of **Carmela Chávez** and her two children, **Froilán Pinzón Chávez** and **Nancy Pinzón Chávez**. In its reply, the Government stated that all necessary measures to investigate the case had been taken and that the Special Rapporteur would be informed of the findings. The Government noted that special attention was being paid due to the fact that minors are involved.

74. On 4 November 2004, the Special Rapporteur received a reply from the Government of Mexico to a joint urgent appeal sent on 23 August 2004 concerning reports of torture allegedly suffered by Eduardo Hernández, Carlos Navarro and Enrique Hernández. Fears had been expressed over their physical integrity. In its reply, the Government provided detailed information contrasting the reported allegations of torture against Eduardo Hernández Sánchez, including references to three medical check-ups carried out while in detention.

## **Observations**

75. The Special Rapporteur wishes to express his thanks to the Government of Mexico for its prompt replies to his letters and welcomes the explanations provided for each case. He recommends to the Government of Mexico to study the possibility of counting on the assistance of an independent body of inquiry for those cases in which controversial and competing accounts of the facts have not yet been settled.

## **Nepal**

### **Communications received**

76. On 4 May 2004, the Special Rapporteur received a reply from the Government of Nepal to a joint urgent appeal sent on 26 September 2003, concerning **Navin Pun**, a journalist also known as Bivas, who was reportedly arrested by plain clothes security forces on 21 September 2003 in Kirtipur, Kathmandu. In its reply, the Government stated that, according to its sources, Navin Pun was not found under police detention.

## Observations

77. The Special Rapporteur welcomed the response sent by the Government of Nepal.

### Venezuela

#### Documents received from the Government

78. On 11 November 2004, the Special Rapporteur received a detailed report sent by the Government of Venezuela regarding the implementation of the “Guaicaparo Mission Programme”, a project aimed at ensuring the organic and responsible participation of indigenous peoples in Venezuela. The Government stated that the programme, following the principles enshrined in the Constitution, is being implemented in cooperation with indigenous organizations with a view of ensuring the right to life, work, health, food, education and housing of indigenous peoples. It was reported that through the creation of different instruments such as informative conferences, workshops, communication campaigns, the involved public institutions are working in an interactive way, among others, to give indigenous communities the opportunity to develop their own social and cultural projects; evaluate the changes caused by the migration of indigenous peoples to the Caracas metropolitan and the Venezuelan central areas; create the basic conditions favouring indigenous peoples’ participation in political decisions affecting them; encourage indigenous communities to play an active role in the definition of the strategies of the programme as well as in their concrete implementation, with a view to permitting its consolidation and support the process of demarcation of habitat and lands of indigenous peoples and communities.

79. The Special Rapporteur welcomes the report sent by the Government of Venezuela and highlights the importance of receiving more information about its implementation and results.

### Viet Nam

#### Urgent appeals

80. On 16 January 2004, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture sent an urgent appeal to the Government of Viet Nam, requesting information about the situation of **Christians belonging to the Montagnard/Degar people**, a group that identifies itself as indigenous, in the central highlands. According to the information received, on 21 December 2003, eight trucks of paramilitary police surrounded the village of Plei Todrah, Bongong municipality, and **Jum, Huit, Teng and Thoi**, members of the Christian community, were arrested. According to reports, the police allegedly tied them up, tortured them in front of the villagers and took them away. Reports also stated that the houses of those who helped the Christians to escape from police actions were completely destroyed; police officers reportedly arrested two Christians, named **Hlo** and **Hua**, and beat them. It was also alleged that on 22 December, a Christian named **Y Bun Ayun** was arrested and tortured by the police, allegedly due to his request to celebrate Christmas. The Special Rapporteurs highlighted their concern at the situation of Christians in



the country, and in particular at the cruelty of the reported human rights violations. In this context, they appealed to the Government to provide information concerning the steps taken by competent authorities in order to guarantee the right to life and physical integrity of the aforementioned persons, as well as the right to freedom of religion and belief.

### **Communications sent**

81. On 22 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an allegation letter to the Government of Viet Nam regarding allegations concerning the situation suffered by the **Degar tribe** (also called Montagnard people) in some areas of the Vietnamese central highlands. According to the information received, on 10 and 11 April, the protests organized by the Degar tribe in the cities of Buon Ma Tuor, Kontum, Dalat, Phuoc Long and Plei Ku as well as in other areas, were allegedly violently suppressed by the Vietnamese authorities, reportedly causing a yet undetermined number of casualties. It was reported that at least 10 Montagnards had been killed and hundreds were allegedly wounded during the demonstrations and their aftermath. It was alleged that security forces used disproportionate and brutal force to confront Montagnard protesters in the area around Buon Ma Tuor, the capital of the Dak Lak province, on the morning of 10 April, seeking to prevent them from accessing cities where protests were to be organized. The situation of Montagnards or Degar peoples has already been addressed by the Special Rapporteur in his communications to the Government in 2002 (E/CN.4/2002/97/Add.1, para. 19). Therefore, he urges the Government to provide information concerning the steps taken by competent authorities, in compliance with international legal instruments, to protect the members of this community and to avoid the recurrence of these abuses.

### **Replies sent by the Government**

82. On 3 April 2004, the Special Rapporteur received a reply from the Government of Viet Nam to a joint urgent appeal sent on 16 January 2004, regarding the situation of **Christians belonging to the Montagnard/Degar people**. In its reply, the Government indicated that all allegations were false. Jum, whose real name is Dihn Jum, was arrested for his acts of undermining the policy of national solidarity and unity. Huit, whose real name is Dihn Huit, Teng, whose real name is Dihn Teng, Hoa, whose real name is Rlan Hoa, were arrested for the same reasons and were released on 29 December 2003. Hlo, whose real name is Dihn Hlo, was arrested for rabble-rousing and acts of undermining the policy of national solidarity and unity. Y Bun Ayun is living normally in the community. Ham, Wo and Oh, whose real names respectively are Hram, Won and Ot, also live a normal life in the community. The Government of Viet Nam indicates that the rights to freedom of religion or belief and freedom of non-religion or belief are ensured. No one is arrested and detained on religious grounds. Only those who violate the law are treated in accordance with the rules and procedures provided by the law. Torture and other forms of inhuman treatment and punishment are forbidden. These are clearly enshrined in the Constitution and laws and are strictly observed in practice.

83. On 14 May 2004, the Special Rapporteur received a reply from the Government of Viet Nam to a joint allegation letter sent on 26 April 2004, regarding the alleged violations suffered by the **Degar tribe**. In its reply, the Government stated that the demonstrations organized on 10 and 11 April 2004 were forced to take place and that public authorities had to adopt serious measures as a consequence of the public disorder and serious injuries caused by the protesters. The Government further stated that indigenous people were receiving the State's attention and also that economic and social assistance was being provided to the ethnic minority people of the central highland provinces. Finally, the Government stated that the right to freedom of religion and belief, enshrined in the Constitution, is respected.

### **Observations**

84. The Special Rapporteur welcomed the assurance by the Government of Viet Nam that the right to freedom of religion and belief, as stated in the Constitution, is fully respected. However, the Special Rapporteur underlines, as he has highlighted in his report on administration of justice, the importance of not prosecuting indigenous people who take part in legitimate demonstrations.

### **Other communications and information received**

85. During the period under review, the Special Rapporteur also received more than 350 communications, including e-mails and letters, concerning the situation of indigenous communities in almost all regions of the world. Some of the information received, while very pertinent for the information contained, did not meet the criteria for an action by the Special Rapporteur due to a number of factors such as a lack of basic information on the victims or basic information concerning the rights claimed as having been violated. These communications were transmitted to the claimants, requesting necessary additional information.

86. The Special Rapporteur received updated information concerning the situation of communities that were subject of references in his previous reports. In particular, the Special Rapporteur continued receiving updated information concerning, among others, the situation of indigenous gatherers-hunters and pastoralists in Kenya, specifically in regard to the question of land and access to natural resources. The Special Rapporteur hopes to have the opportunity to learn more about the situation of the communities in Africa in the course of his discussions with the Working Group of the African Commission on Human and Peoples' Rights.

87. Information was also brought to the Special Rapporteur's attention concerning the situation of the Wanniyala-Aetto peoples of Sri Lanka. In 1983, the Wanniyala-Aetto peoples were a spirited hunting and gathering people protesting against alleged discriminatory practices of the Government, which reportedly denied them access to their traditional forest habitat. In 1998, they seemed to be at last poised on the brink of success. In redressing the grievances of the Wanniyala-Aetto community, the President allowed them to continue their traditional way of life. The Department of Wildlife was ordered to issue special identity cards to the Wanniyala-Aetto so that they could enter the Maduru Oya National Park without harassment or persecution. Twenty-eight cards were handed out immediately after the proclamation,

but 1,020 individuals remained on the waiting list. Only one year later, in 1999, the Government reportedly abandoned this creative solution. The Wanniyala-Aetto peoples claimed that this situation is forcing them to abandon their traditional customs, which are their main means of survival. In the information received, it is stated that the Wanniyala-Aetto peoples cannot enter the forest to hunt and collect without endangering their lives. In the reports received, it is noted that the situation is obliging women to leave the country and that they are at risk of being trafficked.

## **II. FOLLOW-UP TO THE SPECIAL RAPPORTEUR'S MISSIONS**

88. Since his appointment in 2001, the Special Rapporteur has visited six countries, Guatemala, the Philippines, Mexico, Chile, Colombia and Canada. In the reports on his visits, the Special Rapporteur included a number of recommendations to the Governments, the indigenous communities, the civil society, the United Nations and the academic world aimed at opening avenues to improve the human rights situation of the indigenous peoples in the countries concerned.

89. Coinciding with the beginning of the second term of his mandate, the Special Rapporteur considered that sufficient time had passed to be able to begin follow-up evaluations of the implementation of his recommendations, and to analyse the impact of the first visits he undertook. In this context, the Special Rapporteur, encouraged by the positive responses received during and after his visits and based on the provisions contained in resolution 2004/76 of the Commission, wrote to the Governments of Guatemala, the Philippines, Mexico and Chile on 23 November 2003, requesting any information that could be of relevance to assess the progress made in the implementation of his recommendations.

90. The written responses by the Governments of Guatemala, Mexico and Chile to the reports presented by the Special Rapporteur to the Commission contained a number of proposals and information concerning ongoing efforts to improve the human rights of indigenous peoples in the concerned countries and to provide a response to some of the recommendations made by him in these reports. The Special Rapporteur considers that it would be extremely useful to assess the progress made, as well as to know about any potential obstacles to the effective implementation of such recommendations and proposals. The Special Rapporteur invites the Governments of Guatemala, the Philippines, Mexico and Chile, as well as the Governments of Colombia and Canada to provide him with all the information they may consider of relevance to fully comply with this relevant task.

91. To support the ongoing activities towards the implementation of the recommendations made by the Special Rapporteur after his visits to Guatemala and Mexico, a pilot project of technical cooperation was designed jointly with OHCHR, indigenous representatives and the OHCHR Offices in those countries. The activities of the project were designed and based on suggestions made to the Special Rapporteur by indigenous representatives during his official and non-official contacts in both countries. The project activities will focus on three lines of action: (i) supporting and advising the Governments in implementing the recommendations issued by the Special Rapporteur and in strengthening the capacity of civil servants to protect the rights of indigenous peoples, with a special emphasis on indigenous women's rights; (ii) establishing

human rights protection and monitoring standards measuring the implementation of the recommendations, the developments in the legal system and the changes in the human rights situation of indigenous people, and of women in particular; (iii) providing targeted capacity-building to national human rights groups, local NGOs, civil society organizations and indigenous communities on human rights instruments and mechanisms of protection at the national and international levels, aiming at their enhanced participation in public administration, an improved response to human rights abuses and a deeper knowledge and awareness of the human rights of indigenous peoples. The Special Rapporteur would like to extend his compliments to both Governments for their commitment and support in the preparation of such a project as well as to the indigenous communities for their inputs and their commitment to the mandate entrusted to him by the Commission.

92. In the Philippines and Chile, indigenous organizations have organized themselves and established a plan of action to follow up the recommendations made by the Special Rapporteur during his visits to both countries. Indigenous representatives from Chile, on behalf of the Aymara, Rapa Nui and Mapuche peoples, sent a letter to the United Nations High Commissioner for Human Rights, expressing their complete support for the report by the Special Rapporteur on his visit to Chile (E/CN.4/2004/80/Add.3). In their communication, the indigenous representatives informed the High Commissioner that since the presentation of the report, the indigenous organizations in the country, human rights organizations and academic institutions have been working together to disseminate the report throughout the country and to establish a plan to follow up the implementation of the recommendations contained in the report. In particular, the indigenous organizations informed the High Commissioner that they are ready to open a dialogue with the Government to study effective ways of implementing such recommendations and requested the support of OHCHR to organize a consultation between the Government, the indigenous peoples and other interested parties to identify ways for the United Nations system in the country to assist the Government in the implementation of the recommendations, in line with the content of the recommendation included in paragraph 82 of that report.

93. In the Philippines, indigenous organizations have started a process of following up on the Special Rapporteur's visit to the country and monitoring the Government's implementation of his recommendations. In this context, various national workshops have been organized. The Special Rapporteur has also received information concerning developments in the country from various organizations such as the Tebtebba Foundation, the Cordillera Peoples Alliance and the Assisi Development Foundation. On 11 August 2004, the Assisi Development Foundation addressed a letter to the High Commissioner for Human Rights, expressing support for the factual contents of the report of the Special Rapporteur, and stressing the intention of the organizations of the country to continue monitoring the implementation of the recommendations.

94. In 2005, the Special Rapporteur plans to request meetings with the ministries and government departments responsible for the indigenous peoples' portfolios in the visited countries to continue the fruitful dialogue maintained during his visits and to evaluate the dimension of the achievements since his visits.

### III. RELATED AND FUTURE ACTIVITIES

95. Looking ahead, plans are being developed for a number of other country visits. In particular, the Special Rapporteur has expressed his wish to the Governments of New Zealand and South Africa to visit their countries. In 2004, the Special Rapporteur had requested a visit to Botswana, however at the time of the finalization of the present report, a response from the Government was still pending.

96. During the period under review, the Special Rapporteur received a large number of invitations from indigenous organizations to visit their communities and to share with them their life experiences. He was also invited by academic institutions around the world to lecture on the activities of the mandate, as well as on the main concerns and challenges for the promotion and protection of the rights of indigenous peoples. The Special Rapporteur takes this opportunity to thank all the organizations and institutions for their kind invitations.

97. On 19 October, the African Commission on Human and Peoples' Rights addressed an invitation to the Special Rapporteur to participate at its thirty-sixth session and to present a statement on the situation of human rights of indigenous peoples. The Special Rapporteur is of the view that constructive dialogue with regional human rights institutions is one of the most effective ways to continue contributing to an effective response at the international level to the needs of indigenous peoples around the world. In fact, the work being carried out by the African Commission and, in particular, the establishment of a Working Group to deal with the main challenges being faced by indigenous peoples in Africa is not only a milestone for the protection of indigenous peoples rights in the continent but also contributes to the advancement of the discussions related to the challenges indigenous peoples face all over the world. Due to an unexpected change in the agenda, the Special Rapporteur was unable to attend the session of the African Commission at this time, however he proposed the possibility of holding a two-day meeting with the members of the Working Group prior to the thirty-seventh session of the Commission.

98. Since he was appointed, the Special Rapporteur has learned about the legislative improvements undertaken in many countries for the promotion and protection of the rights of indigenous peoples and has also observed a number of initiatives, including the launching of specific projects and policies in areas such as health, education, housing or land management aimed at improving the living conditions of indigenous peoples in almost all the regions of the world. Despite these efforts, the Special Rapporteur has noted that in some countries the legislation adopted to ensure the respect of the rights of indigenous peoples has seen its potential benefits diminished due to a number of internal and external factors. For these reasons, the Special Rapporteur will focus his main report to the sixty-second session of the Commission on Human Rights on the question of legislation concerning indigenous peoples and the challenges and obstacles to its effective implementation.

**Table 1**

**Summary table of communications sent to and received from Governments**

	Africa	Asia and Pacific	Eastern Europe	Western Europe and other	Latin America and the Caribbean	North America	Total
No. of countries to which UA and LA were sent	1	6	-	-	6	-	13
No. of UA sent	1	4	-	-	20	-	25
No. of joint UA (with thematic and country mechanisms)	1	4	-	-	18	-	23
No. of LA sent	-	6	-	-	4	-	10
No. of joint LA (with thematic and country mechanisms)	-	5	-	-	3	-	8
No. of PR*	-	-	-	-	1	1	2
No. of government replies	-	7	-	-	16	-	23

UA - urgent appeals.

LA - letters of allegation.

PR - press releases\*. The Special Rapporteur also issued a general press release on 9 August and 10 December 2004, respectively.

**Table 2**  
**Statistics on joint communications**

	Letters of allegation	Urgent appeals
Number of joint communications	8	23
<b>Thematic mechanisms</b>		
Special Representative of the Secretary-General on the situation of human rights defenders	2	14
Special Rapporteur on the question of torture	4	6
Special Rapporteur on extrajudicial, summary or arbitrary executions	2	7
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	2	9
Special Rapporteur on the independence of judges and lawyers	1	1
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health		1
Special Rapporteur on adequate housing		1
Chairperson-Rapporteur of the Working Group on Arbitrary Detention		2
Special Rapporteur on violence against women	3	1

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