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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 English and Spanish only.

\*\* In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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## Introduction

1. This addendum to the report of the Special Rapporteur contains information on the communications sent and received from 1 January to 31 December 2005. It should be emphasized that the summary of the communications with Governments discussed in this report in no way reflects the full extent of the human rights problems indigenous peoples face the world over; some of these are dealt with in the main report.
2. During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people received a large number of communications providing him with information on alleged violations of the human rights and fundamental freedoms of indigenous peoples. The main sources of these communications were non-governmental organizations, indigenous organizations, intergovernmental organizations and other United Nations procedures concerned with the protection of human rights.
3. In the period under review, as in previous years, there was an increase in the number of communications and reports received by the Special Rapporteur. Since the establishment of his mandate in 2001, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have been working together to better publicize his mandate and raise awareness of it among the communities concerned. This work has included the systematic updating of the information on the mandate on the OHCHR website and of the procedure for submitting information to the Special Rapporteur, the distribution of the Special Rapporteur's reports through OHCHR country offices and the specialized agencies of the United Nations, and steps to ensure that important news about the Special Rapporteur's work is widely publicized.
4. This addendum to the report of the Special Rapporteur describes 15 country situations and provides information on the action taken by the Special Rapporteur during the period under review in response to the information brought to his attention. This information includes summaries of the replies received from Governments to his communications, as well as observations by the Special Rapporteur where considered appropriate.
5. The information received during the period under review shows that indigenous people continue to suffer from serious human rights violations in many parts of the world. In many cases, the violations suffered by individuals also have devastating effects on entire communities. Indigenous people face huge obstacles to the full enjoyment of their rights and continue to suffer from enduring prejudice and discrimination.
6. The information received over the past 12 months shows that, in many countries, indigenous people are persecuted because of their work in defence of their human rights and fundamental freedoms, and are the victims of extrajudicial executions, arbitrary detention, torture, forced evictions and many forms of discrimination. During the period under review, the Special Rapporteur received information on cases of sexual abuse of indigenous women allegedly committed by members of State security forces, as well as allegations denouncing impunity in such cases. Allegations have been received concerning the lack of

access to basic social rights, such as the right to health, food, a culturally appropriate education and adequate housing. There have also been reports of infringements of communities' rights as a result of the implementation of projects, as well as of failures to comply with environmental legislation in pursuing certain activities that have a major impact on indigenous communities.

7. Chapter I of the 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. It should be emphasized that the summary of the communications with Governments discussed in the report in no way reflects the full extent of the human rights problems that indigenous peoples face the world over; some of these are dealt with in the main report (E/CN.4/2006/78).

8. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to omit a considerable amount of detail from the communications sent and received. As a result, it was not possible to accede to requests from Governments to have their replies published in full.

9. Chapter II contains a general description of the other communications received and chapter III covers other present and future activities of the Special Rapporteur, such as visits to specific countries and communities.

## **I. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED**

### **Australia**

#### **Urgent appeals**

10. On 10 March 2005, the Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Australia expressing concern about reports they had received about efforts, apparently supported by the Government, to close down the Aboriginal and Torres Strait Islander Commission (ATSIC), a human rights organization. According to the source, the Government has taken steps to transfer the Commission's substantive responsibilities to other State-funded bodies that do not enjoy the same independence as the Commission, and to withdraw its funding and close it down entirely. It was also reported that legal charges had been brought against some ATSIC members. The Commission on Human Rights experts requested the Government to provide information on the allegations in order to ensure full compliance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and other relevant provisions of international human rights law.

#### **Communications received**

11. On 21 April 2005, the Special Rapporteur received a reply from the Government of Australia to the joint urgent appeal sent on 10 March 2005 concerning the ATSIC situation.

In its reply, the Government reported that the decision to abolish ATSIC did not breach Australia's Racial Discrimination Act 1975 or its international obligations to ensure that peoples of all races are treated equally. The Government said that, after 14 years in operation, ATSIC had not made a great deal of difference to the lives of indigenous Australians through either indigenous-specific or mainstream services or through effective representation. The Government reported that a review of the work of ATSIC (after extensive consultations with the communities concerned) had confirmed that there was widespread dissatisfaction and disillusionment with the ATSIC model, particularly at the national level. The Government said there were a number of organizations in Australia that played an important role in the promotion and protection of human rights, such as the Human Rights and Equal Opportunity Commission, and others that had specific responsibilities in the area of social justice for Aboriginal and Torres Strait islanders. The Government pointed out that there were at least a dozen such non-governmental organizations in consultative status with the Economic and Social Council. Furthermore, there was no law or government policy in Australia to prevent the establishment of new human rights organizations or to prevent them from participating in the work of the United Nations human rights mechanisms.

### **Observations**

12. The Special Rapporteur thanks the Government of Australia for its reply.

### **Bolivia**

#### **Urgent appeals**

13. On 19 January 2005, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, 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 Bolivia expressing concern about the situation of members of the Centre for Legal Studies and Social Research (CEJIS), and particularly that of Cliver Rocha, a lawyer whose case had been the subject of two urgent appeals sent on 2 April and 7 May 2003 respectively. According to the information received, on 5 January 2005, 30 armed men, allegedly leaders of the Asociación Agroforestal de Riberalta (ASAGRI), destroyed the CEJIS office and burned several documents related to land ownership. The information also claimed that the attack was accompanied by a general warning to leave the area within 48 hours and a threat to burn Cliver Rocha alive if he returned to Riberalta. ASAGRI also allegedly threatened other organizations working on agrarian issues and the indigenous communities living in Miraflores. At the time of the communication, the people who had been threatened complained that there had been no response from the authorities. It was feared that the threats received by Cliver Rocha and other members of CEJIS were related to their work as human rights defenders, and especially to the legal assistance they provided for the indigenous and peasant communities fighting over the right to land. The Commission on Human Rights experts requested the Government to provide information on the measures taken by the authorities in accordance with the relevant international instruments to ensure that the rights of the above-mentioned persons are respected.

### **Communications received**

14. On 11 April 2005, the Special Rapporteur received a reply from the Government of Bolivia to the joint urgent appeals sent on 19 January 2005 and on 2 April and 7 May 2003, concerning the alleged break-in and damage at the CEJIS offices. The Government reported that on 6 January, after being informed of the facts, the regional office in Riberalta had sent a note to the public prosecutor in that city calling for an investigation and for the punishment of those responsible for the acts mentioned in the communication from the Special Rapporteur. It also reported that several meetings had been held with members of ASAGRI to urge them to change their approach, and that the area had been placed under surveillance to avoid an escalation of the violence. On 19 January, a commission consisting of representatives of the Ministry of Indigenous Issues, the Government and the Office of the Deputy Minister of Justice had been assigned to deal with the complaint submitted by the Central Indígena de la Región Amazónica de Bolivia in relation to the attack on CEJIS. In its letter, the Government also stated that steps had been taken to speed up the proceedings against the alleged perpetrators. On 23 January 2005, another high-level government commission had gone to the city of Riberalta and signed a memorandum of understanding. In its reply, the Government reported that three ministries had issued a joint decision on 9 February 2005 to guarantee the right of the indigenous peoples in the Beni, Pando and La Paz departments to their original communal lands and to provide immediate assistance whenever there was a threat to the lives or physical or moral integrity of members of those communities. It was also reported that the Deputy Minister of Justice had appointed an official as a member of the Commission to observe the situation in Riberalta at first hand.

### **Observations**

15. The Special Rapporteur thanks the Government of Bolivia for its reply.

## **Botswana**

### **Urgent appeals**

16. On 16 November 2005, the Special Rapporteur, together with the Representative of the Secretary-General on the human rights of internally displaced persons and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an urgent appeal to the Government of Botswana concerning the human rights situation of hundreds of Bushmen reportedly relocated from their homes and traditional hunting grounds in the Central Kalahari Game Reserve, who claimed that their rights over land and natural resources in the Central Kalahari had been violated. The case was the subject of a previous communication sent by the Special Rapporteur on 31 August 2005. In the latest communication, the Commission on Human Rights experts expressed concern about additional information received concerning the alleged deterioration in the situation of both the people still living in the reserve and those who had been relocated in recent years. According to the information received, the Bushmen outside the reserve continue to face urgent problems that prevent them from fully enjoying their human rights, including health problems, the lack of access to adequate housing and a reasonable standard of education, and malnourishment. The claims concerning the lack of prior and informed consent for their relocation, as well as the allegations of harassment

by the security forces, continue to give the Commission on Human Rights experts cause for concern; they drew attention to the Guiding Principles on Internal Displacement and to Commission on Human Rights resolutions 1993/77 and 2004/28 on the prohibition of forced evictions. The special rapporteurs said they were aware that judicial proceedings were under way in connection with the above-mentioned situation but were concerned at their protracted length and the fact that they only addressed part of the problem. They concluded that the problems raised would not be solved definitively without an agreement and conciliation between all the parties, and expressed an interest in making an official visit to the country. They also asked the Government to keep them informed of developments in the case.

### **Communications sent**

17. On 31 August 2005, the Special Rapporteur sent an allegation letter to the Government of Botswana requesting information on the human rights situation of hundreds of Bushmen who had reportedly been relocated from their homes and traditional hunting grounds in the Central Kalahari Game Reserve, and also on developments in the ongoing court case in connection with this situation. According to the information received, there was an increased presence of security forces patrolling the reserve to keep the Bushmen out, which had led to the detention of representatives of many communities. The detainees were allegedly tortured. It was also reported that one of the detainees, Mr. Selelo Tshiamo, had died as a result of the treatment he had received. Recalling his letter of 27 November 2003, in which he had stressed that constructive dialogue between the parties was the only way to find a lasting solution, the Special Rapporteur requested the Government to provide information on the allegations and to take all possible steps to open a dialogue in relation to the court case with the communities concerned. He also reiterated his interest in making an official visit to the country to discuss the situation of the indigenous peoples of Botswana with the authorities, indigenous communities and non-governmental organizations.

### **Observations**

18. In the past three years, the Special Rapporteur has been monitoring the human rights problems facing the Bushmen of Botswana and has expressed his deep concern about the forcible relocation of hundreds of Bushmen far from their traditional homes and hunting grounds in the Central Kalahari. He is particularly concerned that Botswana, a country with a good reputation in the field of human rights, has not responded to his concerns, despite the request by the Commission on Human Rights for Governments to cooperate fully with him, including by reacting promptly to his urgent appeals, in accordance with Commission on Human Rights resolution 2005/51, paragraph 13. In this context, the Special Rapporteur wishes to reiterate his interest in visiting the country, and the above-mentioned region in particular, and takes this opportunity to appeal to the Government of Botswana to reply to the urgent appeals sent to it.

## **Brazil**

### **Urgent appeals**

19. On 18 March 2005, the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an urgent

appeal to the Government of Brazil concerning the situation of a large number of families from the Guarani-Kaiowa community living in Cerro Marangatú in the State of Mato Grosso do Sul. According to the information received, eviction orders have been issued to these families, although the orders were temporarily suspended on 2 March 2005. According to the source, if the orders are executed, the families concerned will be placed in a vulnerable situation as they will lose their crops, their main source of nutrition. It was also reported that the small area occupied by the community had been demarcated in 2004 as indigenous territory, this being the penultimate step in the process of returning indigenous land. If the federal Government of Brazil were to confirm that the territory was Guarani-Kaiowa land, in accordance with its constitutional and international commitments, the families could be spared from poverty. The special rapporteurs requested the Government to resolve the issue of land demarcation and to provide information on the steps taken in this regard.

20. On 7 July 2005, the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an urgent appeal to the Government of Brazil concerning the situation of approximately 100 members of the Guarani indigenous community living on the Floresta ranch, in the indigenous territory of Sombreiro, municipality of Sete Quedas. According to the information received, on 26 June 2005, Guarani Indians occupied a part of the ranch traditionally seen as indigenous land. According to the source, in response to the occupation, some cattle ranchers opened fire on them, killing Dorival Benites and wounding four other villagers. It was also reported that the same cattle ranchers had been rounding up Guarani villagers and threatening to kill them. The special rapporteurs requested the Government to provide information on any steps taken to resolve the situation and to forestall further violence against the Guarani indigenous community.

### **Communications sent**

21. On 29 September 2005, the Special Rapporteur sent an allegation letter to the Government of Brazil concerning the detention of Aurivan dos Santos, leader of the Truka indigenous community in north-eastern Brazil, and the deaths of two members of his family, his brother Adenilson dos Santos and the latter's 17-year-old son Jorge dos Santos. Another member of the community, Marcos José dos Santos, was also allegedly seriously injured. According to the information received, on 30 June 2005, while Adenilson dos Santos and his son Jorge dos Santos were attending, along with another 400 community members, an event on Ilha Assunção to celebrate the agreement reached with the Government on the reconstruction of roads and houses, they were attacked by four unidentified military police officers. The officers reportedly opened fire in response to violence by participants. It was feared that these attacks on the Truka community were related to the success of its leaders in uniting the community in the fight for land. The Special Rapporteur requested the Government to take all necessary measures to guarantee respect for the rights and freedoms of the above-mentioned persons and to punish those responsible for the attacks.

### **Communications received**

22. On 26 May 2005, the Special Rapporteur received a reply from the Government of Brazil concerning the official recognition of indigenous lands, including those in Cerro Marangatú, which were the subject of the urgent appeal sent on 18 March 2005. In its reply, the Government



reported that, over a two-year period, 9.1 million hectares belonging to indigenous peoples had been recognized, including the 1.7 million hectares of the Raposa Serra do Sol area. As for the situation of the Guarani-Kaiowa living in Cerro Marangatu, the Government said that the President had signed a decree on 28 March 2005 officially recognizing the area as their land. This measure, together with the steps taken to ensure access to basic services, especially health care and education, and the sustainable development of the communities, has become a point of reference for the federal Government's policy on the protection and promotion of indigenous rights.

23. On 19 July 2005, the Special Rapporteur received a reply from the Government of Brazil to the allegation letter sent on 7 July 2005 concerning, among other things, the death of Dorival Benites. The Government expressed its regret for the death of Dorival Benites in clashes with illegal occupants of the land and explained that assistance was being provided to those who had been injured and that the federal police and the public prosecutor were conducting the necessary investigations. The Government confirmed that the Sombreiro region was in the process of being recognized as indigenous territory.

24. On 1 November 2005, the Special Rapporteur received a reply from the Government of Brazil to the allegation letter sent on 29 September 2005 concerning the detention of Aurivan dos Santos, leader of the Truka indigenous community in north-eastern Brazil, the deaths of two members of his family, his brother Adenilson dos Santos and Jorge dos Santos, and the serious injuries inflicted on another member of the community, Marcos José dos Santos. In its reply, the Government said that, with regard to the deaths of the two Truka indigenous persons and the injuries inflicted on the third, immediate steps had been taken by the authorities to investigate the crimes and punish the perpetrators. As for Aurivan dos Santos, the Government reported that, after a fair trial in which he had enjoyed his full rights to a defence, he was serving his sentence under house arrest.

### **Observations**

25. The Special Rapporteur thanks the Government of Brazil for its reply.

## **Chile**

### **Urgent appeals**

26. On 24 March 2005, the Special Rapporteur sent an urgent appeal to the Government of Chile concerning the hunger strike undertaken by Mapuche prisoners in the Algol jail. According to the information received, Jaime Marileo, Patricio Marileo, Jaime Huenchullan, Juan Carlos Huenulao, Jorge Manquel and Patricia Troncos, Mapuche prisoners held in the same jail, went on hunger strike on 7 March 2005. Since then, they had received no independent medical assistance at all inside the prison and their relatives had been refused permission to bring in a doctor from outside. The prisoners are said to have gone on a total hunger strike to protest against the allegedly arbitrary detention of all the Mapuche prisoners in the Traiguén, Algol and Concepción jails and to call for an end to the harassment and repression of Mapuche

communities. According to the information received, the strikers were in a critical condition. Medical assistance had apparently been requested through the Mapuche health programme but refused by the Ministry of Justice and the Ministry of Health. The Special Rapporteur requested the Government of Chile to provide information of any kind on the current situation of the strikers.

27. On 9 June 2005, the Special Rapporteur, together with the Special Rapporteur on the right to freedom of opinion and expression, sent an urgent appeal to the Government of Chile concerning the recent detention of Pedro Cesar Cayuqueo Millaqueo, a student of journalism and editor of the Mapuche news website *Colectivo Lientur* and the *Azkintuwe* newspaper. According to the information received, Mr. Cayuqueo Millaqueo was detained on 2 June 2005 for not paying a fine imposed on him after he had pleaded guilty to participating in 2003 in a protest over a claim to land considered by him and by the Mapuche community to be traditional Mapuche land. It was feared that Mr. Cayuqueo Millaqueo had been detained on account of his work in defence of his people's rights rather than the mandatory application of the law. The special rapporteurs requested the Government to provide information on the legal status of Mr. Cayuqueo Millaqueo and to take all necessary measures to guarantee his right to freedom of expression.

28. On 2 September 2005, the Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Chile concerning the situation of Juana Calfunao Paillalef, a leader of the Mapuche indigenous community in the municipality of Cunco, Region IX (Araucanía). Juana Calfunao Paillalef is a founder member of the non-governmental organization Comisión Ética Contra la Tortura and is active in the promotion and protection of the rights of her community. Her case has already been the subject of a previous urgent appeal, which was sent by the Special Rapporteur on 23 August 2004. According to the information received, the house where she was living with her family was burned down for the second time on 22 July 2005. Neighbours managed to rescue her daughter from the fire. Juana Calfunao Paillalef and her family reportedly made statements to the local prosecutor and police lawyers and investigators. According to the source, no progress has been made in the investigation. It should be stressed that the house was still being rebuilt after being burned down for the first time in June 2004. It was feared that the fire was a further attempt to scare Juana Calfunao Paillalef and her family, so that she would give up her work in defence of the rights of her indigenous community. Concern was also expressed about the safety and lives of Juana Calfunao Paillalef and her family.

### **Communications sent**

29. On 19 July 2005, the Special Rapporteur sent an allegation letter to the Government of Chile concerning the trials of the traditional leaders Pascual Pichún and Aniceto Catriman and other Mapuche leaders, which were under way. Following his visit to Chile, the Special Rapporteur had expressed concern in his earlier communications to the Government about the way the trials of these individuals were being conducted, especially with regard to the guarantees of due process, as a result of the application of anti-terrorist legislation. On the basis of the reports received about the new trial of the Mapuche leaders, the Special Rapporteur considered

that to charge the above-mentioned traditional leaders with conspiring to commit a terrorist act was disproportionate to the acts of which they were accused. The Special Rapporteur called on the Government to take action to ensure an equitable and fair outcome to the case. In a press release on 20 July 2005, the Special Rapporteur publicly expressed his concern and sought the intervention of the President, with all due respect for the independence of the judiciary, to ensure an equitable and fair outcome to the case.

### **Communications received**

30. On 10 October 2005, the Special Rapporteur received a reply from the Government of Chile to the joint urgent appeal sent on 2 September 2005 expressing concern about the situation of Juana Calfunao Paillalef, a leader of the indigenous Mapuche community in the municipality of Cunco, Region IX, whose house had been burned down for a second time. In its reply, the Government reported that, although Ms. Calfunao claims the fire on 22 July 2005 was a new attack against her, she did not name any individuals in the complaint she submitted to the police and the local prosecutor. According to the Government, she merely accused neighbouring big landowners in general terms of being responsible. Police investigators are currently investigating the case and, on the instructions of the public prosecutor of Temuco, the police have been patrolling the village where Ms. Calfunao lives since 28 July.

### **Observations**

31. Shortly after his press release was issued, the Special Rapporteur was informed by various organizations that Pascual Pichún and Aniceto Norín had been cleared of conspiracy to commit a terrorist act, for which they were being tried in mid-2005. The charges against all those on trial were dropped. The Special Rapporteur considers the court's decision significant because it threw out all the charges and declared, according to the information he was given, that the accused had done nothing underhand and had not used violence when they occupied the estates. As this report was being finalized, the sentence was in the process of being executed. The Special Rapporteur is still concerned, however, about the continued imprisonment of Pichún and Norín, who are currently serving sentences of five years and a day for the offence of making terrorist threats, of which they were convicted in 2003.

## **Colombia**

### **Urgent appeals**

32. On 28 February 2005, the Special Rapporteur, together 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 about the situation of Gentil Cruz, president of the Asociación Colombiana Interdisciplinaria del Desarrollo (ASINTERDESA), which, among other things, promotes the human rights of the Kogui people. According to the information received, Gentil Cruz disappeared on 11 November 2004 on his way to a meeting with the president of the municipal council of Orinoco, a cattle rancher. Mr. Cruz reportedly disappeared on the "Caribbean highway" connecting Santa Marta, the capital of the department of Magdalena, with

Riohacha, the capital of the department of Guajira. According to the source, he was kidnapped by paramilitaries of the Autodefensas Unidas de Colombia (United Self-Defence Forces of Colombia) (AUC). It was feared that the disappearance of Gentil Cruz was related to his work as a defender of the human rights of indigenous peoples, and concern has been expressed about his safety and physical and mental integrity. The Commission on Human Rights experts requested the Government to provide information on the steps taken by the authorities to ensure that the rights of Gentil Cruz are respected.

33. On 11 March 2005, the Special Rapporteur, together 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 about the situation of members of various organizations defending indigenous and farm workers' rights, particularly José Antonio Guerrero García, Edilia Mendoza, Everto Díaz and Germán Bedoya. According to the information received, a pamphlet bearing the logo of the AUC Bloque Capital was slipped under the door of the headquarters of the Federación Nacional de Cooperativas Agrarias (FENACOA) on 10 February 2005. The pamphlet allegedly contained death threats against José Antonio Guerrero García, Edilia Mendoza, Everto Díaz and Germán Bedoya. According to the information received, José Antonio Guerrero García had been threatened previously, despite having been included in the interior ministry's protection programme for political and trade-union leaders. Moreover, several members of the executive of the agricultural workers' trade-union federation FENSUAGRO were reported to have been followed on 10 November 2004. It was feared that these new threats against four high-ranking officials were related to their work in providing assistance and information to farm workers and indigenous communities. It was claimed that these threats were part of an intimidation campaign against people working on the issue of land rights, as witnessed by the killings of Julio Alfonso Poveda, a farmers' leader and co-founder of FENACOA, and Benedicto Caballero, the vice-chair of the FENACOA board of directors. The Commission on Human Rights experts requested the Government to provide information on the measures taken by the authorities in accordance with the relevant international instruments to protect the rights of the above-mentioned persons.

34. On 30 June 2005, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Colombia concerning the situation of the farm workers detained in the municipality of Totoro, department of Cauca. According to the information received, on 24 June 2005, around 350 farm workers began a peaceful occupation of a road in Totoro in support of claims over land tenure and respect for human rights. According to the source, the combined forces of the army and the police arrested the farm workers Manuel Eduardo Managua Chantre, Luis Ortega and Joaquín Cometa and later detained another 70 farm workers. No information was provided on the place to which they were taken or on whether arrest warrants were produced. According to the source, the houses of these farm workers were burned down, and their captors photographed a rifle they had hidden in the bedding of one of them. Force was used to break into the house of Maria Jesús Calambas and Rodrigo Pisso, who were also

detained. The Commission on Human Rights experts requested the Government to provide information on the judicial inquiries undertaken to ensure that these people's right not to be arbitrarily detained and their right to physical and mental integrity are respected.

35. On 15 November 2005, the Special Rapporteur sent an urgent appeal to the Government of Colombia expressing concern about the difficult conditions in which communities of indigenous people, farm workers and Afro-Colombians were living in the department of Cauca. According to the information received, problems related to access to productive land had given rise to a tense and complex situation that had resulted in several injuries and several deaths. The Special Rapporteur stated in his letter that access by these groups to productive land in the Cauca region was the key to any substantial improvement in the economic and social situation there. The Special Rapporteur requested the Government to take all necessary measures to protect the rights and freedoms of the communities of indigenous people, farm workers and Afro-Colombians in the department of Cauca. He also asked the Government to take the necessary steps, in cooperation with the communities concerned, to prevent the above-mentioned situation from becoming the source of greater tension and conflict in the area.

### **Communications sent**

36. On 11 February 2005, the Special Rapporteur, together 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 allegation letter to the Government of Colombia concerning the case of two young indigenous men, Manuel Salvador López Fernández and José Eduardo Boscán Epinayu, and their mother, Francia Boscán, members of the Wayuu community. According to the information received, on 2 February 2005, in the city of Maicao, three men, allegedly belonging to a paramilitary group, broke into the house of Francia Boscán and threatened to kill her and her family. At 1 a.m. on 3 February 2005, José Eduardo Boscán Epinayu and Manuel Salvador López Fernández were reportedly killed. Their bodies were found close to the Venezuelan border, bearing the emblem of the AUC. It was feared that these killings were related to their work as human rights defenders and, in particular, to their peaceful opposition to the paramilitaries' control and monopoly of the most profitable economic and commercial activities in the border region. The Commission on Human Rights experts requested the Government to provide information on the measures taken by the authorities in accordance with the relevant international instruments to investigate and resolve the case in question.

37. On 2 September 2005, the Special Rapporteur, together with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, sent an allegation letter to the Government of Colombia requesting information on an alleged attack on Emerita Guauña, a 19-year-old indigenous student, in Purace, department of Cauca. According to the information received, Emerita Guauña was approached on 9 August 2005 by two soldiers in camouflage uniform from the José Hilario López battalion, who threatened and intimidated her. Then, in the presence of an indigenous boy, one of them raped her, telling her, "We are doing this to you because you are a guerrilla". According to the source, on 10 August 2005, several indigenous villagers, after learning what had happened, requested the officers in

command stationed in the area not to transfer or relocate any of their troops until the perpetrators had been identified. On 11 August 2005, villagers met a soldier who admitted that a member of the battalion had been responsible for the rape, but refused to give the man's name. The Commission on Human Rights experts requested the Government to provide detailed information on the case and to take all necessary measures to protect the rights and freedoms of the above-mentioned person and to investigate and impose appropriate sanctions on whoever was responsible.

### **Communications received**

38. On 11 July 2005, the Special Rapporteur received a reply from the Government of Colombia to the joint urgent appeal sent on 28 February 2005 expressing concern about the alleged disappearance of Gentil Cruz, president of the Asociación Colombiana Interdisciplinaria del Desarrollo (ASINTERDESA), on 11 November 2004. In its reply, the Government stated that, according to the police report produced after an investigation, Gentil Cruz had been held by members of the AUC belonging to the Bloque de Resistencia Tayrona, who operate outside the law within the jurisdiction of the municipality of Guachaca. As yet, there was no news of the whereabouts of Gentil Cruz; nor was there any indication he was still alive. The Government of Colombia said it intended to continue with the investigations and would monitor their progress and outcome.

39. On 25 August 2005, the Special Rapporteur received a reply from the Government of Colombia to the joint urgent appeal sent on 30 June 2005 concerning the alleged detention of Manuel Eduardo Managua Chantre, Luis Ortega Calambas and Joaquín Cometa. In its reply, the Government said that the statement released by the Comité de Solidaridad con los Presos Políticos was incorrect, since the main aim of police procedure was to prevent the occurrence of unfortunate incidents between the indigenous communities and farm workers as a result of the serious tension between them. On 24 June 2005, 43 individuals (not 70) had been taken to the Cauca police department for blocking a road as part of a demonstration they were holding on that day. The State attorney had talked with these 43 individuals, checked that they had not been ill-treated and seen that they were taken home by bus on the same day. Police officers had searched the area to see if there were any weapons but found none, contrary to the claim in the statement that a rifle had been discovered. In a later reply, received on 21 November 2005, the Government added that the police operation involved the maintenance of public order, not arbitrary detention. Some members of the community had been taken, in a peaceful manner, to the city of Popayán to have their identities and communities of origin checked, and to enable an inter-institutional meeting to be held to try to reach an agreement that would put an end to the roadblock. As a result of that meeting, an agreement not to resort to violence was reached with the demonstrators, and the road was cleared on the same day thanks to a deliberate and voluntary choice made by the farm workers.

40. On 19 December 2005, the Special Rapporteur received a reply from the Government of Colombia to the joint allegation letter sent on 2 September 2005 concerning the situation of the indigenous student Emerita Guauña. In its reply, the Government reported that a preliminary investigation had been opened on 11 August 2005 and that, during a visit in situ, statements had

been taken from both the victim and members of the General José Hilario López Infantry Battalion No. 7. The Government said it would forward the results of the investigation to the Special Rapporteur in due course.

### **Observations**

41. The Special Rapporteur thanks the Government of Colombia for its timely replies, which show its continued commitment to cooperate with him. The Special Rapporteur expresses concern about the ongoing threats against indigenous leaders and human rights organizations, as well as the acts of brutality committed in indigenous territory by the various parties to the conflict. The Special Rapporteur firmly condemns what happened in the case of Emerita Guaña and asks the Government to undertake the necessary measures to avoid impunity in this case.

## **Guatemala**

### **Urgent appeals**

42. On 15 July 2005, the Special Rapporteur, together 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 Guatemala concerning the situation of Mario Antonio Godínez López, the 37-year-old general coordinator of the Asociación para la Promoción y el Desarrollo de la Comunidad Ceiba. According to the information received, at 7.40 a.m. on 7 July 2005 Mario Antonio Godínez López received a threatening fax signed by the Grupo de Acción por la Paz de Huehuetenango telling it not to organize meetings of more than 20 people: the organization of any such meetings would be taken as an act of provocation. It was feared that these threats against Mario Antonio Godínez López were a blatant attempt to stop him from carrying on his work as a human rights defender, particularly his campaign against the mining companies. The Commission on Human Rights experts requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person and to impose appropriate sanctions on those responsible for the alleged violations.

### **Observations**

43. The Special Rapporteur regrets not having received a reply from the Government of Guatemala at the time of writing.

## **Guyana**

### **Communications sent**

44. On 2 March 2005, the Special Rapporteur sent an allegation letter to the Government of Guyana concerning amendments to the legislation relating to the Amerindian population in that country. According to the information received, the Amerindian Act is designed to strengthen internal democracy and accountability within Amerindian communities and would to a certain extent recognize the special relationship between indigenous communities and their lands.

A number of indigenous organizations have expressed concern to the Special Rapporteur about the role of the Ministry of Amerindian Affairs in relation to traditional village councils, especially with regard to the drafting or amendment of rules by the latter. In his letter, the Special Rapporteur noted that indigenous organizations would have preferred nominal oversight by the ministry, provided that the rules proposed by the village councils were in accordance with the new law and the Constitution of Guyana. Alternatively, oversight should have been delegated to the country's independent judicial authorities. Concerns had also been expressed about the fact that recognition of the special relationship between indigenous communities and their lands was not formulated in terms of a specific right. The Special Rapporteur believed it was very important to include in the proposed law a reference to the establishment of the Indigenous Peoples' Commission (art. 212 of the amended Constitution), in accordance with the mandate of the Commission as set out in the Constitution. The Special Rapporteur requested the Government to take account of the comments submitted by indigenous organizations and to consider extending the consultation process with a view to achieving consensus.

### **Observations**

45. The Special Rapporteur regrets not having received a reply from the Government of Guyana at the time of writing.

## **Honduras**

### **Urgent appeals**

46. On 4 February 2005, the Special Rapporteur, together 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 Honduras expressing concern about the physical safety of the members of the indigenous council of the Olominas community, particularly the indigenous land-rights activists Genaro Vásquez Lorenzo and Roberto Chicas Mejía. According to the information received, the latter were ambushed on 31 December 2004 by two armed men who opened fire on them, killing Higinio Hernández. Despite threats against them, Genaro Vásquez Lorenzo and Roberto Chicas Mejía made statements to the authorities and identified one of the murderers as an opponent of the indigenous council of which they were members. According to the source, the incident was part of a campaign to intimidate the inhabitants of Olominas and get them to renounce their rights to the land. It was also reported that, before he was killed, Higinio Hernández Vásquez, had received several death threats in connection with his work in defence of the community's rights over the land. It was feared that the threats received by Genaro Vásquez Lorenzo and Roberto Chicas Mejía were related to their work as indigenous land-rights activists. The Commission on Human Rights experts requested the Government to provide information on the measures taken by the authorities in accordance with the relevant international instruments to ensure that the rights of the above-mentioned persons are respected.

47. On 15 June 2005, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government of Honduras concerning the situation of



Feliciano Pineda, an indigenous leader of the Vertientes community in the municipality of Gracias, department of Lempira. According to the information received, on 5 June 2005 Feliciano Pineda was seriously wounded by four men armed with machetes allegedly linked to a powerful family of local landowners who had a dispute with the Montaña Verde communities over the rights to the land on which they lived. According to the source, when Feliciano Pineda was taken to hospital he was arrested, and when the communication was sent he was still in prison, suffering from a serious infection caused by his injuries and unable to eat. The police detained his attackers but they were released on bail. It was also reported that other indigenous leaders of the same community faced similar charges and were also in danger. The attackers reportedly threatened to kill Feliciano Pineda's wife if she did not leave the area. The Commission on Human Rights experts requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person and to impose appropriate sanctions on those responsible.

### **Observations**

48. The Special Rapporteur regrets not having received a reply from the Government of Honduras at the time of writing.

## **Mexico**

### **Urgent appeals**

49. On 16 February 2005, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, 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 concerning the situation of insecurity and danger allegedly facing Otilia Eugenio Manuel, founder of the Organización del Pueblo Indígena Tlapaneco (OPIT). According to the information received, on 9 December 2004 Ms. Manuel received an anonymous letter containing death threats. Members of her family later noticed that they were being observed by several individuals, who slipped away when they were spotted. This surveillance and intimidation of the family of Otilia Eugenio Manuel and members of OPIT reportedly lasted throughout January. It was also reported that the threats and harassment had continued even though the Inter-American Commission on Human Rights had called on the Mexican Government to adopt the necessary precautionary measures. It was feared that these acts were related to Otilia Eugenio Manuel's work in defence of two indigenous persons, Me Phaa Valentina Rosendo Cantu and Inés Fernández Ortega, who claimed to have been raped and tortured by soldiers. The Commission on Human Rights experts requested the Government to provide information on the steps taken to protect the rights of the above-mentioned person.

50. On 4 May 2005, the Special Rapporteur, together with 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 about the situation of Otilia Eugenio Manuel, founder of the Organización del Pueblo Indígena Tlapaneco, which had already been the subject

of an earlier urgent appeal sent on 16 February 2005. According to new information received, as she was leaving the Montaña Tlachinollan human rights centre on 14 April 2005, Otilia Eugenio Manuel sensed she was being watched from a grey car without a number plate and left in a taxi. On Friday 15 April 2005, as she left her house, she noticed the same grey vehicle slowly following her before parking in front of the office she had entered. When she left, the car again set off in the direction of her house. Ms. Manuel saw five people inside the car, and recognized one of them, as she had done the day before, as a member of the judicial police. Ms. Manuel reportedly saw the same vehicle parked in front of the Guerrero judicial police headquarters on the next day. It was feared that these acts of intimidation were related to Ms. Manuel's work in defence of two indigenous persons, Me Phaa Valentina Rosendo Cantu and Inés Fernández Ortega, who claimed to have been raped and tortured by soldiers. The Commission on Human Rights experts requested the Government to provide information on the steps taken to protect the rights of the above-mentioned person.

51. On 3 October 2005, the Special Rapporteur, together 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 Mexico expressing concern about the situation of Teodoro Pérez Pérez, a Tsotsil indigenous person from the Yabteclúm community in the municipality of Chenalhó, State of Chiapas. His case had already been the subject of a communication sent by the Special Rapporteur on 19 July 2005. According to the allegations received, two intimidating individuals wearing the uniform of the Chiapas community police had visited the house of Teodoro Pérez Pérez on several occasions since 20 August 2005, refusing to say who they were or why they were there when questioned by the wife of Mr. Pérez Pérez. It was feared that these acts of intimidation aimed at Mr. Pérez Pérez were in retaliation for the fact that the Tsotsil indigenous persons Teodoro Pérez Pérez and Juan Pérez Pérez had filed a criminal complaint for torture with the State prosecutor-general against two members of the community police. The Commission on Human Rights experts requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person and to investigate, prosecute and impose appropriate sanctions on whoever was responsible for the alleged violations.

52. On 3 October 2005, the Special Rapporteur, together with the Special Rapporteur on the question of torture, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, sent an urgent appeal to the Government of Mexico concerning the situation of Olga Isabel León Victoria and Zoila Reyes Santiago, of the Mixteca indigenous community in San Isidro Vista Hermosa, in the district of Tlaxiaco, State of Oaxaca. According to the information received, 17-year-old Olga Isabel León Victoria was kidnapped on 29 August 2005 and, after being taken to an unidentified place, was raped by her male captors. On the same day, her family received an anonymous call telling them that Olga had been kidnapped by the authorities of the municipality of Santa Cruz Nundaco. On 30 August 2005, Olga Isabel was reportedly forced to call Zoila Reyes Santiago, a well-known leader of the San Isidro group, to say that her captors had intended to kidnap Zoila Reyes' daughter, not her. Olga Isabel was reportedly released 40 km from Santa Cruz Nundaco on 31 August 2005. Her kidnappers reportedly gave her an envelope

containing threats against Zoila Reyes and her family. It was also alleged that Olga Isabel and her family were subjected to constant harassment, threats and intimidation. According to the information received, members of Olga Isabel's family were followed by someone in a car with tinted windows and Olga Isabel was intimidated on several occasions. The Commission on Human Rights experts expressed concern about the alleged behaviour of the authorities, who appeared reluctant to accept the family's complaints of harassment because, according to the source, there was no proof that any precautionary measures had been taken by the authorities to protect Olga and her family. The experts requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned persons and to investigate, prosecute and impose appropriate sanctions on whoever was responsible for the alleged violations.

53. On 7 October 2005, the Special Rapporteur sent an urgent appeal to the Government of Mexico expressing concern about the forced displacements of several indigenous Chol families living in the Andrés Quintana Roo community in the municipality of Sabanilla, State of Chiapas, as a result of their being attacked, threatened and intimidated by individuals linked with the allegedly paramilitary group known as Paz y Justicia. According to the information received, as at 27 September 2005, 12 families, totalling 75 persons, were still displaced in Tapijulapa, Tabasco, out of a total of 20 families displaced since 9 June 2005. The families said they had not gone back to the Andrés Quintana Roo community for fear of being attacked again by the Paz y Justicia group. According to the information received, the Commission for the Reconciliation of the Communities in Conflict in Chiapas was unable to guarantee the displaced families a safe return to their community. On 12 August 2005, an application for precautionary measures was submitted to the Inter-American Commission on Human Rights. Concern was expressed about the lack of guarantees for the security and physical and mental integrity of the members of several indigenous and peasant communities in Chiapas, particularly in Andrés Quintana Roo, Sabanilla. The Special Rapporteur requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned persons and to impose appropriate sanctions on whoever was responsible for the alleged violations.

### **Communications sent**

54. On 19 July 2005, the Special Rapporteur, together with the Special Rapporteur on the question of torture, sent an allegation letter to the Government of Mexico concerning the situation of Juan Pérez Pérez and Teodoro Pérez Pérez, two Tsotsil indigenous persons from the Yabteclúm community in the municipality of Chenalhó, State of Chiapas. According to the information received, at around 9 a.m. on 10 June 2005 Juan Pérez Pérez was arbitrarily detained by two police officers who made him get into a police car and repeatedly hit him with the butts of their rifles while trying to find out who had ambushed a van transporting money. It was also reported that, at around 9 p.m. on 19 June 2005, Teodoro Pérez Pérez had been detained by one of those officers and other police officers from Yabteclúm, who stole 500 pesos from him, beat him and threatened to rape him. He was finally taken to the local jail, from which he was released the following day. The special rapporteurs requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned persons and to impose appropriate sanctions on whoever was responsible for the alleged violations.

55. On 14 October 2005, the Special Rapporteur, together with the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, sent an allegation letter to the Government of Mexico in which they drew attention to Commission on Human Rights resolution 2005/15, entitled “Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”, highlighted some of the principles set out in that resolution and expressed concern about the use of pesticides on Yaqui land. The special rapporteurs also expressed concern about allegations that the community had not been informed about a training session held in Sonora to ensure that pesticides were properly handled in the Yaqui valley. The organization of this event had been mentioned in a communication received from the Government on 7 January 2005. The source reported that, at the time of the communication, no warnings, instructions, precautions or training had been provided for farmers or the Yaqui community in the surrounding area. The special rapporteurs expressed concern about the apparent failure to comply with domestic environmental legislation on the use of pesticides and requested the Government to provide information on the above-mentioned allegations, as well as on any steps taken to remedy the situation.

### **Communications received**

56. On 24 February 2005, the Special Rapporteur received a reply from the Government of Mexico to the joint urgent appeal sent on 16 February 2005 concerning the situation of Otilia Eugenio Manuel. The Government reported that a meeting had been held on 31 January 2005 between representatives of the Government and the people concerned, and that progress had been made in the implementation of protective measures. The Government had undertaken to arrange for twice-weekly patrols by members of the Federal Preventive Police, to arrange a meeting with the representative of the Attorney-General of the Republic in the State of Guerrero, so that a complaint could be filed, and to inform the relevant authorities that Otilia Eugenio Manuel and members of her family were the subject of precautionary measures granted by the Inter-American Commission on Human Rights. On 4 July 2005, in a further reply, the Government said it had convened two meetings with representatives of Otilia Eugenio Manuel to discuss, together with the relevant authorities, the implementation of, and compliance with, the measures needed to safeguard and protect the lives of Otilia Eugenio Manuel and her family. It was decided to provide police patrols, install a surveillance system in her house and take the necessary steps to have the incidents leading to the adoption of precautionary measures clarified by the judicial authorities. As a result of these steps, the persons concerned had filed a complaint with the Office of the Attorney-General of the Republic. According to the Government, the investigation was carried out in coordination with the Office of the Attorney-General of the State of Guerrero, but at the time of the communication it had produced no definitive results.

57. On 23 November 2005, the Special Rapporteur received a reply from the Government of Mexico to the joint urgent appeal sent on 3 October 2005 concerning the situation of Olga Isabel León Victoria and Zoila Reyes Santiago. In its reply, the Government said that the prosecution service in the State of Oaxaca was still conducting the preliminary investigation into the allegations made by Olga Isabel. With the assistance of a forensic doctor from the Office of the State Attorney-General, Olga Isabel had been physically examined and her injuries recorded. The Government reported that Olga Isabel had made a supplementary statement to the effect that

she was not absolutely sure that the offences against her had been committed by the authorities of Santa Cruz Nundanco, Tlaxiaco, Oaxaca. As far as criminal or disciplinary sanctions were concerned, the Government pointed out that at the time of writing those responsible had not been identified. The Government said that, since neither Olga Isabel León Victoria nor the members of her family saw any urgent need for measures to protect them, the State institution had not taken any steps to protect Olga Isabel León Victoria or Zoila Reyes Santiago.

58. On 23 December 2005, the Special Rapporteur received a reply from the Government of Mexico to the joint urgent appeal sent on 3 October 2005 concerning the situation of Juan and Teodoro Pérez Pérez. In its reply, the Government said that the Chiapas State prosecution service had been informed of the incidents reported by the above-mentioned persons and had opened preliminary investigations into those responsible for the offences of torture and deprivation of liberty. As regards the measures required to safeguard the physical and mental integrity of Juan and Teodoro Pérez Pérez and the follow-up to the investigations, the Government said that these would be determined by the special prosecutor for offences involving public servants in accordance with the law.

### **Observations**

59. The Special Rapporteur thanks the Government of Mexico for its prompt replies to his letters and welcomes the explanation provided in most cases. He trusts he will receive information on developments in the case of Olga Isabel León Victoria and again recommends that the Government should consider calling on the assistance of an independent body to investigate cases in which there are disputed and conflicting accounts of events.

## **Myanmar**

### **Communications sent**

60. On 29 September 2005, the Special Rapporteur sent an allegation letter to the Government of Myanmar requesting information about an alleged raid by government soldiers on the village of Tagu Seik, Einme, which had resulted in the death of one person. According to the information received, the army surrounded Tagu Seik on 7 July 2005, searching and ransacking the village on suspicion that the villagers had contacts with the Karen National Union (an armed opposition group) and were hiding weapons and explosives, though none were found. According to the source, an indigenous local schoolteacher called Stanford died during interrogation as a result of being tortured, including with electric shocks. It was also reported that around 16 people, most of them from the Karen ethnic group, had been detained, including members of the National League for Democracy. Those detained were allegedly interrogated at an interrogation centre set up in Tagu Seik by soldiers based in Einme, and were eventually released on 12 August 2005. The Special Rapporteur requested the Government to take all necessary measures to protect the rights and freedoms of the above-mentioned persons and to investigate, prosecute and punish those responsible.

### **Observations**

61. The Special Rapporteur regrets not having received a reply from the Government of Myanmar at the time of writing.

## Nicaragua

### Urgent appeals

62. On 18 November 2005, the Special Rapporteur, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent an urgent appeal to the Government of Nicaragua concerning the plight of the Mayangna indigenous community of Awas Tingni, on the Atlantic coast of Nicaragua, as a result of violations of their rights over land, territory and natural resources, as recognized by the Inter-American Court of Human Rights. According to the information received, the failure to demarcate or grant title to the community lands in compliance with the Court's judgement of 31 August 2001, despite the undertaking given by the Government, has allowed violations of the property rights recognized in the judgement to continue. It has also led to new threats to the cultural integrity and physical survival of the Awas Tingni community as a result of the activities of third parties on their ancestral territory. In their letter, the special rapporteurs reminded the Government of its international commitments and requested it to comply without further delay with the Court's judgement and resolution on provisional measures by completing the demarcation of the land in Awas Tingni, and to take all necessary measures to protect the land from the illegal acts of third parties pending the granting of title.

### Observations

63. The Special Rapporteur regrets not having received a reply from the Government of Nicaragua at the time of writing.

## Philippines

### Communications sent

64. On 16 March 2005, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter to the Government of the Philippines concerning the case of three brothers, Francisco Bulane, aged 32, Padilla Bulane, aged 29, and Prumencio Bulane, aged 28, farmers belonging to the B'laan indigenous group in Sitio Latil, Davao del Sur, Mindanao. The brothers were allegedly killed by members of the 25th Infantry Battalion of the Philippine army based in Santa Cruz. According to the information received, they had gone fishing in the river when 50 members of the battalion opened fire and killed them. The special rapporteurs requested the Government of the Philippines to provide information on the alleged killings and the investigations conducted to clarify the facts.

### Communications received

65. On 12 April 2005, the Special Rapporteur received a reply from the Government of the Philippines to the joint urgent appeal sent on 2 September 2003 concerning the alleged forcible eviction of 115 Manobo families in Lumintao, Quezon, in the province of Bukidnon, Mindanao. In its reply, the Government said that, according to the National Commission on Indigenous Peoples and the Philippine national police, the eviction had been carried out in accordance with the law, with the requisite notice and in a generally peaceful manner. According to the

Commission, 58, not 115, Manobo families were concerned. Concerning the alleged conflict over land, the Commission reported that an investigation conducted in the presence of both parties had found that the Manobo families were on the property of Jose Escaño. Hence the court had issued an order for their eviction. The Commission noted, however, that the demolition following their eviction was in violation of the court's ruling. It added that the police had taken no action to prevent the demolition as they had no authority to defy the Sheriff, who was presumed to be acting within the limits of his responsibility. The Government reported that the National Commission on Indigenous Peoples had taken several steps to provide immediate assistance to the Manobo families, arrange for their relocation with their prior consent, investigate the legality of the granting of title to the land in question and help the Manobo to submit their claim to their ancestral lands.

66. On 7 July 2005, the Special Rapporteur received a reply from the Government of the Philippines to the joint allegation letter sent on 16 March 2005 concerning the alleged killing on 8 February 2005 of Francisco Bulane, Padilla Bulane and Prumencio Bulane, members of the B'laan tribe, by soldiers of the 25th Infantry Battalion of the Philippine army. In its reply, the Government submitted a report from the Philippine national police stating that, in the view of the military, the incident had been a legitimate response to a clash with a rebel group. The military claimed that the three brothers were members of a splinter group of communist terrorists who had ambushed the soldiers. However, survivors of the attack reportedly claimed that the soldiers had attacked them for no reason. The Government reported that a case had been filed against the commanding officers of the 25th Infantry Battalion for attempted murder at the Office of the Public Prosecutor in the city of Digos, Davao del Sur.

### **Observations**

67. The Special Rapporteur thanks the Government for its prompt replies and trusts he will receive updated information on the ongoing investigations in the case of Francisco Bulane, Padilla Bulane and Prumencio Bulane.

## **Russian Federation**

### **Communications sent**

68. On 2 February 2005, the Special Rapporteur sent an allegation letter to the Government of the Russian Federation concerning the situation of the indigenous peoples on the island of Sakhalin, in the Russian Federation, who oppose the oil and gas drilling and the construction of a number of oil pipelines there. According to the information received, these projects are a threat to the indigenous peoples living in the area who rely on a traditional subsistence economy, as the projects will reduce their hunting and fishing grounds and thus their traditional sources of income and food. It was also reported that the indigenous peoples of Sakhalin had made several attempts to claim their rights during the implementation of the projects but their wishes had been ignored. Consequently, several indigenous groups had decided to launch a protest campaign, which included setting up roadblocks. The Special Rapporteur requested the Government to ensure that the voices of the indigenous communities were heard and their views taken into consideration. He also recommended that an independent environmental impact assessment of the projects under way should be carried out.

## **Communications received**

69. On 15 June 2005, the Special Rapporteur received a reply from the Government of the Russian Federation to the allegation letter sent on 2 February 2005 concerning the situation of the indigenous peoples on the island of Sakhalin, who oppose oil and gas drilling there. In its reply, the Government reported that, with a view to settling the conflict and addressing the legitimate concerns of the indigenous peoples, a congress had been held with the support of the indigenous authorities on 24 and 25 March 2005 in Yuzhno-Sakhalinsk, at which a council of plenipotentiary representatives of the indigenous peoples of Sakhalin had been established and designated as the fully empowered representative body of those peoples in the negotiations with the drilling companies. The Government pointed out that this was a very important step towards settling the conflict, since the oil companies had been insisting that it would be impossible to reach an agreement with the indigenous peoples as long as the latter had no representative body authorized to sign one. The Government also reported that the conflict between the indigenous peoples and the oil companies in Sakhalin was being constantly monitored by the Ministry of Regional Development of the Russian Federation. Various consultations had been held with the Sakhalin authorities and the Association of Indigenous and Minority Peoples of the North, Siberia and the Far East of the Russian Federation. In its letter, the Government said that efforts should be stepped up to have an agreement between the indigenous peoples of Sakhalin and the oil companies drawn up and signed. The Government said that the Ministry of Regional Development had sent a letter to the Federal Service for Environmental, Technological and Nuclear Supervision containing a proposal for the verification of oil companies' compliance with current environmental protection legislation.

## **Observations**

70. The Special Rapporteur thanks the Government of the Russian Federation for its prompt and full reply.

## **Thailand**

### **Urgent appeals**

71. On 10 August 2005, the Special Rapporteur, together 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 Thailand expressing concern about the situation of the Hmong people from the Lao People's Democratic Republic living in Petchabun province in north-eastern Thailand. According to the information received, between 6,500 and 7,000 Hmong, including 3,000 children, had occupied land in the Thai province of Petchabun near the border with the Lao People's Democratic Republic. An estimated 2,000 people had arrived in Thailand in the first few months of 2005, while another 4,500 to 5,000 were living in a camp in central Thailand. The camp has now reportedly been closed. It was also reported that approximately 1,400 of the Hmong who had been occupying the area since 2004 were provided with basic medical services by the Thai Government until 4 July 2005, when the Government suspended these services with a view to deporting the people concerned to their country of origin. The Thai Government reportedly



requested local authorities and landowners to evict the members of the Hmong community. As a result, the Hmong had camped alongside the roads or in municipal buildings and had experienced problems in gaining access to water, food and basic health care. The special rapporteurs requested the Government to provide information on the measures taken to protect the human rights of the Hmong and, in particular, to ensure that they have access to health care, food and essential services.

### **Observations**

72. The Special Rapporteur regrets not having received a reply from the Government of Thailand at the time of writing and will continue to monitor the situation.

## **II. OTHER COMMUNICATIONS AND INFORMATION RECEIVED**

73. During the period under review, the Special Rapporteur received a large number of communications - around 400 - including e-mails and letters on the situation of indigenous communities in almost every region of the world. In particular, the Special Rapporteur continued to receive information on the situation of communities such as the pygmies in the Congo or the Tartars of the Crimea in Ukraine. During the period under review, he also received updates on the situation of the communities dealt with in previous reports.

74. The Special Rapporteur also received general information on indigenous children in situations of conflict and specific information on the programmes and projects of a number of associations and foundations working in this area, as well as a number of studies on issues of great importance to indigenous peoples, such as the management of local government in various Asian countries.

75. The Special Rapporteur received information from the United States of America on the situation facing some indigenous communities such as the Navajo people and various Apache communities confronted with the expansion of a ski resort that is reportedly located on sites they consider sacred in the San Francisco Peaks. According to the complainants, this expansion would include cutting down trees over a large area as well as other activities that could damage the ecosystem in the area. The Special Rapporteur also received information on the situation of the O'odham people and on the border-related problems faced by this community, which straddles the current border between the United States and Mexico, including the construction of a border fence.

76. The Special Rapporteur also received, as in previous years, a number of communications containing information which, though relevant, did not justify action on his part for various reasons, such as a lack of basic information.

## **III. RELATED AND FUTURE ACTIVITIES**

77. Looking ahead, plans are being developed for a number of other country visits. In particular, the Special Rapporteur has been invited by the Government of Ecuador to visit that country, which he plans to do at the beginning of 2006. The Special Rapporteur has also told the

Governments of Kenya, the Russian Federation and Malaysia of his desire to visit their countries. In 2004 and 2005, he requested a visit to Botswana, but at the time of writing had received no reply.

78. The Special Rapporteur has considered a number of possibilities for following up on his country visits. The first would be to analyse the information provided by Governments, indigenous organizations and organizations of the United Nations system on action taken to implement the recommendations contained in his country reports. As requested by the Commission on Human Rights in paragraph 9 of its resolution 2005/51, the Special Rapporteur is submitting a progress report on this subject (E/CN.4/2006/78/Add.4) to the Commission at its current session. The second possibility would be to make follow-up visits, before the end of the second term of his mandate, to some of the countries visited. In this context, the Special Rapporteur has told the Governments of Guatemala and the Philippines of his interest in carrying out follow-up visits.

79. As in previous years, during the period under review the Special Rapporteur received many invitations from indigenous organizations to visit their countries and share their experiences. He was also invited by a number of academic institutions around the world to lecture on his activities as Special Rapporteur and on the main concerns and challenges in the field of the promotion and protection of the rights of indigenous peoples. The Special Rapporteur takes this opportunity to thank all these organizations and institutions for their kind invitations.

**Table 1**

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

	Africa	Asia and the Pacific	Eastern Europe	Western Europe and other States	Latin America and the Caribbean	North America	Total
No. of countries to which urgent appeals and allegation letters were sent	1	4	1	-	9	-	15
No. of urgent appeals sent by Special Rapporteur only	-	-	-	-	3	-	3
No. of joint urgent appeals (with thematic and country mechanisms)	1	2	-	-	16	-	19
No. of allegation letters sent	1	1	1	-	3	-	6
No. of joint allegation letters (with thematic and country mechanisms)	-	1	-	-	4	-	5
No. of press releases*					1		
No. of government replies	-	3	1	-	10	-	14

\* The Special Rapporteur also put his name to a general press release on 10 December 2005.

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

	Allegation letters	Urgent appeals
Number of joint communications	5	19
Thematic mechanisms		
Special Representative of the Secretary-General on the situation of human rights defenders	1	12
Special Rapporteur on the question of torture	2	3
Special Rapporteur on extrajudicial, summary or arbitrary executions	-	1
Special Rapporteur on the right to freedom of opinion and expression	1	6
Special Rapporteur on the independence of judges and lawyers	-	2
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 as a component of the right to an adequate standard of living	-	4
Chairperson-Rapporteur of the Working Group on Arbitrary Detention	-	2
Special Rapporteur on violence against women	1	1
Representative of the Secretary-General on the human rights of internally displaced persons	-	1
Special Rapporteur on the sale of children, child prostitution and child pornography	-	1
Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights	1	-
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	-	1

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