



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the 4<sup>th</sup> session of the  
Human Rights Council

Reports of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (advance version of summaries of reports)<sup>1</sup>

### **Mandate holder**

Rodolfo Stavenhagen

### **Mandate**

Over the last two decades the situation of the indigenous peoples and the enjoyment of their human rights has become a key issue. The mandate was established in 2001<sup>2</sup> in response to the growing international concern regarding the marginalisation and discrimination against indigenous people worldwide. The Special Rapporteur is mandated to investigate violations of indigenous people's human rights and fundamental freedoms, to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy them, and to work on topics which may contribute to advancing the debate on fundamental issues of the draft United Nations declaration on the rights of indigenous peoples.

### **Annual Report<sup>3</sup>**

At the time of writing, the annual report is only available in Spanish. The report will be summarised soon after the translated version in English is available and an updated version of this *Report in Short* will be published on ISHR's website.

### **Mission to Ecuador<sup>4</sup>**

#### **Scope:**

The mission took place from 24 April to 4 May 2006. The Special Rapporteur met with Government officials, local authorities and representatives of indigenous nationalities and peoples, local indigenous community leaders, representatives from the United Nations (UN), international cooperation agencies, the business sector, non-governmental and civil society organisations and academic centres.

#### **Summary and key conclusions:**

- Ecuador is a multi-ethnic country. **Indigenous** populations comprise **14 nationalities**. Depending on the definition used, the census records the indigenous population at six per cent or between 35 and 45 per cent of the total population;

<sup>1</sup> Summary prepared by Elodie, Intern, ISHR.

<sup>2</sup> Commission *Resolution 2001/57*.

<sup>3</sup> A/HRC/4/32, 27 February 2007.

<sup>4</sup> A/HRC/4/32/Add.2, 28 December 2006.

- The **Constitution** defines the State as multi-cultural and multi-ethnic body, and grants a range **collective rights to the indigenous peoples and nationalities**. Several political and administrative bodies pertaining to those rights have been established but the constitutional rights of indigenous people have not yet been incorporated into adequate secondary legislation, and these institutions lack the necessary legislative and financial support;
- From 2002, **ancestral territories** were **returned** to the indigenous peoples and the Government began to recognise indigenous communal lands as inalienable, imprescriptible<sup>5</sup> and not subject to seizure;
- The Special Rapporteur highlights that important steps have been taken in relation to **bilingual intercultural education** and in the application of an intercultural approach to indigenous health but these programmes are too weak due to the lack of resources and insufficient institutional underpinning;
- **Oil operations** carried out **in indigenous territories** have negative consequences on the environment and the living conditions of the communities. **Abuses** against local indigenous populations have been reported. These acts of violence are alleged to have been perpetrated by armed forces deployed to secure the interests of oil, mining and logging companies;
- The **aerial spraying of illicit crops** in Colombia also had negative effects on the indigenous border population;
- In general, the situation of **indigenous people living in voluntary isolation** in these regions is worrying due to illicit logging activities and the incursion of settlers.

### **Key recommendations:**

- The National Congress of Ecuador should **enact legislation concerning the Constitutional collective rights** of indigenous nationalities, peoples and communities;
- Ecuador should **enact** the necessary national **legislation** to protect the rights of the **peoples in voluntary isolation**;
- Ecuador should **strengthen** the legal arrangements underpinning **indigenous institutional structures** in the various established bodies and provide them with necessary resources;
- An **emergency plan** on the critical situation of **indigenous border communities** should be established and an international independent commission should examine the effects of the aerial spraying;
- The State must **recognise the ancestral lands** of the Shuar and other Amazonian peoples who have yet to receive this recognition;
- The armed forces should abstain from concluding service provision contracts with oil companies that could damage the rights of the indigenous communities;
- The Government should **carry out** a thorough **investigation into accusations of abuse and violence** against members of indigenous communities committed by some elements of the armed forces, and punish those responsible.

### **Mission to Kenya<sup>6</sup>**

#### **Scope:**

The mission took place from 4 to 14 December 2006. The Special Rapporteur met with national and regional authorities, UN agencies, representatives of non-governmental organisations, and members of indigenous communities and organisations.

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<sup>5</sup> Defined as “not capable of being lost or impaired by neglect, by disuse, or by the claims of another founded on prescription of rights”

<sup>6</sup> A/HRC/4/32/Add.3, 26 February 2007.

## **Summary and key conclusions:**

- In Kenya, the 1989 census recorded 42 tribes but smaller **pastoralists and hunter-gatherers** communities were omitted though they are **regarded as indigenous peoples** in the international context, and face exclusion and discrimination;
- The new Government, which came to power in December 2002, has been considering long-standing demands by indigenous for human rights whose specific needs and rights were addressed in the 2003 constitutional review process. It also allowed for a strong civil society;
- The main human rights violations suffered by pastoralists and hunter-gatherers are related to their **access to and control over land and natural resources**, and result from colonialism, and inadequate land policies and developmental strategies. These communities are therefore asking for restitution and reparation;
- Settlement schemes, logging, charcoal production, and the introduction of exotic plantations in the Kenya's forest have had **negative consequences on the environment** and entailed the **loss of the traditional livelihoods and cultures** of indigenous hunter-gatherers;
- The Special Rapporteur highlights the **inadequate response of the Government** to recurrent inter-ethnic conflicts that has led to **human rights abuses** by security forces. However, a local peace initiative in Wajir is said to have produced encouraging results;
- He also noted the ill-treatment and arrest of people protesting on land rights claims, and systematic harassment and intimidation by authorities, of organisations promoting land reform and denouncing abuses against indigenous peoples. The response was the creation of a presidential Task Force on the Establishment of a Truth, Justice and Reconciliation Commission, which recommended **the creation of a truth commission**;
- The Special Rapporteur notes that **traditional justice systems** are **not fully recognised**. They are applied only in civil cases upon certain conditions. The demand for the right of indigenous to be represented in court has also not been addressed;
- Indigenous people are affected by **poverty** and lack **access to social services**, especially to health care and education. To provide primary school education to semi-nomadic pastoralist families, mobile schools have been established and the Government is considering building schools in areas where nomadic populations live;
- **Indigenous women** are facing **human rights violations** arising from their discriminatory status and traditional law, lack of access to social services and decision-making, and harmful traditional practices such as female genital mutilation (FGM).

## **Key recommendations:**

### **The Government should:**

- Ensure that the rights of indigenous and hunter-gatherer communities to their lands and resources, as well as their effective political participation, and the fact that they are a distinct cultural identity is constitutionally recognised;
- Encourage the adoption of the draft UN Declaration on the Rights of Indigenous Peoples by the General Assembly and, ensure its incorporation into domestic law;
- Establish efficient mechanisms to current and natural resource dispute resulting from dispossession of lands originally owned by hunter-gatherers and pastoralists, and enact law to strengthen the guarantees against the dispossession of indigenous communal lands;
- Establish a Truth, Justice and Reconciliation Commission that is empowered to investigate and provide redress and compensation to the victims of gross human rights violations;
- Investigate promptly, independently and thoroughly allegations of torture, rape and other human rights violations, and prosecute the perpetrators;
- Promote education for indigenous children, especially girls, and adequate health services to indigenous people, especially women and girls;

- Strengthen its efforts to eradicate FMG and review existing discriminatory laws and regulations affecting the property rights of indigenous women.

**Indigenous communities and organisations should:**

- Revise their existing customary laws and practices to eliminate discrimination against women, and ensure their full participation in decision-making at the community and national level.

**Civil society and political parties should:**

- Take a stand in favour of the recognition of indigenous peoples' communities and their rights in the constitutional review, legislative reform and policymaking.

**The international community should:**

- Establish specific programmes for indigenous people that take into account their needs and rights;
- Ensure that all projects in indigenous areas respect the principle of free, prior and informed consent of the local communities.

**Study regarding best practices carried out to implement the recommendations contained in the previous annual reports of the Special Rapporteur<sup>7</sup>**

**Scope:**

The Commission on Human Rights requested the Special Rapporteur in *Resolution 2005/51* to begin preparing a study regarding “best practices carried out to implement the recommendations contained in his general and country reports”.

**Summary and key conclusions:**

- The recommendations made by the Special Rapporteur can not be seen in isolation but are rather part of the wider system of international norms, actors and procedures that interact to promote the rights of indigenous peoples;
- One of main conclusions of the Montreal expert seminar was that the implementation of recommendations included in the Special Rapporteur's thematic reports has been limited in comparison to those in the country reports because of its different objectives. The thematic reports are however increasingly seen as authoritative sources for different purposes at the national and international levels;
- In general, **country visits** have a **more direct impact on domestic legal, social and political dynamics** related to the recognition and protection of the rights of indigenous people and have helped to promote dialogue between States and indigenous peoples, and to raise awareness of the general public on this issue. They have also been used as advocacy tool for indigenous peoples and human rights organisations;
- If left to institutional action alone, recommendations are barely implemented and implementation needs to be pushed forward in close cooperation with the Government and other stakeholders. However, in **countries** that have established **follow-up mechanisms** (monitoring bodies, national forums and follow-up missions), **implementation** has been **more sustained** and real changes in law and practice have occurred;
- Recommendations in the areas of **social policy and development**, the **strengthening of specific government institutions and policies** related to indigenous affairs are **implemented more easily**;

<sup>7</sup> A/HRC/4/32/Add.4, 26 February 2007.

- In the area of **legal and constitutional reform** and indigenous **land and resources** rights, most recommendations **have not been addressed**;
- Follow-up visits by the Special Rapporteur help to evaluate the status of implementation;
- Follow up initiatives by OHCHR and civil society, such as the setting up of follow-up mechanisms and the use of the recommendations in programming their work, are an example of best practices;
- The report discusses in depth the implementation of the Special Rapporteur's recommendations in a number of countries that he has visited.<sup>8</sup>

### **Key recommendations:**

#### **The Government and all State institutions should:**

- Promote effective changes in law and policy for the implementation of the recommendations of the Special Rapporteur;
- Publicise and disseminate the reports and recommendations of the Special Rapporteur, and consider publishing them in various indigenous languages;
- Establish permanent follow-up mechanisms to the recommendations of the Special Rapporteur;
- Evaluate the implementation of the recommendations periodically, and publicise the results, with the help of national parliaments and national human rights institutions.

#### **Indigenous people and civil society should:**

- Strengthen their cooperation to promote the implementation of the recommendations, and be more involved in the activities of the Special Rapporteur.

#### **OHCHR should:**

- Incorporate the recommendations in its programme activities and in relation to its field presences;
- Keep assisting governmental institutions and civil society organisations to ensure the follow-up to the reports of the Special Rapporteur.

#### **International agencies should:**

- Make efforts to implement the recommendations of the Special Rapporteur and take them into account in their programming in areas concerning the rights of indigenous people.

#### **International donors should:**

- Support indigenous peoples and their support organisations to make sure they are involved in the Special Rapporteur's visits and activities.

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<sup>8</sup> Canada, Chile, Colombia, Guatemala, Mexico, and the Philippines, see pp. 14 – 23 of the report.