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## مجلس حقوق الإنسان

الدورة الخامسة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بحالة حقوق الإنسان والحريات الأساسية للشعوب الأصلية، السيد جيمس أنايا

إضافة

### حالة الشعوب الأصلية في كولومبيا: متابعة التوصيات التي صاغها المقرر الخاص السابق\*

موجز

يعرض هذا التقرير ملاحظات المقرر الخاص المعني بحالة حقوق الإنسان والحريات الأساسية للشعوب الأصلية، السيد جيمس أنايا، فيما يخص حالة الشعوب الأصلية بكولومبيا، في إطار متابعة التوصيات التي صاغها المقرر الخاص السابق، السيد رودولفو ستافينهاغن، في تقريره لعام ٢٠٠٤. وتعد هذه الملاحظات ثمرة لتبادل المعلومات بين الحكومة الكولومبية وأطراف أخرى معنية، وكذلك نتيجة للزيارة التي قام بها السيد أنايا إلى كولومبيا ما بين ٢٢ و٢٧ تموز/يوليه ٢٠٠٩.

\* يُعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيُعمم باللغة الإسبانية وبالإنكليزية فقط.

ويحيط المقرر الخاص علماً بأن الحكومة الكولومبية مستعدة للاعتراف بحقوق الشعوب الأصلية. ومن الواضح، أن الحكومة مهتمة بقضايا الشعوب الأصلية وأنها وضعت خططاً ومقترحات تهدف إلى متابعة توصيات المقرر الخاص السابق. غير أن المقرر الخاص يعرب عن قلقه إزاء المعلومات المتعددة التي مفادها أن الطبيعة الملحة لحالة الشعوب الأصلية للبلد والخطورة المتسمة بها لم تُؤخذ في الاعتبار على النحو الواجب. وعموماً، لا تتيح القوانين والبرامج والسياسات الحكومية حماية حقوق الإنسان للشعوب الأصلية وتبليتها بصورة فعالة.

وعلاوة على ذلك، من الواضح أن حالة الشعوب الأصلية تتفاقم من جراء النزاع المسلح الداخلي الذي يقع البلد ضحيته. فوفقاً لجميع المؤشرات الحالية تقريباً، يمس هذا النزاع بصورة غير متناسبة الشعوب الأصلية للبلد. وأبلغ المقرر الخاص بالحالة المقلقة للغاية للشعوب الأصلية، التي تقع ضحية أعمال العنف والجرائم وكذلك عمليات الترحيل القسري والاحتجاز التي تهدد بقاءهم المادي والثقافي.

ويساور الحكومة الكولومبية بالغ القلق بشأن قضايا الشعوب الأصلية وهو ما يشهد عليه وضع خطط ومقترحات تهدف إلى تنفيذ التوصيات التي صاغها المقرر الخاص السابق. غير أنها ما زالت تواجه مشاكل كبيرة للوفاء بالتزاماتها من أجل تعزيز وحماية حقوق الإنسان والحريات الأساسية للشعوب الأصلية بصورة فعالة، بما في ذلك ما يتعلق بالحقوق في الأراضي والموارد الطبيعية والاستشارة المسبقة للشعوب الأصلية، عندما يتعلق الأمر باتخاذ قرارات ذات تأثير على حياتهم. وتوجد كذلك فوارق كبيرة بين الشعوب الأصلية والمتوسط العام للسكان فيما يخص الممارسة الفعلية للحقوق الاقتصادية والاجتماعية والثقافية.

وقام المقرر الخاص بتقديم مجموعة من التوصيات الرامية إلى معالجة المشاكل وإحراز تقدم ملحوظ في الاعتراف بحقوق الإنسان للشعوب الأصلية في البلد وحمايتها، وفقاً لالتزامات الدولة الكولومبية وتعهداتها في هذا الصدد.

## Annex

### **Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya**

#### **The situation of indigenous peoples in Colombia: follow-up to the recommendations made by the previous Special Rapporteur**

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## I. Introduction

1. This report presents the findings of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, on the situation of indigenous peoples in Colombia, as part of the follow-up to the recommendations made by the previous Special Rapporteur, Mr. Rodolfo Stavenhagen, in his 2004 report on his mission to Colombia.<sup>1</sup> These findings are the result of an exchange of information with the Government of Colombia and other interested parties and of the mission to Colombia carried out by the current Special Rapporteur between 22 and 27 July 2009.

2. During his mission, the Special Rapporteur held meetings with representatives of the Government of the Republic of Colombia, including the President, Mr. Álvaro Uribe; the Minister of Foreign Affairs, Mr. Jaime Bermúdez Merizalde, and other representatives of his Ministry; and representatives of the Ministry of the Interior and Justice, the Ministry of Defence, the Ministry of Social Protection, the Ministry of Education, the Ministry of Agriculture, the Presidential Agency for Social Action and International Cooperation (*Acción Social*) the National Department of Planning, the Colombian Family Welfare Institute and the Presidential Advisory Council on Equality for Women. He also had meetings with indigenous members of the Congress of the Republic; Constitutional Court judges; representatives of the Office of the Attorney-General, the Office of the Procurator-General and the Office of the Ombudsman; and the Governor and other representatives of the government of the department of Cauca. In addition, he met representatives of indigenous communities and organizations and civil society activists in Bogotá and the departments of Nariño and Cauca and had discussions with representatives of United Nations agencies and the international community.

3. The Special Rapporteur would like to thank the Government of Colombia for its invitation and the assistance it provided before and during the mission. He considers the welcome that he received a mark of the Government's good will and openness. Also, special thanks are due to the indigenous communities and organizations for the substantial amount of information that they provided and for their cooperation in the organization of large parts of the mission. Lastly, the Special Rapporteur wishes to thank the United Nations agencies in Colombia, particularly the Office of the High Commissioner for Human Rights, for their indispensable assistance at all stages in the planning and conduct of the mission.

4. The findings contained in this document are not intended as an exhaustive evaluation of the situation of Colombia's indigenous peoples or of the implementation of the recommendations of the previous Special Rapporteur, Mr. Stavenhagen, but rather as a discussion of the main issues relating to those recommendations that arose during the mission of the current Special Rapporteur. The recommendations made by Mr. Stavenhagen touched on various subjects, including the armed conflict in indigenous areas; violence and drug trafficking; the environment, land and human rights; access to justice and indigenous jurisdiction; the situation of indigenous women; sustainable development and the recognition of indigenous identity; and the extension of essential social services. The Special Rapporteur would like to thank the Government for compiling and providing detailed information on the measures taken in response to the recommendations.

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<sup>1</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum: Mission to Colombia (E/CN.4/2005/88/Add.2).

5. The Special Rapporteur welcomes the consideration given by the Government of Colombia to the recommendations of the previous Special Rapporteur and the steps it has taken in response to them, while recognizing the challenges still to be confronted, and he hopes to continue constructive dialogue in the light of the progress made and the challenges ahead. As part of that constructive dialogue, this report includes a series of recommendations for measures that could help to improve the situation of indigenous peoples in Colombia, within the framework of the relevant international norms. These recommendations also represent an updating of the previous Special Rapporteur's recommendations in the light of the current situation.

## II. Findings of the Special Rapporteur

6. In the report on his mission to Colombia in 2004, the previous Special Rapporteur, Mr. Stavenhagen, stated that: "Colombia's indigenous peoples find themselves in a serious, critical and profoundly worrying human rights situation".<sup>2</sup> The situation as observed by the current Special Rapporteur confirms that this description is still valid. Despite some progress on indigenous issues, in general the laws, programmes and policies of the Government do not result in effective protection of the human rights of the indigenous peoples in Colombia. Also, it is clear that the situation of indigenous people is aggravated by the internal armed conflict currently gripping the country. As was pointed out by the previous Special Rapporteur, "The precarious human rights situation of Colombia's indigenous peoples reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples, against a background of internal armed conflict involving numerous warring parties whose actions directly affect indigenous communities' chances of survival."<sup>3</sup>

### A. Legal and political framework

7. The Colombian Constitution recognizes indigenous peoples and their collective and individual rights. Rulings of the Constitutional Court have built on this institutional framework, creating a world-class model of jurisprudence. In addition, Colombia has ratified Convention No. 169 of the International Labour Organization (ILO), the Convention concerning Indigenous and Tribal Peoples in Independent Countries,<sup>4</sup> and recently declared its support for the United Nations Declaration on the Rights of Indigenous Peoples and for its spirit and guiding principles.

8. The Special Rapporteur was informed about programmes and activities relating to indigenous peoples carried out by, inter alia, the Ministry of the Interior and Justice, *Acción Social*, the Presidential Programme for Human Rights and International Humanitarian Law, and the Ministry of Education. In particular, the Special Rapporteur was informed about programmes aimed at, among other things, addressing the needs of internally displaced persons, training members of the Security Forces in matters relating to human rights and international humanitarian law, promoting the education and health care of the indigenous peoples, responding to complaints regarding land and territories, and promoting consultations with the indigenous peoples on economic projects and laws. The Special Rapporteur notes the readiness to pursue general courses of action based on public policy

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<sup>2</sup> Ibid., para. 5.

<sup>3</sup> Ibid., para. 81.

<sup>4</sup> By Law No. 21 of 1991.

agreed with the indigenous peoples and various plans in that connection, and also the support for highly vulnerable indigenous communities.

9. The organs of the Department of Public Prosecution, particularly the Office of the Procurator-General and the Ombudsman's Office, have important powers as regards protection of the country's indigenous peoples. The Special Rapporteur especially notes the preventive functions entrusted to the Early Warning System of the Ombudsman's Office, which is an important mechanism for identifying and preventing human rights violations and breaches of international humanitarian law directed against indigenous peoples. Within the framework of the Early Warning System, the Ombudsman's Office collects, verifies and analyses information relating to situations where the civilian population is vulnerable and at risk as a consequence of the armed conflict and warns the authorities responsible for providing protection so that timely and comprehensive coordinated assistance is provided to the communities affected.

10. However, recommendations have not always received proper consideration and response on the part of the organs entrusted with taking protective measures. For example, in February 2009, eight members of the Awa indigenous community were murdered on the Tortugaña-Telembí reserve (in the department of Nariño), which resulted in the displacement of some 400 members of the community. That happened despite repeated warnings given by the leaders of the Awa people, and the issuing of a risk report by the Ombudsman's Office (No. 53 of 5 June 2008), which warned about the dangers to the Awa people in that department. Ultimately, the Government drew up a plan and programme of protection for the Awa people under an agreement concluded with Awa representatives on 9 July 2009.

11. The Special Rapporteur is extremely concerned about the fact that, despite the plan and programme of protection, shortly after the completion of his mission, in August 2009, there was a further massacre of members of the Awa community. On 26 August, a group of hooded persons entered a dwelling located on the Gran Rosario indigenous reserve (in the municipality of Tumaco, department of Nariño), where they cruelly murdered 12 persons, including seven Awa children. The Special Rapporteur notes the declaration of the Minister of the Interior and Justice condemning the murder of the 12 members of the Awa community and stating that results are expected from the investigations being carried out with the assistance of the international community and that the Government will intensify its efforts to protect indigenous peoples.

12. The fact of the matter is that, despite the formulation of public policy measures to promote and protect the rights of indigenous peoples, several of those measures have not been implemented or have been inadequately implemented. In that regard, the Special Rapporteur notes the Constitutional Court's comment that the response of the State authorities to the critical situation has been chiefly to draw up guidelines, policies and formal documents which, despite their value, have had only a very limited practical impact.<sup>5</sup> Furthermore, many initiatives do not take adequate account of the living conditions, culture, customs, organizational structures and aspirations of the indigenous communities and peoples.

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<sup>5</sup> Constitutional Court, Decision 004 of 2009, p. 23.

## B. Internal armed conflict

13. The rights of the indigenous peoples are continuing to be threatened and violated, and there can be no doubt that the internal armed conflict and its effects are contributing to this serious situation. In its Decision 004 of 2009, the Constitutional Court stated that the indigenous peoples were suffering from forced displacement on an alarming scale, homicide, food shortages and other serious problems due to the internal armed conflict and various underlying factors.<sup>6</sup> Pointing out that those problems were affecting all the indigenous peoples of Colombia, the Constitutional Court concluded that 34 of the indigenous peoples were under threat of “cultural or physical extermination”.<sup>7</sup>

14. According to almost all indicators, the internal armed conflict is having a disproportionate effect on Colombia’s indigenous peoples. They are particularly vulnerable because their territories are located in areas strategically important for those engaged in the internal armed conflict and in drug trafficking. In 2007, Early Warning System statistics from the Ombudsman’s Office showed that 45 per cent of the 38 risk reports issued related to indigenous peoples. In 2008, 14 reports warned of risks affecting the indigenous population,<sup>8</sup> and 13 risk reports relating to indigenous persons were issued between January and August 2009.<sup>9</sup>

15. The Special Rapporteur is particularly concerned about the impact of the internal armed conflict on indigenous women and children. The number of cases of sexual violence against indigenous women is increasing because of the conflict.<sup>10</sup> The occupation of indigenous land and territories by groups involved in the conflict limits the possibilities for overall development in accordance with their traditions of the youngest indigenous persons. Indigenous children are more exposed to recruitment by illegal armed groups and face difficult humanitarian conditions, including killing and maiming, recruitment by and use in armed forces and groups, abduction, sexual violence, attacks on schools and hospitals, and denial of humanitarian access, as was recognized in the August 2009 report of the Secretary-General on children and armed conflict in Colombia, drawn up pursuant to Security Council resolution 1612 (2005).<sup>11</sup> In order to deal with this situation, the Colombian State should, as a matter of urgency, implement the recommendations of the Secretary-General contained in that report, especially those intended to prevent the recruitment of children.

### 1. Violence and other crimes against the physical and cultural survival of indigenous peoples

16. Paradoxically, it appears that the decision of the indigenous peoples not to take part in the internal armed conflict has resulted in an increase in violence and threats against them. They are arbitrarily and without reason accused, individually and collectively, of collaborating with whichever armed group is opposing the Security Forces.<sup>12</sup>

<sup>6</sup> Ibid., p. 13.

<sup>7</sup> Ibid., p. 2.

<sup>8</sup> In the departments of Boyacá, Guaviare, Norte de Santander, Amazonas, Vaupés, La Guajira, Quindío, Chocó, Cauca, Casanare, Vichada, Nariño and Arauca.

<sup>9</sup> Indigenous persons in the departments of Bolívar, Guajira, Antioquia, Chocó, Arauca, Norte de Santander, Nariño, Magdalena and Cesar.

<sup>10</sup> Constitutional Court, Decision 092 of 2008 (III.1.1.3).

<sup>11</sup> S/2009/434.

<sup>12</sup> Constitutional Court, Decision 004 of 2009 (2.2.1).

17. In view of the persistent risk of attacks against life and bodily integrity to which the indigenous peoples in various parts of Colombia are exposed, the Inter-American Commission on Human Rights has requested the adoption of precautionary and provisional measures, on both an individual and a collective basis, in order to protect leaders and whole communities. According to the Government, inter-institutional groups have been formed to care for each indigenous community with members under the protection of measures requested by the Inter-American Commission. Despite the existence of these measures, numerous indigenous peoples and communities continue to report selective killings of their leaders, spokesmen and traditional authorities. The Awa people in the Nariño department is one of the most affected indigenous groups.

18. The Monitoring Unit for the Presidential Human Rights and International Humanitarian Law Programme has stated, with regard to the killing of indigenous persons, that the killing of one such person constitutes not only the taking of a life but also an attack on tribal stability and survival.<sup>13</sup> According to the Monitoring Unit, from 1998 to July 2008 there were 1,075 murders of indigenous persons in Colombia.<sup>14</sup> However, according to other sources, the figure is higher – 1,365 murders of indigenous persons during that period, plus, inter alia, cases of threat (321), forced disappearance (254), injury (492) and sexual violence and torture (216).<sup>15</sup> The Vice-President's Office recorded a 71 per cent increase in the killing of indigenous persons during the period January-September 2009 compared with 2008.<sup>16</sup>

19. The armed groups operating outside the law clearly pose a threat to the whole of Colombian society, but particularly to the indigenous peoples. The Special Rapporteur notes with extreme concern that the illegal armed groups, chiefly the Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo (Revolutionary Armed Forces of Colombia — People's Army) (FARC-EP), operating in many indigenous areas seem to be completely unaware of human rights standards and international humanitarian law. FARC-EP and other illegal armed groups are the main perpetrators of killings of indigenous persons and other serious crimes, such as the recruitment and exploitation of indigenous children, forced displacement, acts of sexual violence and the use of anti-personnel mines.

20. The Government has been endeavouring to demobilize the paramilitary groups, and its efforts have produced major successes. However, the demobilization programme has resulted in de facto amnesties or in promises of reduced sentences for demobilized combatants, which has given rise to protests against a culture of impunity. Moreover, it is clear that the paramilitary groups have not been completely disbanded; on the contrary, in recent months there seems to have been an increase in the number of members of paramilitary groups or new criminal gangs (Bacrim).

21. Furthermore, human rights violations continue to be committed by members of the Security Forces, and several cases involving indigenous victims remain unsolved. In 2008, the Office of the High Commissioner for Human Rights reported that indigenous peoples and communities in departments such as Antioquia, Cauca and Chocó had been victims of cruel, inhuman and degrading treatment or punishment attributed to members of the

<sup>13</sup> Monitoring Unit for the Presidential Human Rights and International Humanitarian Law Programme, *Los Indígenas Colombianos: La Constancia de los Pueblos por Mantener sus Costumbres* (Indigenous Colombians: The Peoples' Efforts to Uphold their Customs), Boletín Temático No. 11, August 2008.

<sup>14</sup> Ibid.

<sup>15</sup> Database, *Casa del Pensamiento* of the Nasa people ACIN-ENSAYOS.

<sup>16</sup> Website of the Monitoring Unit for the Presidential Human Rights and International Humanitarian Law Programme, Vice-President's Office [www.derechoshumanos.gov.co/observatorio\\_de\\_DDHH/](http://www.derechoshumanos.gov.co/observatorio_de_DDHH/).



Security Forces.<sup>17</sup> In addition, the Constitutional Court, in its Decision 004, referred to the threatening, harassment and persecution of individuals, families and communities by some individual members of the Security Forces.<sup>18</sup> In that connection, the Special Rapporteur notes with concern the so-called “false positives”, whereby indigenous individuals disappear and are subsequently reported, without grounds, as being guerrilla fighters killed by the Security Forces during combat.<sup>19</sup> The “false positives” were one of the main concerns regarding extrajudicial, arbitrary and summary executions expressed by the Special Rapporteur in June 2009 at the end of his mission to Colombia.<sup>20</sup>

22. The information indicates an insufficient level of attention on the part of the authorities responsible for the administration of justice, particularly the Office of the Attorney-General, with regard to abuses committed by members of the Security Forces and illegal armed groups against members of indigenous communities. According to data from the Office of the Attorney-General, 182 law suits involving indigenous victims have been assigned to its Human Rights and International Humanitarian Law Unit (163 of them relate to homicides, of the more than 1,075 homicides reported by the State during the past ten years) – according to information provided by the Government, not all investigations into the killing of indigenous persons are handled by that unit. The Special Rapporteur considers that the persisting situation of impunity is unacceptable, as it puts the ethnic and cultural survival of indigenous peoples at grave risk. The Office of the Attorney-General and the other authorities responsible for the administration of justice are reminded that these serious violations should be investigated and judged independently, promptly and impartially.

23. On the other hand, the Special Rapporteur notes the information provided by the Government on measures taken to prevent the repetition of abuses by members of the Security Forces and ensure effective penalization. These measures include a project entitled “Strengthening the justice sector in order to reduce impunity in Colombia”, and a programme entitled “Expanding coordination between the national jurisdiction and the special indigenous jurisdiction”. The latter consists in characterizing the justice systems of 18 indigenous peoples with a view to strengthening those peoples’ systems for the administration of justice and linking them to those of the local authorities in the neighbouring areas. The Special Rapporteur considers the investigation task forces fielded by the National Human Rights and International Humanitarian Law Unit in the case of law suits involving indigenous victims to be a positive factor in eliminating impunity. The judicial authorities should have access to all means necessary for establishing such task forces or similar mechanisms.

24. During his mission, the Special Rapporteur noted another useful mechanism – the Indigenous Guard’s, or traditional security and protection units, of the indigenous peoples of Colombia. In general, the Government should respect, support and legitimize in the role in order to ensure their effective functioning.

## 2. Military presence in indigenous areas

25. The indigenous peoples have repeatedly complained about the occupation of schools, council meeting places (“cabildos”), sacred sites and dwellings by members of the

<sup>17</sup> Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia (A/HRC/10/032), 19 February 2009.

<sup>18</sup> Constitutional Court, Decision 004 of 2009 (2.2.1).

<sup>19</sup> Ibid.

<sup>20</sup> Statement of Mr. Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, at the end of his mission to Colombia, 8–18 June 2009.

Security Forces. The Special Rapporteur received information about the Security Forces establishing a military presence on indigenous reserves without any prior consultation with the affected communities. He also received information about the Security Forces using indigenous persons, including children and adolescents, as informants.

26. Representatives of the Ministry of Defence maintain that members of the Security Forces do try to consult with indigenous communities before the establishment of a military presence and that they use indigenous community members as informants only when it is necessary for the physical protection of their communities. Also, the Military General Command's Standing Order No. 048 of 2008 forbids the use of children and adolescents in intelligence-gathering activities. In any event, the Special Rapporteur is concerned that the use of indigenous community members as informants and the mere presence of members of the Security Forces within indigenous communities, at the very least, frequently puts at risk the communities that the Security Forces are trying to protect.

27. Government initiatives to strengthen respect for human rights in indigenous areas by members of the Security Forces do exist. In its Directive No. 016 of 2006, the Ministry of Defence spells out its policy vis-à-vis indigenous peoples, emphasizing the need to strengthen the protection of their human rights and specifying the procedures that the Armed Forces should follow when operating within indigenous territories. This policy is part of the Ministry of Defence's Overall Human Rights and International Humanitarian Law Policy, which covers the conduct of the Security Forces during operations and states that the Colombian National Army's operational orders always include instructions relating to the treatment of indigenous communities and the rights bestowed on them by the Constitution when the Security Forces are operating within indigenous territories.<sup>21</sup> Also, the Special Rapporteur notes that Circular No. 151 of 2004 requires the Security Forces to designate points of contact with the indigenous authorities in each region where they operate.

28. In connection with those initiatives, the Special Rapporteur emphasizes the need to consult and try to reach agreement with the affected indigenous peoples on the conditions of any military presence within their territories. Respect for the autonomy and the traditional decision-making structures of indigenous communities is extremely important at all times. The Special Rapporteur recalls that in the United Nations Declaration on the Rights of Indigenous Peoples it is stated that "States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities" (art. 30, para. 2).

### 3. Forced displacement and confinement

29. The forced displacement of indigenous peoples threatens their cultural and physical survival, as the Constitutional Court has pointed out, and gives rise to critical humanitarian issues such as overcrowding, unsanitary conditions and food shortages. The public authorities are not prepared to respond adequately to the humanitarian needs of the victims and, in particular, the women and children. Of grave concern is the acute impact of forced displacement on indigenous women, who, according to the Constitutional Court, are among those who have been affected most severely by the crimes, injustices and inequities that accompany armed violence and forced displacement.<sup>22</sup>

<sup>21</sup> Ministry of Defence, Overall Human Rights and International Humanitarian Law Policy, p. 26.

<sup>22</sup> Constitutional Court, Decision 092 of 2008, III.1.9.

30. In the past five years, the displacement of indigenous peoples has increased disproportionately in comparison with the displacement of the rest of the population. According to figures from *Acción Social*, between 2006 and 2007 the displacement of the rest of the population increased by 16.8 per cent, while the displacement of the indigenous population increased by 23.1 per cent. Furthermore, some indigenous communities are in a situation of confinement and receiving no humanitarian assistance.

31. In the years following the mission of the previous Special Rapporteur, regulations for better responding to the needs of the displaced population were adopted within the framework of the National System of Comprehensive Care for the Displaced Population (SNAIPD) and its “Directive for the Comprehensive Care of the Indigenous Population in Situations of Displacement and Risk, with a differentiated approach”. This directive guides the programmes and actions of the organs of SNAIPD at the national and the regional level, in order that the necessary resources are allocated to them, the differentiated approach ensuring the comprehensive care of indigenous populations as collective subjects of the law. Furthermore, the National Council for the Comprehensive Care of the Displaced Population (CNAIPD) adopted resolutions on implementing a differentiated approach vis-à-vis displaced indigenous persons<sup>23</sup> and, in 2006, approved a comprehensive plan for the support of indigenous communities in situations of extreme vulnerability and risk of disappearance.

32. However, as the Constitutional Court concluded in its Decision 004 of 2009, under the prevailing circumstances it is difficult to see how those initiatives have been translated, into practical actions for ensuring that the indigenous peoples of Colombia are not disproportionately affected by the armed conflict, for preventing the forced displacement caused by the armed conflict, or for providing appropriate and timely material assistance to its victims.<sup>24</sup>

33. The Constitutional Court has ordered a series of measures for responding adequately to the various problems that confront displaced indigenous persons. These measures include the development of a country-wide Programme to Guarantee the Rights of Indigenous Peoples Affected by Displacement and the development of plans for the protection of 34 indigenous peoples identified as being at serious risk of cultural or physical extermination – all with the effective participation of the legitimate authorities of the indigenous peoples. It should be mentioned that, for its part, the National Indigenous Organization of Colombia (ONIC) has identified numerous other indigenous groups at risk of extinction because they have fewer than 500 members each, including 18 groups with fewer than 200 members and 10 groups with fewer than 100.

34. Regarding implementation of the orders of the Constitutional Court in its Decision 004, the Government informed the Special Rapporteur that it had carried out several activities under the Programme to Guarantee the Rights of Indigenous Peoples Affected by Displacement and in connection with the preparation of 34 “ethnic safeguards plans”, including the drafting of a proposal that will be the subject of consultations with the leaders of the indigenous peoples and serve as input to the “ethnic safeguards plans”.

<sup>23</sup> Agreement 03 of 2006 (defining actions to ensure the right of the displaced population to be protected from discriminatory practices); Agreement 05 of 2006 (adopting a special and differentiated effective care plan for the members of the Nukak Maku indigenous community who have been forcibly displaced to urban areas and those persons who are in danger of displacement from the department of Guaviare); and Agreement 08 of 2007 (adopting measures aimed at the formulation of a differentiated policy for the care of the population in situations of displacement).

<sup>24</sup> Constitutional Court, Decision 004 of 2009.

35. The Special Rapporteur stresses the need to intensify the efforts in question and finalize the “ethnic safeguards plans” within the deadlines specified by the Constitutional Court and in accordance with the relevant international norms. He also stresses the need to develop similar programmes for other vulnerable indigenous communities at risk of extinction, in cooperation and consultation with indigenous leaders and organizations.

### C. Land and natural resources

36. Respect for and protection of the right to land and territories are a constant demand of the indigenous peoples in Colombia. Over the last decades, Colombia has moved forward in the recognition of the land rights of the country’s indigenous peoples. The number of official indigenous reserves now stands at 710, located in 27 of the country’s departments and in 228 municipalities; according to the Government, they occupy a total of approximately 34 million hectares, equivalent to 29.8 per cent of Colombia’s national territory.<sup>25</sup>

37. However, some representatives of the indigenous peoples say that much of the land purchased and handed over to indigenous communities is unproductive or not suited to their cultural needs. A mere 7.68 per cent of the indigenous reserves (covering an area of 1,290,000 hectares) are situated in agricultural areas, and they are inhabited by approximately 65 per cent of Colombia’s total indigenous population. The other reserves are situated in the Amazon forest, the Orinoquía savanna and the Guajira desert.<sup>26</sup> The territorial crisis is evident in the Caño Mochuelo reserve, located in the Casanare department (Orinoquía region). According to information received by the Special Rapporteur, the reserve is not sufficiently large to ensure the physical and cultural survival of the peoples living there. The soil is of low fertility and between May and November more than 65 per cent of this land is subject to flooding. As a result, there is concern that a serious food crisis might impact this reserve.

38. In addition, the establishment, expansion and improvement of reserves seem not to be proceeding in a manner consistent with the numerous needs identified. In November 2008, 450 dossiers relating to the establishment, expansion, improvement and restructuring of indigenous reserves were being processed.<sup>27</sup> According to data for 2004 from the Colombian Rural Development Institute (INCODER), the indigenous territories still the subject of dossiers being processed have a total area of 1,627,758 hectares, populated by at least 380,000 indigenous people. The departments with most land to be assigned are Cauca (309,000 hectares), Amazonas (276,000 hectares) and Boyacá (nearly 100,000 hectares). In the departments of Magdalena, Caquetá, Putumayo, Cesar, Tolima, Valle, Arauca and Vaupés, the territories awaiting assignment have a total area of over 50,000 hectares.

39. Prior to 2007, the establishment and expansion of reserves were the responsibility of the Colombian Agrarian Reform Institute (INCORA), which later became the Colombian

<sup>25</sup> National Department of Statistics (DANE), *Colombia, Una Nación Multicultural: su diversidad étnica* (Colombia, a multicultural nation: a look at its ethnic diversity), Bogotá (2007), p. 19. According to other sources, the indigenous peoples occupy only 31,694,421.1 hectares, 22 per cent of the national territory. Houghton, *La legalización de los territorios indígenas* (The legalization of indigenous territories), *Cecoion-OIA*, Bogotá (2008).

<sup>26</sup> Information provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in Colombia.

<sup>27</sup> Unidad Nacional de Tierras Rurales (National Rural Land Administration), 30 November 2008.

Rural Development Institute (INCODER).<sup>28</sup> The Rural Development Statute (Law 1152 of 2007) transferred responsibility for the establishment, expansion and improvement of indigenous reserves to the Ethnic Affairs Directorate of the Ministry of the Interior and Justice. In 2009, the Constitutional Court declared the Rural Development Statute to be unconstitutional because it had not been the subject of consultation, so that today there is a need to clarify the responsibilities of public authorities with regard to the various legal processes concerning indigenous reserves.

40. It is important to emphasize that recognition and protection of the territorial rights of the indigenous peoples are crucial for establishing sustainable conditions of peace and ensuring the survival of the indigenous peoples, as acknowledged by the Constitutional Court.<sup>29</sup> In Decision 004, the Constitutional Court noted that, in some cases, uncertain tenure arrangements greatly facilitated the invasion and seizure of indigenous lands, so that there was a link between the expansion and improvement of reserves and certain aspects of the armed conflict (such as armed forces, illicit crops, or military activities in areas of expansion).

41. The Special Rapporteur emphasizes the need to bring Colombia's public policy relating to economic development of the country (particularly as regards natural resource extraction and agro-industry and tourism infrastructure "megaprojects") into line with the indigenous peoples' rights to land and natural resources, in accordance with the provisions of ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. Between 1993 and 2006, the Constitutional Court found approximately 18 times in favour of indigenous peoples in cases where their land rights were being violated by intrusive initiatives or large infrastructure projects. Among the indigenous peoples affected by the launching of projects without appropriate consultation are the Motilón Bari people (oil prospecting and drilling),<sup>30</sup> the U'wa people (oil prospecting and drilling),<sup>31</sup> and the Embera Katio people of the Alto Sinú (the Urrá I hydroelectric project).<sup>32</sup> There are many other examples of concessions granted and projects authorized without the necessary prior consultation with the affected communities. Although the Government has provided information about consultations regarding various projects, the information does not establish that the consultations were carried out in accordance with the relevant international standards.<sup>33</sup>

42. Thus, there is still not full compliance with the recommendation of the former Special Rapporteur, that investment, infrastructure, natural resource extraction and exploitation, industrial production and other major projects should not be promoted without full and genuine prior consultation with and the involvement of the indigenous peoples<sup>34</sup> (see section D below). In view of the free trade agreements that the Colombian Government has concluded, and is in the process of concluding, which would facilitate the exploitation of natural resources within indigenous territories, it is important to ensure that these agreements explicitly provide for the rights of the indigenous peoples to be respected, particularly the right to free and informed prior consultation.

<sup>28</sup> Law 160 of 1994, Decree 2164 of 1995 and Decree 1300 of 2003.

<sup>29</sup> Judgement T-652/98; Presiding Judge: Carlos Gaviria Díaz.

<sup>30</sup> Judgement T-880 of 2006.

<sup>31</sup> Judgement SU-039 of 1997.

<sup>32</sup> Judgement T-652 of 1998.

<sup>33</sup> It should be noted that the right to prior consultation as regards the exploitation of natural resources is guaranteed in the Political Constitution of Colombia (in articles 332 and 330) and in various laws, including Law 99 of 1993.

<sup>34</sup> E/CN.4/2005/88/Add.2, para. 108.

43. The aerial fumigation of illicit crops has particularly affected the indigenous peoples. The Constitutional Court has ordered that the aerial fumigation of illicit crops be suspended until consultations with the indigenous peoples have led to agreement or eradication methods that are less detrimental to the indigenous peoples' survival and cultural integrity.<sup>35</sup> The former Special Rapporteur recommended that there be no aerial fumigation of illicit crops in the vicinity of indigenous settlements unless the indigenous communities expressly requested it in full knowledge of the implications.<sup>36</sup> The Government has stated that, pursuant to that recommendation, since 2005 progress has been made with regard to the right to prior consultation on the eradication of illicit crops, and it has provided detailed information about the consultations carried out in that connection. However, the Special Rapporteur has received information indicating that, in many cases, the eradication of illicit crops by glyphosate spraying is continuing to occur without adequate consultation with the indigenous communities affected and has given rise to health problems and food shortages.

#### **D. Consultation and agreement**

44. The lack of prior consultation with the indigenous peoples on decisions that affect them is a persistent problem in Colombia. The Constitutional Court has developed considerable jurisprudence relating to the right to consultation, establishing in the national legislation a framework for promoting the right to consultation as embodied in ILO Convention No. 169 and in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>37</sup> Despite that, violations of the right to consultation have persisted in several contexts, as shown in subsequent years by cases brought before the Court, which has ruled both on draft laws and public policies and on proposals with an impact on the use of land and natural resources.<sup>38</sup>

45. More recently, the Court declared the General Forestry Act (Law 1021 of 2006) and the Rural Development Statute to be unconstitutional as they had not been the subject of appropriate consultation with the indigenous peoples. On declaring the General Forestry Act to be unconstitutional, the Court stressed that the Constitution provided for special protection of the right of ethnic groups to participate in the taking of decisions that affected them and that such special protection implied a duty to develop processes for consulting with indigenous and tribal communities on the adoption and implementation of decisions that might affect them.<sup>39</sup> There are currently several draft laws on indigenous matters under consideration in Colombia,<sup>40</sup> and these should be the subject of consultation and agreement

<sup>35</sup> Judgement SU-383 of 2003.

<sup>36</sup> E/CN.4/2005/88/Add.2, para. 106.

<sup>37</sup> Decision SU-039/97.

<sup>38</sup> Decision SU-038/97; Decision T-652/98; Decision C-169 of 2001; Decision C-418/2002 (Law 685 of 2001); Decision C-891/02; Decision C-620/03; Decision SU-383/03; Decision T-382/06; Decision T-880/06; Decision C-208 of 2007; Decision C-461/08 (Law 1151 of 2007); Decision C-030/08 (Law 1021 of 2006), Reporting judge: Rodrigo Escobar Gil; Decision C-175/09 (Law 1152 of 2007); Decision C-615 of 2009 (Law 1214 of 2008).

<sup>39</sup> Decision C-030/08.

<sup>40</sup> Draft Law 196 of 2008 (Establishing a Comprehensive Statute on the Rights of the Indigenous Peoples); Draft Law 32 of 2008 (Establishing a national commission on comprehensive development for indigenous peoples and Afro-Colombians and adopting measures aimed at ensuring the fulfilment of the Millennium Development Goals in the communities); and a Draft Law entitled "Protection of Native Languages".

with the indigenous peoples; the Special Rapporteur notes Government statements that steps have been taken in that regard.

46. Efforts are being made by the Government to promote dialogue with the indigenous peoples, such as: the creation of a Standing Committee for Consultation (between indigenous organizations and the State on all laws and administrative decisions that could affect them);<sup>41</sup> the establishment of a National Human Rights Commission and an Amazonian Committee; and the dialogues that took place in the context of the Minga Social y Comunitaria (Social and Communal Workshop) in 2008 and 2009. Also, a dialogue is taking place between the State and the indigenous peoples on compliance with the orders issued by the Constitutional Court in its Decision 004 – specifically regarding preparation of the 34 “ethnic safeguards plans”. Nevertheless, numerous factors have prevented the initiatives in question from leading to permanent relevant dialogue that would allow the parties to make satisfactory progress on the issues important to indigenous peoples.

47. The development of effective consultation procedures that conform to international standards is one of the main challenges facing Colombia. According to information provided by the Ministry of the Interior and Justice, Decree 1320 of 15 July 1998, which creates a framework for consultations with indigenous peoples, is continuing to be implemented even though both the Constitutional Court<sup>42</sup> and ILO<sup>43</sup> have concluded on numerous occasions that it is incompatible with Convention No. 169 and have called for the competent ministries to revise it.<sup>44</sup> It is essential, therefore, to develop and implement, in cooperation with the indigenous organizations and authorities, consultation procedures as stipulated by the Constitutional Court and ILO.

48. The Special Rapporteur notes the information provided by the Ministry of the Interior and Justice regarding the formation of a working group exclusively dedicated to the subject of prior consultation. The Ministry states that the group is in the process of preparing a draft law to regulate the consultation process. The preparation and adoption of a draft law on the right to consultation, which could provide an excellent opportunity for ensuring that the consultation process is effective and in conformity with international principles and standards, should be carried out in consultation with the indigenous peoples.

## **E. Economic, social and cultural rights**

49. There are significant differences regarding the enjoyment of economic, social and cultural rights between the indigenous peoples and the population of Colombia as a whole. Furthermore, the effects of the armed conflict, particularly displacement, have left many

<sup>41</sup> Decree 1397 of 1996.

<sup>42</sup> Constitutional Court, Decision T-652 of 1998, Reporting judge: Carlos Gaviria Díaz. Also see Constitutional Court, Decision T-737 of 2005, Reporting judge: Álvaro Tafur Galvis.

<sup>43</sup> ILO Committee of Experts on the Application of Conventions and Recommendations: Individual direct request regarding ILO Convention No. 169 concerning indigenous and tribal peoples, 1989, Colombia (ratification: 1991), sent in 2009; Individual observation regarding Convention No. 169, Colombia, published in 2009; Individual observation regarding Convention No. 169, published in 2004; Complaint of 1999 regarding article 24 of Convention No. 169, Report of the Committee established to examine the complaint alleging noncompliance by Colombia with Convention No. 169, lodged pursuant to article 24 of the ILO Constitution by the Confederation of Colombian Workers (CUT) and the Colombian Trade Union Medical Association (ASMEDAS).

<sup>44</sup> In particular, the Constitutional Court has ordered several ministries to stop applying Decree 1320 of 1998 as it is contrary to the Constitution and the standards incorporated into domestic law. Decision T-880/06.

peoples and communities in a highly vulnerable situation. There is a need to strengthen programmes for realizing the social and economic rights of indigenous peoples, including the right to be provided with food and health services, especially in the case of those communities which have been displaced or otherwise affected by the armed conflict.

50. The departments where indigenous peoples account for a large percentage of the overall population have worse social indicators than the rest of the country. As regards maternal mortality, for example, while the national average is 73.1 deaths per 100,000 live births,<sup>45</sup> the following departments report rates far higher than that figure: Guainía (386), Chocó (250.9), Guaviare (171.2), Amazonas (158), La Guajira (131) and Cauca (125.9).<sup>46</sup> As regards infant mortality, while the national average is 15.6 deaths per 1,000 live births,<sup>47</sup> in those same departments the rates are also far higher: Guainía (40.5), Chocó (32.8), Amazonas (29.9), La Guajira (24.2) and Cauca (21.2).<sup>48</sup>

51. The Government is paying some attention to the health needs of indigenous peoples; among other things, it is modelling their health situation and looking into the possibility of incorporating traditional medicine into the Public Health Plan 2007–2010. Mutual health-care societies have been established in collaboration with traditional indigenous authorities and, through the Colombian Family Welfare Institute, there have been efforts to tackle the problem of malnutrition both through supplementary food programmes and through awareness and prevention programmes. According to the Government, since 2003 the coverage of the indigenous population by the subsidized health-care regime has increased by 87 per cent, from 603,833 beneficiaries in 2003 to 1,132,138 in 2008, which means that 81 per cent of the indigenous population was covered by 2008.

52. However, although their access to health care is clearly on the increase, indigenous groups do not appear to have the same access to and enjoy the same quality of health care as the majority of Colombians – a situation aggravated by the armed conflict. According to information received by the Special Rapporteur, the Security Forces have occupied health-care facilities in the department of Nariño, leaving the inhabitants reluctant to visit those facilities for fear of stigmatization and retaliation on the part of illegal armed groups. Furthermore, roadblocks, stigmatization and threats are deterring people from seeking medical treatment and other health-care services locally.<sup>49</sup> Likewise, indigenous women are facing difficulties in accessing sexual and reproductive health services, especially when they are victims of forced displacement. Indigenous children are particularly vulnerable to violations of the right to food and health. In 2008 and 2009, some State bodies, and the indigenous communities themselves, published reports of severe malnutrition in Kogui and Arhuaco communities of the Sierra Nevada de Santa Marta mountain range and in the departments of Chocó, Guaviare and Cauca, among others.

53. As regards education, the Ministry of Education has developed and is promoting an ethno-educational policy with the aim, according to information provided by the Government of introducing intercultural education at all State and private schools in the

<sup>45</sup> Pan American Health Organization (PAHO), World Health Organization (WHO), Health situation in the Americas – Basic indicators (2008) (Data from 2005).

<sup>46</sup> National Department of Statistics (DANE), Vital Statistics (2005).

<sup>47</sup> PAHO and WHO, Health situation in the Americas – Basic indicators (2009) (Data from 2005).

<sup>48</sup> DANE, Vital Statistics (2005). The departments with the highest percentage of indigenous inhabitants, the majority of which correspond to those showing the most troubling rates, are: Vaupes (66 per cent), Guainía (65 per cent), Guajira (45 per cent), Vichada (44 per cent), Amazonas (43 per cent), Cauca (22 per cent). Ibid.

<sup>49</sup> See Thematic Group on Health and Displacement, Reports of the Thematic Committee on Health [www.disaster-info.net/desplazados/informes/pah2/index.php](http://www.disaster-info.net/desplazados/informes/pah2/index.php).



country. During 2008 and 2009, the Government, within the framework of the Cooperative Board on Education Service Policies for Indigenous Peoples (CONTCEPI), made proposals for the establishment of an Indigenous Education System (SEIP). Significantly, according to information provided by the Government, the number of indigenous persons enrolled in schooling programmes increased from 319,226 in 2007 to 331,469 in 2008 and 343,676 in 2009.

54. Nevertheless, it should be noted that the Committee on the Rights of the Child has commented that “Despite an established programme for bilingual education (*etnoeducación*) the coverage is limited and illiteracy rates high.”<sup>50</sup> In fact, the Government estimates that 28.6 per cent of Colombia’s indigenous persons over 15 years of age are illiterate. Also, it should be pointed out that the education of indigenous peoples is being seriously affected by the armed conflict and, in particular, displacement.

### III. Conclusions and recommendations

#### Legal and political framework

55. **The Special Rapporteur notes the readiness of the Government of Colombia to recognize the rights of indigenous peoples. Clearly the State is addressing indigenous concerns and developing plans and proposals for responding to the recommendations of the previous Special Rapporteur, Mr. Stavenhagen.**

56. **In spite of this, the Special Rapporteur is concerned about the numerous indications that the grave situation of indigenous peoples in Colombia has not been addressed with the level of urgency it deserves. Accordingly, the Special Rapporteur recalls the comment of the Constitutional Court regarding the lack of consistency between, on one hand, the serious undermining of rights recognized in the Constitution and enshrined in law and, on the other, the resources actually assigned for ensuring the enjoyment of those rights in practice and creating the institutional capacity necessary for implementation of the corresponding constitutional and legal mandates.**<sup>51</sup>

57. **There is a need for progress in the adoption of appropriate public policies and national laws for enforcement of the rights of the indigenous peoples, including a law on consultation processes, with the full and effective participation of the indigenous authorities and representatives. Both the processes and the public policies and national laws that are agreed upon should comply with the international standards relating to the rights of indigenous peoples, including those recognized in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.**

58. **The Special Rapporteur urges the Government to ensure all necessary support for the effective functioning of the State organs of control and justice, including the functioning and funding of the Early Warning System, and adequate funding of the Constitutional Court to enable it to follow-up its decisions. He also recommends that greater financial resources be assigned to the local representatives of the Ombudsman’s Office.**

<sup>50</sup> Final comments of the Committee on the Rights of the Child on the third periodic report by Colombia (CRC/C/COL/CO/3), 8 June 2006, para. 94.

<sup>51</sup> Decision T-025 of 2004, Ruling, First Declaration.

## Internal armed conflict

### Call for peace

59. The Special Rapporteur urges the State of Colombia to seek a negotiated solution to the armed conflict, with the involvement of civil society, and particularly the indigenous authorities, so that real and lasting peace may be achieved in Colombia. It is recommended that support be given to the dialogue and peace-building initiatives proposed by the indigenous authorities and their organizations.

60. It is also recommended that, in coordination with indigenous authorities and organizations, political agreements be concluded on the clearing of explosive devices that have been left abandoned after fighting in urban and rural areas during the armed conflict. The Special Rapporteur recommends that the Government invite a competent international organization to monitor the clearance process and provide humanitarian guarantees to communities in that connection.

### Violence against indigenous peoples

61. The Special Rapporteur urges the competent authorities at the national, regional and local levels to afford effective protection to indigenous leaders. In that connection, the Colombian Government should, as a matter of urgency and in consultation with the indigenous peoples themselves, adopt budgetary and operational measures to strengthen protection arrangements, including the precautionary and provisional measures prescribed by the Inter-American Human Rights System.

62. The protection measures established by the Ministry of the Interior and Justice should be adapted to the circumstances and needs of the leaders and authorities of the indigenous peoples. In that process, the Indigenous Guard and other indigenous community initiatives should be respected.

63. The State authorities, especially the Office of the Attorney-General, should, acting in compliance with international human rights principles, take all necessary steps to properly investigate violations of the human rights of indigenous peoples, to bring the perpetrators to justice and to ensure that such human rights violations do not recur. In particular, the Special Rapporteur urges the Office of the Attorney-General to arrange for the creation, as a matter of urgency, of special investigatory commissions for cases of violence against indigenous peoples.

64. The State is urged to invite the United Nations Special Adviser on the Prevention of Genocide to monitor the situation of the indigenous communities that, according to Decision 004 of the Constitutional Court, are under threat of cultural or physical extermination. The State is also urged to continue cooperating with the Office of the Prosecutor of the International Criminal Court.

65. The Special Rapporteur stresses that the armed groups must abstain from recruiting indigenous children for activities relating to the hostilities, which constitutes a serious violation of human rights and international humanitarian law.

66. All armed personnel, legal and illegal, must comply with all the rules of international humanitarian law.

#### **Military presence in indigenous areas**

67. The Special Rapporteur welcomes the efforts being made by the Security Forces to promote respect for human rights by their members in the exercise of their duties. He urges them to intensify those efforts and to respect the autonomy of the indigenous peoples, and to consult with the indigenous peoples' authorities on the conditions governing any presence that may be required within their territories, in compliance with article 30 of the United Nations Declaration on the Rights of Indigenous Peoples. Those efforts should be intensified through, inter alia, cooperation at the international level, particularly with the Office of the High Commissioner for Human Rights.

#### **Forced displacement and confinement**

68. The Special Rapporteur notes the Government's efforts to prepare the "ethnic safeguards plans" called for by the Constitutional Court in Judgement T-025 of 2004 and Decision 004 of 2009. He urges that those plans be prepared and implemented exactly as stipulated by the Constitutional Court, with full participation of the organizations and authorities of the indigenous peoples at each stage. Also, he stresses the need to develop similar plans for other vulnerable indigenous communities at risk of extinction. It should be ensured that all human and financial resources necessary for the effective implementation of those plans are available.

69. On the basis of special guarantees, the Government should protect the land of indigenous peoples that have been forcibly displaced, so as to prevent seizures of the land in the absence of the indigenous peoples and enable them to return to it. Also, the Government should ensure that displaced indigenous communities can return safely, of their own free will, with dignity and without fear of forced displacement in the future.

70. The Special Rapporteur considers it important that a distinction be made between the different forms of displacement of indigenous peoples – displacement within the same reserve, displacement between reserves and displacement across the national border (Wayuu, Awa, Sikuani and Embera peoples); with the third form of displacement, the binational character or the refugee status of the peoples in question should be recognized and respected.

71. It must be ensured that, when it is impossible for displaced indigenous communities to return to their land, they are able to live in dignity, with full access to basic social services.

72. The Special Rapporteur is particularly concerned about the situation of indigenous children and women affected by the armed conflict, and he urges the Government to strengthen its programmes for responding effectively and with targeted assistance to their needs. He urges the State to comply fully with Decision 092 and Decision 237 of 2008 issued by the Constitutional Court and to respond in a differentiated manner to the situation of indigenous women and children in rural and urban areas, particularly women and children who have been displaced.

#### **Land and natural resources**

73. The Special Rapporteur urges the Government to take the measures necessary for speeding up the establishment, expansion and improvement of reserves, drawing up timetables with clear deadlines for the actions to be taken.

74. The Special Rapporteur considers that recognition and protection of the territorial rights of indigenous peoples are essential for establishing sustainable conditions of peace and ensuring the survival of the indigenous peoples.

75. The State should promptly clarify the competences of the public authorities as regards the various legal processes relating to reserves in order that the inalienable, unattachable and imprescriptible character of the indigenous territories may be guaranteed. The competent authorities should ensure that in the course of those legal processes the principles of openness, transparency and indigenous participation are respected.

76. The Special Rapporteur emphasizes the need to bring Colombia's public policy relating to the economic development of the country (particularly as regards natural resource extraction and infrastructure "megaprojects") into line with the collective and individual rights of the indigenous peoples. He recalls the recommendation of the previous Special Rapporteur that investment, infrastructure, natural resource extraction and exploitation, industrial production and other major projects should not be promoted without full and genuine prior consultation with and the involvement of the indigenous peoples. Also, it is essential to respond properly to the decisions of the Constitutional Court regarding intrusive initiatives and large infrastructure projects.

77. The Special Rapporteur recognizes the need for concerted action to prevent the cultivation of illicit crops, but also the complexity of the issue. He recommends that the efforts to deal with the issue be strengthened and recalls the recommendation of Mr. Stavenhagen that, except when expressly requested by an indigenous community that has been fully apprised of the implications, no aerial fumigation of illicit crops be carried out near indigenous settlements and the areas from which they obtain their food and other necessities.<sup>52</sup>

### **Consultation and agreement**

78. The Special Rapporteur recommends that agreements be reached with the indigenous peoples on the draft law regarding consultation and care be taken to ensure that it is consistent with the applicable international standards, the decisions of the Constitutional Court and relevant international mechanisms. He is confident that the support of the United Nations System, especially the Office of the High Commissioner for Human Rights, will be helpful in that respect.

79. Regarding consultation committees, the Special Rapporteur considers that such forums should be promoted, with guaranteed exercise of the right of communities to participate, with the adoption of agreed consultation arrangements and with recognition of the representative status of indigenous organizations. He urges the Government to ensure that all agreements reached with indigenous peoples in the consultation committees and other forums be duly respected and implemented.

### **Economic, social and cultural rights**

80. With a view to be improving the provision of necessary social services to the indigenous peoples, Colombia's population statistics should be updated, with more

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<sup>52</sup> See note 36 above.

systematic census-taking so as to obtain detailed information regarding their socio-economic conditions of peoples and with the establishment of an agreed system for the collection of socio-demographic information that involves a differentiated approach in the case of the indigenous peoples.

81. In collaboration with indigenous authorities and organizations, there should be a concerted effort to reduce the high levels of mortality and morbidity in their communities. In particular, health centres with medical staff should be established within indigenous territories, in order that care may be provided promptly – especially to the many communities in remote areas. The Special Rapporteur urges the State to develop and implement a strategy for the prevention of death caused by malnutrition among children, pregnant women and the elderly in indigenous communities. The Government should take steps to ensure that the financial resources available to local authorities for investments designed to improve the health of indigenous peoples are sufficient.

82. There is an urgent need for progress in applying, on an agreed basis, the special education system for indigenous peoples in compliance with Decision 207 of 2007. Accordingly, the State should provide the indigenous peoples with the power, and budgetary resources required by them in order to independently implement the bilingual and intercultural education programme in indigenous areas and ensure that vulnerable indigenous groups — particularly ones that have been displaced — have access to education.

83. The Special Rapporteur urges the State to align local, municipal and national development plans, and other instruments reflecting public policy, more closely with the needs of the indigenous communities. Its institutions need to recognize the indigenous authorities and the decision-making mechanisms of the various ethnic groups, and local authorities should participate in the development of plans and programmes. Also, there is a need for steps to ensure the sound management by local government authorities of public funds transferred to indigenous reserves.

### **Other recommendations**

84. The Special Rapporteur recommends that the United Nations agencies in Colombia, including the representation of the Office of the High Commissioner for Human Rights, in cooperation with the Government and the indigenous peoples, provide technical assistance to the State in order that the recommendations made in this report may be implemented.

85. The Special Rapporteur urges the State of Colombia, the indigenous peoples and other relevant entities to establish processes for dialogue and the adoption of lasting social covenants aimed at implementing the recommendations of various human rights organizations, ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the recommendations made in this report.