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HUMAN RIGHTS OF INDIGENOUS PEOPLES

Report submitted by Mrs. Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations, on her visit to Mexico (28 January-14 February 2000)

Executive summary*

* The full text of the report is circulated as document E/CN.4/Sub.2/2000/CRP.1 (in English only).

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1. The visit of the Chairperson-Rapporteur of the Working Group on Indigenous Populations of the Sub-Commission for the Promotion and Protection of Human Rights (hereinafter Chairperson) to Mexico took place from 28 January to 14 February 2000 following an invitation by the Instituto Nacional Indigenista (INI) of the Ministry of Social Development. This invitation was extended to the Chairperson within the framework of a public statement by the Chairman of the Sub-Commission made on 24 August 1999 in the context of the consideration of the human rights situation in Mexico.

2. The human rights situation of the indigenous peoples of Mexico follows the trends of the overall human rights situation in the country with some particularities, especially regarding, in certain cases, extreme poverty and marginalization, land disputes, violence, forced displacement and oppression.

3. The political will expressed by the Government to improve the implementation of its international human rights obligations should be seen as a generally hopeful sign of respect for indigenous rights as well and should be commended and encouraged. It is obvious that political will cannot be translated into concrete results in people?s lives overnight. The Government needs to engage all State institutions and actors in a process of long-term transformation in favour of human rights. Political will and policy initiatives, including legislative reform, must be followed by sustained concrete steps of implementation and must be monitored by the Government, and accountability mechanisms must be established. In the last analysis, the evaluation of the commitment and human rights policies of the Government will be results-based.

4. The Chairperson recommends comprehensive legislative reform at the federal level regarding indigenous affairs, in order fully to incorporate and translate into specific laws Convention No. 169 of the International Labour Organization. The Chairperson regrets that such legislative reform is currently hostage to the stalemate in the implementation of the San Andrés accords and underlines that immediate and creative steps should be taken by the Government, the Zapatista National Liberation Army (EZLN) , the legislative authorities and political parties to reverse this situation and to adopt urgently the relevant important legislation and administrative measures.

5. Regarding the conflict in Chiapas, the Chairperson recommends that the Government and the EZLN resume dialogue as soon as possible so that the San Andrés accords are implemented for the benefit of the indigenous peoples of Mexico and of all Mexicans. The parties could use the good offices of appropriate international facilitation in this process.

6. The Chairperson is deeply concerned over the militarization of indigenous areas, especially in Oaxaca, Chiapas and Guerrero, and the increasing use of the military for police functions. This situation provokes outbreaks of violence, an atmosphere of fear and gross violations of human rights, including the right to life and physical and mental integrity, the right not to be subjected to torture or to cruel, inhuman or degrading treatment, and the right to be free from arbitrary arrest and detention.

7. The Chairperson is convinced that social issues should be solved through a democratic and genuinely participatory dialogue, rather than through oppression and militarization.

8. The Chairperson is concerned over reports of indigenous communities being deprived of their traditional lands and of indigenous lands being fragmented a situation that has often created tension and conflict, including within and between indigenous communities. The Chairperson expresses the hope that the Government of Mexico will take legislative and administrative measures to recognize indigenous lands, to demarcate these lands and to protect, duly and effectively, their unhindered use by indigenous communities.

9. The Chairperson commends the dynamic efforts and policy initiatives of the INI for the improvement of the economic and social conditions of indigenous communities and believes that many of these efforts have indeed borne fruit and produced important results. At the same time the Chairperson considers that the work and resources of the INI are not adequate to address the immense problems of indigenous communities and that many parts of the State structure must be fully mobilized to face these issues.

10. While economic, social and cultural rights are a matter of progressive implementation depending on the level of economic development of each country, it is clear that the Government of Mexico, like every Government, is responsible for undertaking sustained and systematic efforts for the enjoyment of these rights, using both its own means and, if those are not adequate, through the assistance of the international community. The Government?s giving priority to social development and its policy of decentralization are welcome. It is also recognized that the globalization of the world economy and the impact of internationally set prices for products such as coffee create difficulties for indigenous producers. Further efforts should be made by the Mexican administration and the competent international and regional institutions, including the European Union, to promote market research as that producers, including indigenous women producers, can sell their products at fair prices.

11. The principles underlying the right to development, as proclaimed in the Declaration on the Right to Development in 1986, require more emphasis on the genuine participation of indigenous communities in making decisions regarding their own development, on equality of opportunity for all in their access to basic resources, education, health services, food, housing and employment, and on the fair distribution of income. The genuine and full participation of indigenous communities in the development process is still a challenge for the Government of Mexico. It is recommended that the competent authorities review the process of decision-making and fully involve indigenous communities in the planning, implementation and evaluation of development projects affecting their lives. Special measures need to be taken for the participation of women in the development processes, in particular to market their handiwork.

12. The Chairperson welcomes the good functioning in certain areas of self-administered indigenous communities, without governmental interference, and their recognition de jure or de facto. She is concerned, however, over allegations of governmental interference in other areas, particularly Chiapas and Guerrero, including the removal of indigenous authorities and their replacement by others selected by the government, as well as the phenomenon of "re-municipalization" which appears to undercut democratic processes. The Chairperson considers genuine participation by indigenous communities in the political life of the country to be crucial for their own development and for Mexico?s development, and for democracy overall. Where indigenous communities express the wish to administer their own affairs, this should be allowed by the Government, provided that such self-government takes place within the framework of international human rights principles and standards. It is also recommended that the practice of remunicipalization in indigenous areas be reviewed and revised to reflect the genuine and free will of indigenous communities.

13. In the area of economic and social rights, efforts are being made by the Government to improve the health and education of indigenous people. However, serious challenges still exist, especially in terms of malnutrition, and, in general, more resources appear to be needed in the health area. Sterilization of indigenous women, as a result of enforced practices or due to misinformation, is not only a serious violation of the right to health and of women?s reproductive health, but also of the right to physical integrity. The Government is strongly encouraged to investigate allegations of such practices and to eliminate them, wherever they may exist.

14. The Chairperson commends the efforts of the shelter for outpatient children in need of long-term treatment in Mexico City, Casa de los Mil Colores, and encourages national or international donors to provide financial support.

15. With respect to the right to education, the efforts of the Government to facilitate primary education for indigenous children, including by the establishment of centres for indigenous students, are commendable. However, bilingual education is not systematically pursued by the authorities. Sustained policy efforts and resources are needed to improve this area, especially in terms of teacher training, teachers' remuneration and bilingual educational materials.

16. Access by indigenous youth to secondary and tertiary education requires considerable improvement. It is recommended that the authorities consider adopting a pro-active policy in this area, including consideration of affirmative action in favour of indigenous youth in higher education.

17. The education of girls, a priority of the United Nations in the year 2000, needs further efforts. Beyond the official encouragement of the authorities - which is welcome and should continue - there is a fundamental role to be played also by indigenous community leaders, women?s organizations, community workers, church representatives and others in changing traditional mentalities which result in discrimination against indigenous girls and women in education.

18. The Chairperson considers the use of indigenous languages in the media extremely important for the preservation and development of indigenous cultures and encourages further efforts in this area. Especially in states where the indigenous population constitutes the majority or a considerable percentage of the population, the authorities should consider the broadcasting of television, as well as radio programmes in indigenous languages. This would appear appropriate, for example, in Yucatan, where the Maya language is spoken by the majority of the population. Mechanisms should be established for indigenous people to participate fully in the administration of cultural sites of their own cultural heritage. It has been applauded that the INI has encouraged and helped indigenous children and youth to be directly involved with the establishment of radio stations, their management, the preparation of educational programmes and of communications activities in general.

19. The system of administration of justice faces great challenges in Mexico, where indigenous people are affected by its problems and view it with mistrust. The Chairperson reiterates the appeals of other United Nations bodies and mechanisms regarding impunity enjoyed by the police and the army, excessive use of force by the police and the army, problems related to the language difficulties of non-Spanish-speaker, detention procedures, and the overall lack of transparency in judicial procedures as well as the lack of awareness by indigenous people of what constitutes a crime in Mexican law.

20. Religious conflicts are a reality in many indigenous communities, and are often complicated further by political or economic considerations. State, religious and indigenous authorities and all others concerned have the responsibility to foster tolerance, mutual respect, peaceful coexistence and freedom of religion or belief for all indigenous persons of any religion or any denomination.

21. The Chairperson supports the request of the Huichol people regarding the sacred site of Tatei Aramara in Nayarit that the navy stop using the area as a firing range. This request is based, inter alia, on the principle, adopted by the Working Group on Indegenous Populations and respected by many Governments, that indigenous cemeteries and other sacred sites should be respected and protected by Governments wherever they exist.

22. Regarding technical co-operation between the Government of Mexico and the Office of the High Commissioner for Human Rights, the Chairperson is convinced that the constructive exchange of views

between the High Commissioner for Human Rights and the leadership of Mexico and the timely conclusion and implementation of a memorandum of understanding should be vigorously pursued. The Chairperson expresses her appreciation for the openness of the Government of Mexico in discussing these matters and is convinced of the importance of technical cooperation in the long-term effort to improve institutions. The specific areas of technical cooperation identified by the Chairperson in connection with indigenous peoples include: enforced disappearances; paramilitary groups or groups of armed civilians; corruption, which affects many sectors of the public service and in particular, the administration of justice; drug-trafficking and the illicit transfer of arms; the use of force by the police and the military; training of police and prison officials; enhancing participatory processes for indigenous communities; the need for formal recognition and training of indigenous court interpreters and for the judicial police, the judiciary and its staff to be aware of their legitimate role; the need for awareness of basic constitutional, other legal, in particular penal, principles and provisions, as well as of fundamental human rights principles and standards on the pact of indigenous communities.

23. The displacement by force of the indigenous population appears to have multiple causes, an in-depth analysis being beyond the scope of this report. It is clear that religious conflicts, land conflicts, militarization and poverty are all part of the problem and each of these areas needs to be given an appropriate policy response, in accordance with the international human rights obligations of Mexico.

24. The Chairperson commends the Government of Mexico for generously providing a place of refuge for indigenous Guatemalans and others over the years, appreciates the opportunities for elementary education for Guatemalan children and youth provided by the competent authorities of Mexico and, in particular, welcomes the granting of Mexican citizenship to the Guatemalan indigenous refugees requesting it and the facilitation of the economic and social development of those indigenous communities.

25. The Chairperson expresses the fervent wish that the newly elected President and the Government and administration will make every effort, as soon as possible, to demonstrate political will and responsibility in taking legislative and administrative measures for the full implementation of the recommendations of the present report. They should also establish just and fair procedures, in accordance with the obligations and responsibilities provided by international humanitarian and human rights law, aimed at the prevention of violations of human rights and the effective protection of the human rights and fundamental freedoms of all peoples - indigenous and non-indigenous - of Mexico.
