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Protection of Human Rights*
Working Group on Indigenous Populations
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REVIEW OF DEVELOPMENTS

**PRINCIPAL THEME: “UTILIZATION OF INDIGENOUS PEOPLES’
LANDS BY NON-INDIGENOUS AUTHORITIES, GROUPS OR
INDIVIDUALS FOR MILITARY PURPOSES”**

Note by the Secretariat

* Pursuant to General Assembly resolution 60/251, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights will be assumed as of 19 June 2006 by the Human Rights Council, which will review them as appropriate.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 13	3
I. DIFFERENT KINDS OF UTILIZATION OF INDIGENOUS PEOPLES' LANDS BY NON-INDIGENOUS AUTHORITIES, GROUPS OR INDIVIDUALS FOR MILITARY PURPOSES	14 - 32	4
A. Use of indigenous lands for military bases and training camps	14 - 20	4
B. Use of indigenous lands by armed groups	21 - 24	5
C. Use of military forces for the control of indigenous peoples' lands	25 - 29	6
D. Use of armed forces for the protection of development projects and the exploitation of natural resources	30 - 32	7
II. LEGAL STANDARDS AND LAWS USED TO JUSTIFY THE MILITARIZATION OF INDIGENOUS PEOPLES' LANDS	33 - 39	8
A. Arguments based on national defence	33 - 35	8
B. Violations of treaties and agreements	36 - 39	8
III. IMPACT OF THE UTILIZATION OF INDIGENOUS PEOPLES' LANDS BY NON-INDIGENOUS AUTHORITIES, GROUPS OR INDIVIDUALS FOR MILITARY PURPOSES	40 - 47	9
A. Internal displacement and refugees	40 - 43	9
B. Forced labour and other human rights violations	44 - 45	9
C. Special effects on indigenous women and children	46 - 47	10
IV. CONCLUSIONS	48	10

Introduction

1. In its resolution 2005/23, the Sub-Commission on the Promotion and Protection of Human Rights decided that the principal theme of the twenty-fourth session of the Working Group on Indigenous Populations would be “utilization of indigenous peoples’ lands by non-indigenous authorities, groups or individuals for military purposes” (E/CN.4/Sub.2/2005/26).
2. The aim of the present paper is to identify possible areas for discussion based on contributions from indigenous peoples during previous sessions of the Working Group.
3. In the working paper submitted by Mr. Miguel Alfonso Martínez to the twenty-second session of the Working Group entitled “Indigenous peoples and conflict resolution” (E/CN.4/Sub.2/AC.4/2004/2) militarization was analysed briefly. He stated: “This is a major source of conflict, which often results in either the forced eviction of indigenous peoples, or life-threatening circumstances connected with nearby warfare. The State’s power to ‘extinguish’ aboriginal titles to lands on the basis of national security needs is often used to give license to armed forces to launch national defense projects on indigenous lands, including the construction of military bases, testing grounds and territory for war games.”
4. In the report of the Working Group on its nineteenth session (E/CN.4/Sub.2/2001/17), paragraphs 46-53 are dedicated to “Militarization, conflict and military bases”. In this report, the Working Group examines the effects of militarization of indigenous lands, using as a basis several examples provided by indigenous peoples’ representatives.
5. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples also analyses the question of militarization, especially in his visits to Colombia (E/CN.4/2005/88/Add.2) and the Philippines (E/CN.4/2003/90/Add.3).
6. The concept “for military purposes” refers to military, logistic or any other activity of military nature, including supply facilities, construction of roads or any other action necessary for the development of the activities of armed groups, independent of their nature or the lack of an official declaration of those activities.
7. The term “indigenous peoples’ lands” in this report also refers to the concept of territories, which covers the total environment of the areas that the peoples concerned occupy or otherwise use.¹
8. Wars and armed conflicts are a major concern for indigenous peoples. In many cases, indigenous peoples’ lands become battlefields for the internal wars and conflicts, and indigenous peoples are targeted by non-regular armed groups like *colons* or paramilitaries and/or threatened by regular military forces. As was pointed out repeatedly by indigenous peoples’ representatives during the Working Group, alleged counter-terrorism has been increasingly used as a justification for military activities on indigenous peoples’ lands.

9. Resettlement policies are also an important source of concern to indigenous peoples, as such policies are often used to justify military presence. General comment No. 27 of the Human Rights Committee responds to this concern by pointing out that: “There could be limitations on the freedom to settle in areas inhabited by indigenous peoples” (CCPR/C/21/Rev.1/Add.9).

10. Indigenous peoples’ representatives at the Working Group frequently identified a link between development projects, natural resources exploitation and militarization. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people also analysed this link. In his report to the Commission on Human Rights, he recommended that major development projects “should never be handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate the human rights of indigenous communities” (E/CN.4/2003/90).

11. Some indigenous representatives in the Working Group expressed concern regarding the use of legal instruments to justify the installation of military forces on indigenous lands, such as special laws and national security acts. They were concerned that those laws may allow military forces to act with a sense of impunity, and may create a legal coverage for their operations.

12. The impact of the utilization of indigenous peoples’ lands for military purposes on indigenous peoples’ rights is wide-ranging. Indigenous representatives were specially concerned with internal displacement, refugees, and the effects suffered by those individuals and communities that remain on their traditional lands and are threatened daily by the military use of their lands. Different statements highlighted the fact that this impact is different for men, women and children, and that their particular needs should be analysed separately.

13. It was pointed out during several sessions of the Working Group, however, that the military use of indigenous lands can also have positive effects. International interventions, peacekeeping operations or even the creation of a military base on indigenous lands may limit or stop human rights violations. Overall, however, the information received indicates that militarization is likely to have negative impacts on indigenous peoples when policies, laws and activities do not respect indigenous peoples’ rights, especially those related to their lands and their differentiated identities, and especially in regard to the principle of free prior and informed consent.

I. DIFFERENT KINDS OF UTILIZATION OF INDIGENOUS PEOPLES’ LANDS BY NON-INDIGENOUS AUTHORITIES, GROUPS OR INDIVIDUALS FOR MILITARY PURPOSES

A. Use of indigenous lands for military bases and training camps

14. One of the main concerns of the indigenous peoples’ representatives at the Working Group was that their lands are often used for the installation of military bases and training camps. The non-recognition of collective property and the absence of land titles for indigenous peoples were identified by affected indigenous representatives as reasons why indigenous peoples’ lands are frequently declared “public lands” and are used for militarization.

15. It is important to emphasize the fact that military bases are often accompanied by soldiers, suppliers and civilian workers who may settle in or close to indigenous communities. One indigenous peoples' representative at the Working Group stated that these non-indigenous individuals bring with them their own lifestyles, including activities such as prostitution and drinking alcohol, that in his experience have threatened the way of life of his community.

16. The size of the military bases and facilities is also a source of concern. Different indigenous representatives stated that they were forced to move to new lands, or were deprived of important parts of their lands, after the construction or enlargement of military facilities. Training activities may also compromise the quality of the affected lands, which can have important effects on the survival, and on the right to food, of indigenous peoples.

17. When military bases are in conflict areas, armed conflict can be spread to indigenous lands, a concern that was stressed by several indigenous representatives at the Working Group. They also stated that even though the impact that those conflicts have on indigenous communities can be severe, their own authorities are not regularly consulted or their advice is often ignored.

18. Some training exercises use hazardous material such as nuclear weapons, radioactive substances, and landmines. Indigenous representatives stated repeatedly that their lands are often not cleared after military training exercises and that these materials threaten their right to health and to a safe environment. Especially dangerous is the use of landmines during training exercises, and in several countries indigenous peoples have been injured by landmines left behind after training exercises.

19. Indigenous peoples' representatives also remarked that training camps are often created in order to promote military presence and control in geo-strategic places such as borders, rivers, coastlines, mines, and ports, sometimes for the storage of hazardous materials. Indigenous peoples are often prevented from entering and using their lands under military jurisdiction, and, in some cases, militarization has resulted in the permanent loss of their lands.

20. Positive effects arising from military facilities have also been reported by indigenous peoples. Information received from some countries shows that the construction of military bases has helped indigenous peoples by limiting intrusions by paramilitary and armed groups from neighbouring countries.

B. Use of indigenous lands by armed groups

21. Information from various indigenous peoples underlines the fact that during internal conflicts indigenous peoples may suffer violence from both sides involved, without being a belligerent party themselves. Indigenous communities are often forced to help armed groups by providing them with food and supplies. When indigenous communities do so, the opposite armed groups often define those communities as "enemies", and commit serious human rights violations against them.

22. Some of the armed groups in conflicts have no formal structure, act independently and commit human rights violations, war crimes and crimes against humanity, attacking local communities without being prosecuted afterwards.

23. In order to combat these negative effects of militarization, indigenous peoples suggested that agreements be signed by all belligerent groups that declare indigenous lands to be non-militarized zones and indigenous communities to be neutral. These agreements are a useful tool for recognizing the neutrality of indigenous peoples and resisting armed groups' legitimacy when entering indigenous lands.

24. Peacekeeping operations and foreign forces were also reported to be a useful way of limiting the effects of war or armed conflicts. If in most cases, indigenous peoples recognize the presence of such operations and forces as positive, indigenous representatives also expressed concern that peacekeepers may have little knowledge about the special needs and rights of indigenous peoples. They recommend that peacemakers should receive human rights training, with special emphasis on indigenous peoples and minorities rights.

C. Use of military forces for the control of indigenous peoples' lands

25. Many of the statements regarding the utilization of indigenous peoples' lands by non-indigenous authorities, groups or individuals for military purposes made by indigenous peoples' representatives at the Working Group underline the fact that they are directly targeted by armed forces and paramilitaries.

26. Some of those statements pointed out that perpetrators are rarely prosecuted. They asserted that those in the armed forces who commit violations often enjoy impunity, and that when they are held accountable, responsibility is often limited to a few individuals and no systematic policy is recognized. Indigenous peoples' representatives also stressed that violations are sometimes very difficult to prosecute since the affected lands are often closed areas, making it difficult for human rights defenders and journalists to report on the human rights violations committed there.

27. Indigenous peoples' representatives underlined the fact that some countries do not recognize the existence of indigenous peoples within their territories, and treat them as foreigners that occupy "national lands". Indigenous peoples' representatives from some countries alleged that their Governments are implementing policies aimed at the homogenization of the national community, as they consider ethnic differences to be a challenge to national unity. These representatives stated that indigenous peoples and communities are viewed as "inside enemies or terrorists", and that antiterrorist acts have been used against indigenous peoples' demands for equal rights, under the pretext of "counter-insurgency" and national security. It should be noted that general comment No. 29 on state of emergency situations of the Human Rights Committee states that "the Committee is of the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances" (CCPR/C/21/Rev.1/Add.11).

28. Several indigenous peoples' representatives expressed concern that regular military forces are used in some countries to intimidate local communities, by carrying out extrajudiciary executions, disappearances, rapes and other human rights violations. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has also reported several cases of these kinds of grave violations in his communications with Governments (E/CN.4/2006/78/Add.1, E/CN.4/2005/88/Add.1, E/CN.4/2004/80/Add.1).

29. Information received from indigenous peoples also points to the link between human rights violations and resettlement policies. In some instances, regular forces threaten indigenous communities in order to force them to leave their traditional lands. Once indigenous populations leave, their lands are reallocated to *colons* and actions are taken in order to prevent the return of indigenous peoples, including the construction of military bases or police stations. Often after the first *colons* are settled, paramilitary forces may target indigenous peoples, forcing them to leave their lands, which are then occupied by additional *colons*. Indigenous representatives at the Working Group expressed their concern that as a part of these policies, *colons* usually receive lands titles, food supplies and other benefits typically unavailable to the original inhabitants. It was noted that paramilitary forces may act on their own behalf and with or without the support of regular forces.

D. Use of armed forces for the protection of development projects and the exploitation of natural resources

30. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, in his report for the fifty-ninth session of the Commission on Human Rights (E/CN.4/2003/90), analysed the impact of large-scale or major development projects on indigenous peoples' rights. In this report, the Special Rapporteur made the following recommendation regarding the militarization of these projects: "Contentious issues between indigenous peoples, Governments and business enterprises arising in the course of the implementation of major development projects should at all times be considered within the framework of democratic governance, open dialogue and negotiations, and should never be handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate the human rights of indigenous communities."

31. Statements regarding this issue highlight two main reasons that underlie the militarization of development projects. The first is economic interest. Indigenous peoples' lands are rich in resources and the militarization of their lands is sometimes used for the exploitation of those resources without appropriate compensation for the indigenous peoples concerned. Development projects may also be used as a justification for controlling areas that belong to indigenous peoples as well as for the presence of large numbers of soldiers on those lands.

32. Specific legislation has been passed in some countries to protect indigenous peoples from negative effects of militarization. In the Philippines, the Indigenous Peoples' Rights Act 1997 recognizes indigenous peoples' right to ancestral domain and land titles to traditional lands. The Act also requires a public or private developer or company to obtain the free prior and informed consent of indigenous peoples for certain activities, including the entry of the military (see section 17 and 57 of the Act). In Venezuela, the Indigenous Peoples and Communities Act 2005 states that soldiers working in indigenous lands should attend and follow the guidelines laid out at specific workshops and covers a wide range of actions that require the free prior and informed consent of the indigenous peoples involved.

II. LEGAL STANDARDS AND LAWS USED TO JUSTIFY THE MILITARIZATION OF INDIGENOUS PEOPLES' LANDS

A. Arguments based on national defence

33. Indigenous peoples' representatives expressed concern regarding the fact that the use of indigenous' peoples lands by non-indigenous authorities, persons or groups for military purposes is often justified by legal arguments that may result in impunity for perpetrators.

34. Some statements issued by indigenous representatives emphasized that when foreign military bases are located on indigenous peoples' lands, their personnel often enjoys immunity (indigenous peoples' lands may be under the jurisdiction of foreign military law). It was alleged that, in many cases, when a human rights violation is denounced, national jurisdiction does not apply and perpetrators may return to their home countries without facing prosecution.

35. Specific country situations illustrate that National Defense Acts and other domestic legislation have given special powers to militaries, such as the control of areas that are usually reserved for civilians including governmental offices, universities, etc.

B. Violations of treaties and agreements

36. Miguel Alfonso Martínez, in his report "Study on treaties, agreements and other constructive arrangements between States and indigenous populations" (E/CN.4/Sub.2/1999/20), analysed the implementation of these treaties, agreements, and constructive arrangements. He stated that "Failure of State parties to comply with, or their violation of, the obligations assumed under existing treaties, the unilateral abrogation of the treaty itself (or parts thereof), via State law or other mechanisms and even the failure of State parties to ratify treaties negotiated with indigenous peoples were problems identified (...) regarding the significance of treaties/agreements at the national level."

37. Treaties and agreements between indigenous peoples and States are often the result of previous armed conflicts and, as of recently, often include some sort of autonomy for indigenous peoples' regions, changes in resettlement policies, limitation of military force and the participation of the local population in decision-making.

38. In some instances, however, treaties and agreements are not respected, and ceasefire agreements are used to create an environment of impunity for regular and paramilitary forces. Indigenous peoples complain that if agreements are violated by the State, they have no impartial instance to demand redress.

39. An additional concern is that when a conflict is among non-indigenous belligerents, indigenous peoples are usually excluded from the peace negotiations and accords, which are limited to belligerent parties, and that the reparation to indigenous peoples is, when it exists, only secondary. The information received shows that war crimes committed against indigenous peoples are rarely punished, and in some cases the international community and mass media do not pay enough attention to their situation.

III. IMPACT OF THE UTILIZATION OF INDIGENOUS PEOPLES' LANDS BY NON-INDIGENOUS AUTHORITIES, GROUPS OR INDIVIDUALS FOR MILITARY PURPOSES

A. Internal displacement and refugees

40. An increase in internally displaced persons is often the result of the use of indigenous peoples' lands for military purposes or resettlement policies, as some country situations illustrate. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), recognize, in principle 9, the special link between indigenous peoples and their lands, stating that "States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands".

41. Indigenous peoples' representatives at the Working Group stressed that in some countries displacing indigenous peoples from their traditional lands is one of the main goals of armed groups. In such cases, displacements are not accompanied by governmental policies designed to help indigenous peoples to settle on new lands, nor do they address effectively the effects of the displacement. On the contrary, further measures are undertaken to prevent indigenous peoples' return, such as mining their lands, distributing their lands to others and implementing development projects run by outsiders, all of which gravely aggravate the situation of indigenous peoples.

42. Internal displacement may also be the result of overall violence, pushing indigenous peoples into safe areas or big cities. This may increase the vulnerability of their situation, as the Special Rapporteur pointed out in his report E/CN.4/2003/90/Add.3 on his visit to the Philippines. In his report on his visit to Colombia (E/CN.4/2005/88/Add.2), he also emphasized that displacement is especially traumatic for women and children.

43. It has been reported from several countries that indigenous peoples seeking refuge in neighbouring countries may find themselves diverted to the lands of other indigenous communities belonging to the same people in neighbouring countries. Existing lands and services may not be able to satisfy the needs of an increased population. Indigenous peoples may also have difficulties practising their way of life inside refugee camps. When conflicts have a very long duration, the risk of coming "permanent refugees" may be very high.

B. Forced labour and other human rights violations

44. Reports show that gross violations of human rights, and impunity associated with the military use of indigenous peoples' lands, can include extrajudiciary killings, rapes, burning of homes and even cannibalism, as reported in the report of the Secretary-General (S/2003/211). It has also been reported that military forces request food to be collected for their maintenance. Forced labour may include enrolment as soldiers, farmers, miners, constructors of facilities or even as prostitutes.

45. It has been reported that an integral part of military action is psychological warfare, including the creation of permanent fear in individuals and communities. Such psychological warfare has been used to neutralize the work of non-governmental human rights organizations, to force indigenous peoples to leave their lands and to weaken traditional authorities.

C. Special effects on indigenous women and children

46. Indigenous representatives were especially concerned at the situation of indigenous women and children. The absence of men recruited for war often brings extra work for indigenous women and may increase their insecurity. It was reported that in specific situations gang-rape has been used as a weapon of war and that women have been forced to marry soldiers or were used by them as prostitutes or sex slaves. As a consequence, women may be prevented from marrying or be excluded by their original community.

47. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, in his report (E/CN.4/2005/88), noted that indigenous children have been forcibly recruited as soldiers in different conflicts. During their recruitment, and sometimes for several years, these indigenous children do not receive any education, suffer from war trauma and find it difficult to learn and to respect their customary laws and authorities. When rehabilitation policies have been implemented, indigenous children are treated the same as any other children, with no specific programmes designed for them.

IV. CONCLUSIONS

48. **The Working Group might want to make recommendations on the principal theme, taking into account the relevant articles of the United Nations draft declaration on the rights of indigenous peoples. These recommendations, among others, could focus on consultation and the principle of free, prior and informed consent, respect for treaties and other constructive arrangements, participation of indigenous peoples in peace agreements, and the effective protection of indigenous peoples' human rights and lands during conflict.**

Note

¹ See ILO convention No. 169, Indigenous and Tribal Peoples Convention, article 13.2.
