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QUESTIONS AUTOCHTONES

**Note verbale datée du 16 mars 2005 adressée au Haut-Commissariat
des Nations Unies aux droits de l'homme par le Ministère colombien
des relations extérieures**

Le Ministère colombien des relations extérieures présente ses compliments au Haut-Commissariat des Nations Unies aux droits de l'homme et le prie de bien vouloir transmettre à M. Rodolfo Stavenhagen, Rapporteur spécial de la Commission des droits de l'homme sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones, les observations du Gouvernement colombien* concernant le rapport de M. Stavenhagen sur sa mission en Colombie, qui s'est déroulée du 8 au 17 mars 2004 (E/CN.4/2005/88/Add.2), afin que puisse les prendre en considération la Commission quand elle examinera le rapport du Rapporteur spécial.

* Ces observations sont reproduites telles qu'elles ont été reçues, dans la langue originale et en anglais seulement.

Annex

OBSERVATIONS OF THE GOVERNMENT OF COLOMBIA CONCERNING THE REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES, MR. RODOLFO STAVENHAGEN

In the view of the Colombian Government, the report provides information on the situation experienced by indigenous communities as a result of the ongoing terrorist activity being waged by illegal armed groups in its territory. It must be acknowledged that the vast majority of violations of these communities' rights can be attributed to illegal guerrilla and self-defence groups. The fact that the report indicates that some indigenous communities have remained in their territory because of the security and protection afforded by the permanent presence of the army is noteworthy.

However, the report does not reflect all the efforts made by the Colombian Government on behalf of indigenous peoples. Accordingly, a number of specific observations are provided below regarding situations that the Government believes the Special Rapporteur failed to grasp adequately during his brief visit to the country, particularly with regard to the work of the public force. In addition, a brief account is given of the progress that has been made in developing a national policy in this area.

SPECIFIC OBSERVATIONS

1. The statement in paragraph 29 of the report to the effect that there "are truly acts of genocide and ethnocide against indigenous peoples" in Colombia must be strongly refuted. For this international crime to be present, a subjective element is required, which is the intent to destroy, either in part or in whole, a national, ethnic, racial or religious group. The acts being perpetrated in Colombia against members of indigenous groups, deplorable though they may be, do not meet the requirement of intent to do away with indigenous peoples, even if that is their result; they are the depraved acts of armed groups outside the law that occur in a situation over which the State has little control, and which over time have affected the rural civilian population - mestizo, Afro-Colombian and indigenous - in many parts of the country and in all social sectors.
2. With regard to paragraph 41 of the report, it is important to note that the Anti-Terrorist Statute has never entered into force in Colombia. It should also be noted that the Constitutional Court, which exercises constitutional control as befits a State governed by the rule of law, ruled, in its judgement No. C-816 of 30 August 2004, that the legislative act by which the Anti-Terrorist Statute was adopted is unenforceable.
3. The rehabilitation and consolidation zones referred to in the report were established when the state of emergency was declared; the declaration set out a series of constitutional controls that were to be implemented on a temporary and proportional basis.

4. Paragraph 18 of the report contains a reference to a legislative initiative aimed at curtailing the jurisdiction of the Constitutional Court and restricting the scope of protection it affords; it should be noted that this initiative was not submitted to Congress.

5. Paragraph 28 contains a reference to the use of explosive devices and anti-personnel landmines but does not specify by whom they are used. The use of such devices is a practice of armed groups outside the law; Colombia is in fact committed to an anti-mine plan of action that sets out measures in the areas of prevention, victim care and destruction of such devices.

6. In the text box following paragraph 29 of the report it is stated that the precautionary measures called for by the Inter-American Commission on Human Rights on behalf of the Embera Katío people have still not been implemented by Colombia. It should be noted, however, that a protection plan has been devised for the Embera Katío people, consisting of a Joint Commission (representatives of the Government, monitoring bodies and the communities concerned) and a community advocate. It should also be pointed out that the indigenous communities covered by the provisional and precautionary measures called for by bodies of the Inter-American human rights system maintain direct and ongoing contact with the Government.

7. The Special Rapporteur also speaks of the neutrality of indigenous reserves and territories. It should be pointed out in this connection that neutrality has to do with the relations between one State and another, in the context of international armed conflicts. It would be difficult to apply this concept to the nationals of a State vis-à-vis their own State. What would be more appropriate in terms of international humanitarian law would be to speak of the unquestionable immunity enjoyed by the civilian population from attacks by armed groups. Colombia, for its part, is required to protect the population from such attacks, and to this end is pursuing its policy of democratic security.

8. The report makes general references to acts by the public force that would seem to infringe these rights. Such situations must be challenged so that in cases where they do occur and have not yet been prosecuted the appropriate criminal and disciplinary charges can be brought, given the Government's policy of zero tolerance of human rights violations by the public force. The report also indicates that this practice is widespread, which is contrary to fact.

9. It is stated, for example, that there have been reports of bombings of indigenous communities by the air force, and the bombing of the Maguí council hall in Nariño, which allegedly took place on 12 February 2004, is cited. It should be noted in this connection that according to information provided by the air force, prior to the air strike on a place known as Las Vegas, near Maguí, it was determined that there were no civilians in the area, and the operation was conducted in full compliance with international humanitarian law. The area had become a "legitimate military target": information obtained beforehand had confirmed that it was being improperly used by armed groups outside the law as a refuge or meeting place or rest facility, since it contained a kitchen, bathrooms, wide corridors and so forth. The Government wishes to inform the Special Rapporteur that, pursuant to Directive No. 800-07 of 7 May 2003, concerning the policies of the Military High Command for the protection of the human rights of

indigenous communities and other ethnic minorities, the air force has prepared a compact disc containing geographical maps showing the location of indigenous reserves throughout the country, and this material has been issued to all military units with a view to protecting the inhabitants of the communities where air raids are carried out, a step which constitutes a commendable effort to protect human rights.

10. The report also states that the indigenous communities of Sierra Nevada de Santa Marta view the possible posting of a mountain battalion in the area as a threat to their cultural integrity. In this connection the Government wishes to inform the Special Rapporteur that under President Uribe the community has been approached with a view to obtaining the permission of the indigenous authorities for this project, a matter that was fully discussed at a community council held in Nabusimake.

11. The report refers to “reports of civilian indigenous people being detained by the armed forces, later to be found dead; the official explanation, where any is given, is that they were ‘terrorists’ who had been ‘eliminated’ in military operations”. The Government believes that these incidents, which are the subject of criminal investigations, must be clarified, but considers that it would be inappropriate to draw any conclusions until a judgement has been reached. At the same time, the Government believes that clarifications must be made to the statement in paragraph 41 that the army has been carrying out “mass arbitrary detentions in indigenous communities ... under the Anti-Terrorist Statute, which allows the armed forces to perform judicial functions in conflict zones”, since these functions have never been given effect, pursuant to the aforementioned decision of the Constitutional Court.

12. Attention is drawn to recommendations 100 and 101 of the report: with regard to the first, there is no need to recommend that indigenous people should continue to be excluded from the bill on compulsory military service, as both the Government and the legislature have publicly reaffirmed their commitment to maintaining the exemption of indigenous peoples as being necessary to protect the country’s ethnic and cultural diversity; as regards the second recommendation, calling for the discontinuation of schemes for children and youngsters such as the network of informers, the peasant soldiers and the “soldiers for a day” programme, it must be pointed out that all of these programmes are entirely voluntary in nature, and it would therefore be incorrect to assume that they involve civilians in the armed conflict.

13. The Government also considers that the report fails to recognize that never before has the public force had a standing coherent policy for strengthening the protection of the individual and collective human rights of communities. Such a policy now exists and has not only yielded results in the operational sphere and led to major efforts to ensure a permanent presence in indigenous territories formerly under the control of terrorist groups but has even involved the training of public force members in legislation and indigenous law, with a view to enhancing communication and collaboration with the authorities. This, together with the indigenous security councils, has meant that the public force explicitly recognizes indigenous governors as public authorities in their own territories, under terms of autonomy provided for in the Constitution.

PROGRESS IN THE IMPLEMENTATION OF GOVERNMENT POLICY ON BEHALF OF INDIGENOUS PEOPLES

As the Special Rapporteur noted, the Government is in the process of formulating a strategy for indigenous peoples aimed at overcoming poverty and the social, legal, political, economic and cultural inequalities that confront them, increasing their participation and autonomy, and ensuring that they are recognized, respected and valued by Colombian society as a whole.

Progress has also been made in the area of legislation, with a view to ensuring the right to development of every group, strengthening their cultural values, recognizing their languages, providing them with education that reflects the specificities of their culture and encouraging participation that is consistent with their forms of organization. Specific measures have also been adopted in respect of individual ethnic groups.

Forums for collaboration with indigenous peoples

From 26 to 29 July 2004 the Committee on Human Rights for Indigenous Peoples and the Standing Committee for Consultation with Indigenous Peoples and Organizations met and put forward proposals for a strategy for the protection and promotion of human rights and international humanitarian law of indigenous peoples and regulations for the implementation of Act No. 691/2001. The articles corresponding to indigenous mining areas are covered by the Mining Code.

Indigenous data by sector

Indigenous territory¹

To date the following have been established:

53 former or colonial reserves	514,509 hectares	indigenous pop. 244,010
632 new reserves	31,125,786 hectares	indigenous pop. 441,550

Deeded and expanded territories, 2002-2004

National:

97 reserves	1,298,475.6547 hectares	indigenous pop. 88,024
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General System of Indigenous Contribution

Volume of resources transferred from the State to indigenous reserves, 2002-2004:
143,817 million pesos

Legislation

Work continues on developing implementing regulations for Act No. 691/2001 (on the social security system and health), Act No. 715/2001 (on the distribution of resources transferred from reserves by the General Participation System) and Act No. 756/2001 (on the distribution by sector of a percentage of royalties). Work continues also on the regulation of the mining areas located in indigenous reserves, which is intended to ensure the right of indigenous communities to preferential access to the deposits there.

In addition, on the initiative of the Government, a bill is currently before Congress on the organization of territorial planning and has been transmitted to the Senate. This bill lays the foundation for the establishment of indigenous territorial entities.

Health 2004²

Indigenous population covered by subsidies	500,198 persons
Annual cost	95,537,000 pesos

Some 410,000 indigenous persons belong to enterprises set up by their own communities that administer resources totalling 78,310,000 pesos. It was hoped that by December 2004 all indigenous persons in the country would have access to health insurance.³

Education

Enrolment in the ethnic education programme	105,487 indigenous children
Cost	1,791,000 pesos

New shares: contracts to extend coverage of indigenous children have been concluded using resources from the National Royalties Fund, as follows:

Amazonas	787 new shares	Value: 500 million pesos
Cauca	2,461 new shares	Value: 2 billion pesos
Total	3,248 new shares	Value: 2.5 billion pesos

Higher education

The National Training Service (SENA) reports that 64,000 indigenous persons have received training during the current administration.

Recipients of fellowships from the Álvaro Ulcue Fund:

- | | |
|--------------------------------|-------------------------------|
| – Total beneficiary population | 1,469 indigenous young people |
| – 2004 budget | 1.2 million pesos |

Culture

The National Collaboration and Incentives Programme run by the Ministry of Culture was instrumental in the execution of 49 cultural projects during 2003, with 396 million pesos earmarked for such activities as:

- Musical encounters;
- Inter-ethnic encounters;
- Traditional medicine encounters;
- Myth and legend festivals;
- Indigenous games;
- Reclaiming of traditions, etc.

Consultation with the Uw'a people

The Office of Ethnic Affairs has begun a process of inter-agency coordination for the holding of consultations with the Uw'a indigenous people, pursuant to article 16, paragraph 4, of Decree No. 200/2003 and Convention No. 169 of the International Labour Organization (ILO), adopted by Act No. 211/1991.

In order for the consultation to take place, an interdisciplinary team was set up under an agreement with ECOPETROL and the Office of Ethnic Affairs for the purpose of developing a model for consultation that would serve as a pilot in an effort to reconcile the right of the State to economic development with the special rights of indigenous peoples, while ensuring the ethnic, economic, social, cultural and environmental integrity of the Uw'a and all indigenous peoples in Colombia.

The methodology used in the consultation process has been conceived from the outset as one of joint building; among its guiding principles are good faith, legitimacy, transparency, participation, representativeness, intercultural understanding and bilingualism, unity and integration, opportunity and legal pluralism.

Military service

Act No. 48/1993 remains in force; this Act exempts Colombia's indigenous people from compulsory military service and payment of the military assessment.

Indigenous radio stations⁴ - phase I: total of 16**Indigenous radio stations established during Phase I**

Installation period and commencement of operations	Location	Department and total number of stations	Beneficiary population	Population covered (percentage)	Municipalities covered	Indigenous reserves covered
Established as of 07/08/2002, commenced operations between 08/2002 and 03/2003	Aldana	Nariño	14 263	2.3	5	7
	Barbacoas	Nariño	7 613	1.2	3	21
	Coconuco	Cauca	3 760	0.6	2	3
	Cumbal	Nariño	20 826	3.4	2	5
	Santander de Quilichao	Cauca	24 475	4.0	7	16
	Silvia	Cauca	20 883	3.4	2	3
	Totoró	Cauca	6 509	1.1	1	5
	Túquerres	Nariño	4 272	0.7	5	12
	SUBTOTAL	8	102 601	16.6	27	72
Became operational in 2003	Almaguer	Cauca	7 802	1.3	2	2
	Belalcázar	Cauca	33 350	5.4	2	13
	Milán	Caquetá	1 666	0.3	2	10
	Mocoa	Putumayo	2 793	0.5	4	24
	San José del Fragua	Caquetá	1 723	0.3	5	12
	Santiago	Putumayo	7 865	1.3	3	5
	SUBTOTAL	6	55 199	8.9	18	66
Became operational in 2004	Morales	Cauca	6 058	1.0	1	3
	Ricaurte	Nariño	6 876	1.1	2	27
	SUBTOTAL	2	12 934	2.1	3	30
	TOTAL PHASE I	16	170 734	27.6	48	168

Indigenous radio stations – phase II: total of 12**Indigenous radio stations established during Phase II**

Installation period and commencement of operations	Location	Department and total number of stations	Beneficiary population	Population covered (percentage)	Municipalities covered	Indigenous reserves covered
Drawing up of contracts, to be completed by the end of November 2004; installation to be completed and stations to be operational by March 2005	Jardín	Antioquia	13 000	2.1	1	1
	Apartadó	Antioquia	20 000	3.2	10	85
	San Andrés de Sotavento	Córdoba-Sucre	35 000	5.7	12	87
	Uribia (Nazareth)	Guajira	145 000	23.4	6	14
	Fonseca	Guajira				
	Caldono	Cauca	12 000	1.9	3	2
	SUBTOTAL	6	225 000	36.4	32	189
Agreements pending, work on infrastructure required of indigenous peoples	Quibdó	Chocó	8 000	1.3	9	20
	Bojayá	Chocó	5 000	0.8	2	3
	Valledupar	Sierra Nevada – Cesar	32 000	5.2	3	8
	Ortega	Tolima	22 000	3.6	6	119
	Mitú o Carurú	Vaupés	19 000	3.1	3	40
	Cumaribo	Vichada	18 000	2.9	1	4
	SUBTOTAL	6	104 000	16.8	24	194
	TOTAL PHASE II	12	329 000	53.2	56	383
TOTAL PHASES I and II Contracts concluded		22	395 734	64.0	80	357
TOTAL PROGRAMME GOAL		28	499 734	80.8	104	551

Social programmes

In preparing the National Plan for Children, progress has been made in characterizing the indigenous population, and an effort has been made to compile data by ethnic group, age and sex with a view to identifying clearly the status of indigenous people within the country.

Indigenous women

In the context of formulating policies for indigenous peoples, support has been provided for the plans of the Office of the Presidential Adviser on Equality of Women, the purpose of which is to identify inter-agency activities for indigenous women.

In addition, Act No. 731/2002, on rural women, was transmitted to territorial bodies with a view to making it available for consultation in all relevant coordination forums. There are plans to publish it in the Consumer's Bulletin.

Border areas

An inter-agency border committee has been established, which is preparing an ethnic policy paper for ethnic groups living in border areas. Inter-agency activities to develop various inter-agency programmes in the border areas are also being coordinated.

Census

There are plans to incorporate the ethnic variable in the National Population and Housing Census to be conducted in 2005 by the National Administrative Department of Statistics (DANE).

Family Forest Ranger Programme

To date 621 indigenous families in the Department of Nariño have received social assistance from the Government totalling 1.4 billion pesos for the eradication of illegal crops by hand.

It is hoped to enrol families in Cauca and Sierra Nevada de Santa Marta in the programme.

Spraying

In its decision SU-383/2003, the Constitutional Court held that in the Amazonas region, particularly in those indigenous territories where spraying is carried out, consultations must be held.

Protection and security

In coordination with the Ministry of Defence and with the assistance of indigenous authorities, five indigenous security councils have been established at a high level; these have established guidelines on such topics as prevention, protection and impunity, which will be dealt with in a plan of action. The ethnic groups taking part in the councils and the towns where they are being held are:

- Valledupar-Cesar: the Kankuamo, Kogui, Wiwa and Arhuaco from Sierra Nevada de Santa Marta and the Yukpa people from Serranía del Períja;
- Popayán-Cauca: the Paece and Yanacona;
- Tierralta-Córdoba: the Embera Katío people from Alto Sinú and the Zenú ethnic group;
- Riosucio-Caldas: the Emberu Chami people;
- Puerta Inírida-Guainía: indigenous peoples from the regions of Amazonía and Orinoquía.

With regard to the personal protection of indigenous leaders, approximately 80 indigenous persons enjoy protection under the Leader Protection Programme of the Human Rights Office of the Ministry of the Interior and Justice. It should be stressed that the measures taken have been determined in accordance with the particular features of each ethnic group.

In order to provide the precautionary and provisional measures called for by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, inter-agency working groups have been set up with the collaboration of the beneficiaries and requesting organizations with a view to the adoption of special protection measures.

Regular meetings are held to monitor specific situations; groups have been established by the State monitoring bodies to deal with disciplinary and criminal investigations; bimonthly visits are made to the regions to carry out humanitarian assistance and verification missions; training is provided to members of the public force in the area of human rights and international humanitarian law and in special indigenous law; communication measures are taken in some reserves by deputy governors and leaders; and economic assistance is provided for temporary relocation, the movement of supplies and transport.

The communities receiving these services are:

Kankuamo indigenous people	provisional measures
Embera Chami indigenous people	precautionary measures
Embera Katío indigenous people of Alto Sinú	precautionary measures
Pijao indigenous people	precautionary measures
Páez indigenous people - Naya region	precautionary measures
Four members (leaders) of the Wayuú people	precautionary measures

Communities at risk project: The Human Rights Office of the Ministry of the Interior and Justice, working with the President's programme for human rights and international humanitarian law under the supervision of the Vice-President of the Republic, and through the coordination of the Office of Ethnic Affairs, is carrying out activities aimed at protecting communities in high-risk situations with a view to preventing harm (timely intervention by the State aimed at preventing violations by means of political, administrative, legal and cultural measures that neutralize both the actors and the risk factor involved), addressing it or providing subsequent reparation. Among the areas covered by this programme, priority is given to the following: Sierra Nevada de Santa Marta, the Catatumbo region, Sur de Cauca, Sur de Tolima, Caquetá, Medio and Bajo Atrato, Arauca and the indigenous area of El Eje Cafetero.

Decentralization of public policy in the area of human rights and international humanitarian law

Institutions with competence in this sphere are also carrying out activities to ensure that action plans in this area are prepared at the territorial and local levels, and that they contain an ethnic element. This programme is being carried out throughout the country with the participation of indigenous authorities and organizations.

Forced displacement

In collaboration with indigenous authorities and organizations, the Office of the Ombudsman, the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR), a guideline for special (differentiated) treatment of indigenous populations that have been displaced or are at risk has been developed and is being implemented. A key element is the incorporation of ethnic considerations in a single registration system for persons displaced by violence.

In addition, there has been an inter-agency effort to provide support to 45 displaced indigenous families in Bogotá who have formed an indigenous council.

Normative developments

Existing laws, decrees, resolutions and circulars in the area of human rights and international humanitarian law are being adapted and ethnic elements are being incorporated where relevant.

To this end, in the area of protection, a committee for the regulation and assessment of risk to indigenous peoples (ETNOCRER) has been established and is to have among its members an indigenous delegate acting as representative of civil society. This representative was elected at the session of the National Human Rights Commission of Indigenous Peoples held on 26 and 27 July 2004.

Bogotá, 14 October 2004

Notes

¹ Data from the Colombian Rural Development Institute (INCODER).

² Data from indigenous health insurers (EPS), March 2004.

³ There are currently 550,000 persons covered (=104,500,000,000) and 450,000 persons covered by indigenous health administrators (ARSI) (=85,000,000,000).

⁴ Ministry of Communications, 2004 report.
