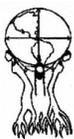

INDIGENOUS WOMEN OF THE AMERICAS: DOUBLE DISCRIMINATION

Presented by the Continental Network of Indigenous Women, The International Clinic for the Defense of Human Rights of the Université du Québec à Montréal, and Rights & Democracy
October 19, 2006
Washington, DC.



Enlace Continental De Mujeres Indígenas
Continental Network of Indigenous Women
Réseau Continental des Femmes Autochtones



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1. INTRODUCTION

1. The International Clinic for the Defense of Human Rights of the Université du Québec à Montréal, Rights & Democracy (Canada), and the Continental Network of Indigenous Women of the Americas, in collaboration with their counterpart organizations in the Americas — listed from north to south — Quebec Native Women (QNW, in Canada), the Coordinadora Nacional de Mujeres Indígenas de México (CNMIM), the Organización Nacional Indígena de Colombia (ONIC), and the Consejo de Organizaciones Aborígenes de Jujuy (COAJ, in Argentina), pursuant to article 64 of the *Rules of Procedure of the Inter-American Commission on Human Rights*, appear before the members of this honourable Commission to present the situation of double discrimination and, in some cases, multiple discrimination that the Indigenous women of the Americas experience.

2. The Continental Network is an organization of Indigenous women, with strategic allies in the field of human rights, who aim to define the specific profile of Indigenous women and whose objectives include helping to promote and defend the civil, political, socio-economic, and cultural rights of the Indigenous women of the Americas by empowering them and increasing their visibility. To achieve these objectives, it is important to analyze the obstacles that these women face, including double discrimination.

1.1. Being an Indigenous woman in the Americas means living in conditions of extreme vulnerability

3. It is a disadvantage to be born a woman in the Americas, but being born an Indigenous woman is even more disadvantageous. Women are not all equal. Though they are all human beings and have the same gender, they are diverse, living in different contexts, with different social relationships, philosophies, and cosmologies. However, the states in which these women live regard them without distinction from other women, without understanding or valuing their ethnicity or gender.

4. In Latin America, poverty tends to affect women most. One of the indicators of this “feminization” of poverty is the proportional increase in the number of women who are heads of households and the principal income earners: (25% in Paraguay, 24% in Mexico, and 38% in El Salvador). At the same time, there is an “indigenization” of poverty, and the areas inhabited by Indigenous people are the poorest in the Americas.¹

5. This dual status of Indigenous and women makes them vulnerable and results in multiple human rights violations.

6. Discriminatory labour markets and social exclusion by political and economic institutions make Indigenous women vulnerable to chronic poverty.

¹ G. Psacharopoulos and H.A. Patrinos (1994); quoted in *Discriminación étnico-racial y xenofobia en América Latina y el Caribe*, ECLAC, 2001.

7. This said, it is difficult to provide precise picture of the reality they face , because statistics in reports and studies do not provide disaggregated data for Indigenous women but rather include them as part of the rural sector. Indigenous women, however, do not all live in rural sectors. For various reasons they may be located in cities or other urban areas, but this does not change the fact that they are born, live, and die as Indigenous women.²

8. The scarcity of studies and information on Indigenous women hinders effective action. There is a need to organize regional and national studies and research on the effects of emerging issues such as free-trade agreements, migration, remittances, proposals for market flexibility, militarization, internal displacements, inequities in health and education, and even forced sterilization.³

9. It is vitally important to conduct studies that can provide primary and disaggregated statistical data from a multidimensional angle and thereby identify the double discrimination experienced by Indigenous women and its effects on them. In this sense, we echo the opinions of different international organizations, including the UN Permanent Forum on Indigenous Issues, that have requested statistical documentation.

1.2. Indigenous women are victims of double discrimination

10. It can be said that Indigenous women experience multiple forms of human rights violations. They are victims of at least double discrimination⁴ because they are women and because they are Indigenous.⁵ This double discrimination and the multiple forms of human rights violations are interconnected in different ways.

11. An Indigenous woman might experience a primary form of discrimination that is then aggravated by and combined with a second form of discrimination. For example, access to health care might be limited because someone is Indigenous, given that health care is not provided in rural areas inhabited primarily by Indigenous communities. This discrimination in the distribution of services would force such a person to travel long distances to access services. Access may be limited as well because that person is a woman and some services, especially in the realm of family planning, are not available to women or because some sexist-minded civil servants refuse to service women with the same consideration or diligence that they display with men. Such successive limitations on an Indigenous woman's access to health-care services could be considered as a combination of mutually aggravating discriminations that result in a violation of the rights to physical integrity, to a decent life, to health, and, of course, to equality.⁶ This kind of double discrimination affecting Indigenous women and their access to health care has been denounced by different organizations, including the UN Permanent Forum on Indigenous Issues.⁷ This

² Data from the FAO, *Mujer rural y seguridad alimentaria: situación actual y perspectiva 2003* (draft, chapter on Latin America and the Caribbean), in the ECLAC database, gender indicators (2003).

³ *Ibid.*

⁴ It can also be claimed that Indigenous women experience triple discrimination: because they are women, Indigenous, and poor. See, for example, the Inter-American Court of Human Rights, *Caso Masacre Plan de Sánchez v. Guatemala. Reparaciones* (Art. 63.1, American Convention on Human Rights, 2004, Series C, nº 116, par. 38d).

⁵ See, for example, the UN Permanent Forum on Indigenous Issues, *Report on the Third Session* (10-21 May 2004), ECOSOC official documents, supp. no. 23, [E/2004/43 E/C.19/2004/23] (2004), par. 3.

⁶ See, for example, the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, add. 2 to report E/CN.4/2004/80: E/CN.4/2004/80/Add.2 (23 December 2003): *Indigenous Issues – Indigenous Rights and Indigenous Issues – Mission to Mexico*, par. 46- 48.

⁷ *Report on the Third Session*, *supra* note 5, par. 88 and 89, denouncing, among other things, inadequate and limited access (par. 88) and violations of the reproductive rights of indigenous women (par. 89).

same example could be presented with respect to access to public education, as expressed by the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People.⁸

12. In some situations, violations of the human rights of Indigenous women may occur because they are women and because they are Indigenous, but they may occur independently, or in parallel, and may not be interrelated. Nevertheless, one kind of violation can, in this case, exacerbate or aggravate the other.⁹ In the case of armed conflict, for example, Indigenous women may be victims of sexual crimes committed by parties to the conflict as a means of terrorizing them and their communities or because these parties consider Indigenous women to be objects or war booty. Moreover, because they are located in rural areas or in areas where military operations are taking place, or because control over their ancestral territories is an objective of the warring parties, many Indigenous communities may be forced to leave their territories and move to other areas. This phenomenon destroys the special relationship between the community and its land as well as the community's social structure, in cases where males in the community flee or are recruited by the parties to the conflict. This situation imposes additional responsibilities on Indigenous women, who must then take over most or all family and community tasks. Again, the victims suffer because they are women and because they are Indigenous, though the resulting violations of their rights are not necessarily related. It remains, nonetheless, that the consequences of one violation have an exacerbating effect on the other violation. An Indigenous woman who has been raped by soldiers or members of an armed group (violation of the right to her physical integrity and of her honour) might suffer aggravating or exacerbating consequences if she were later forced to escape (which would cause parallel violations of her right to property, to freedom of movement, freedom of association, etc.) because she could not be immediately or effectively provided with health-care services (another violation of the right to physical integrity) and because her displacement would make it more difficult to conduct an investigation and punish those responsible (violation of the right to judicial protection and guarantees).¹⁰

⁸ See, for example, the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, report E/CN.4/2005/88 (6 January 2005): *Indigenous Issues – Indigenous Rights and Indigenous Issues*, par. 4-6 and 36-37.

⁹ Inter-American Court of Human Rights. *Caso Caesar v. Trinidad y Tobago*. Judgment of 11 March 2005. Series C, No. 123, par. 82 and 87.

¹⁰ See also UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN General Assembly official documents, 59th Session, UN Document A/59/258 (2004), par. 52 and 69; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN GA Off. Doc., 60th Session, UN Doc. A/60/358 (2005), par. 13 and 62; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People – Mission to Colombia*, GA Doc. A/59/258, UN GA Off. Doc., 61st Session, E/CN.4/2005/88/Add.2 (2005), par. 35, 39, 42, 70, 71 and 92.

13. Of course, the phenomena of interrelated and aggravated violations are sometimes lumped together and cannot be distinguished. In the previous example, an Indigenous woman could be forced to move as a result of armed conflict, which would cause her to suffer an initial series of human rights violations. This person would then be placed in a context of extreme physical and psychological vulnerability and could thereby be exposed to sexual violations committed by the parties to the conflict. It can be reasonably affirmed that displaced Indigenous women who, in addition, are alone, poor, and living in refugee camps or isolated places in war zones will generally suffer more sexual violence than women living in other conditions. In this specific context, not only is there an aggravation and exacerbation of human rights violations, but there is also a combination of violations and a relationship of causality among them.¹¹

14. This phenomenon of double discrimination or double violation has been recognized by many international bodies, including the UN Secretary General,¹² the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, Dr. Stavenhagen,¹³ and the UN Permanent Forum on Indigenous Issues, which recently reiterated its concern “about the multiple forms of discrimination experienced by indigenous women, based on gender and race/ethnicity, and the complex problems stemming from this discrimination.”¹⁴ UNIFEM (UN Development Fund for Women) also reiterated the following: “When combined with other forms of discrimination, such as those based on race or ethnicity, the effects of gender discrimination can multiply, posing serious challenges to women’s enjoyment of their basic human rights.”¹⁵ This was also emphasized by representatives of different States throughout the Americas, such as Ambassador Juan León Alvarado, Guatemala’s Permanent Representative to the OAS,¹⁶ and national bodies for the protection of human rights.¹⁷ The Inter-American Commission on Human Rights itself has taken this perspective into account in contentious cases, including that of *Ana, Beatriz and Celia González Pérez v. Mexico*, when it stated that “the pain and humiliation that the women suffered is aggravated by their indigenous status”.¹⁸

¹¹ *Ibid.*

¹² *Report on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (2005)*, *supra* note 10, par. 62.

¹³ See, for example, *Report on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (2004)*, *supra* note 10, par. 51-69; *Indigenous Issues – Human Rights and Indigenous Issues*, UN GA Off. Doc., 60th Session, E/CN.4/2004/80 (2004), par. 1.

¹⁴ *Report on the Third Session*, *supra* note 5, par. 3.

¹⁵ *Securing Indigenous Women’s Rights and Participation*. UNIFEM Fact Sheets, UNIFEM at a Glance. (2004) see: http://www.unifem.org/about/fact_sheets.php?StoryID=288

¹⁶ *Meeting in Brazil to Negotiate the Rights of Indigenous Peoples Ends with Progress with respect to Indigenous Women’s Rights*, 25 March 2006, OAS Press Release C-068/06, online: http://www.oas.org/oaspage/press_releases/press_release.asp?sCodigo=C-068/06: in which Ambassador Leon Alvarado said “The indigenous women of the Americas have long suffered from dual discrimination, as women and as indigenous persons, in addition to being discriminated against within their own communities.”

¹⁷ United Mexican States, Federal Executive Authority, *Alianza para la Igualdad: Programa Nacional de la Mujer 1995-2000*, Mexico, Publivisual S. A. de C.V. 1996.

¹⁸ *Ana, Beatriz y Celia González Pérez, Mexico* (2001), Inter-American Commission on Human Rights, No. 53/01, Case 11.565, summary, par. 2.

15. Finally, it should be stated that this double discrimination is sometimes concretely expressed in legislation. For example, certain laws do not provide the same treatment for women as they do for men in similar circumstances,¹⁹ and, as the Inter-American Commission on Human Rights has maintained, there is no justification for this under international law.²⁰ In addition, "... States must not invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence and discrimination against women," including Indigenous women, as the IACHR Rapporteurship on the Rights of Women has declared.²¹

1.3. This double discrimination violates the special protection measures that benefit Indigenous women under international law

16. It should be emphasized that the phenomenon of double discrimination violates not only a woman's right to equality²² but also multiple special protection that international law provides for Indigenous women and girls.

17. Women in general benefit from special protection measures under the *Convention on the Elimination of All Forms of Discrimination against Women*, according to which States must adopt special or temporary measures to ensure that women are effectively protected against discrimination.²³ According to the UN Committee on the Elimination of Discrimination against Women,²⁴ these measures include affirmative action. Many other universal instruments provide special protection measures for women in general²⁵ and with regard to particular situations, including armed conflict.²⁶ The UN has recognized the importance of such protections in its plans of action and in its Vienna and Beijing declarations.²⁷ As for the Inter-American System, both the *American Declaration of the Rights and Duties of Man*²⁸ and the *Inter-American Convention on the Prevention,*

¹⁹ See, for example, *María Eugenia Morales de Sierra v. Guatemala* (2001), Inter-American Commission on Human Rights, No. 4/01, Case 11.625, par. 50.

²⁰ See Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002), par. 338, in which it is stated that "any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought."

²¹ OAS, *Annual Report of the Inter-American Commission on Human Rights 2001, Annex A, Chapter VI: Special Studies, Update on the Work of the Rapporteurship on the Rights of Women*, OEA/Ser./L/V/II.114, doc. 5 rev., (2002).

²² *American Convention on Human Rights*, Treaty Series, OAS, No. 36, 1144, UN Treaty Series, 123, Art. 1, 2 and 24; *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/IL82 doc. 6 rev.1 p. 17 (1992), Art. II.

²³ *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) p. 193, UN Doc. A/34/46, Art. 2-5.

²⁴ Committee on the Elimination of Discrimination Against Women, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women*, on temporary special measures, online:

[http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)

²⁵ See, for example, the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 999 U.N.T.S. 171, Art. 10.

²⁶ *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, 14 December 1974, G.A. Res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) p. 146, UN Doc. A/9631 (1974).

²⁷ *World Conference on Human Rights: Vienna Declaration and Programme of Action* (1993), A. CONF.157/23, Art. 36-44; See also *Report of the Fourth World Conference on Women* (1995), A/CONF.177/20.

²⁸ See Article 7.

Punishment and Eradication of Violence against Women ("Convention of Belém Do Pará")²⁹ contain such special protections. As stated by the Inter-American Commission on Human Rights³⁰ and the Inter-American Court of Human Rights,³¹ these protections may include measures for affirmative action or special protective measures to effectively guarantee women's rights.

18. According to the *American Convention on Human Rights*,³² the *Convention on the Rights of Children*,³³ and other general³⁴ and specific³⁵ instruments, special protection must likewise be provided for children. The bodies of the Inter-American System have already recognized the importance of this special protection, including measures for affirmative action.³⁶

19. Finally, Indigenous peoples also benefit from such special protection under international law, and many UN bodies for the protection of human rights³⁷ have recognized this. In particular, the *ILO Convention (169) concerning Indigenous and Tribal Peoples in Independent Countries*³⁸ requires States to guarantee the right of Indigenous people to equality, including by means of special measures.³⁹ Special protection for Indigenous peoples under international law has been recognized and applied by the Inter-American Commission on Human Rights⁴⁰ and the Inter-American Court of Human Rights⁴¹ on many occasions in their interpretations of Inter-American human rights instruments that concern Indigenous peoples.

²⁹ See *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* 33 I.L.M. 1534 (1994), Art. 7-10.

³⁰ IACHR, *Annual Report 1999*, Chapter VI, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination. See also *Update on the Work of the Rapporteurship on the Rights of Women*, Annual Report of the IACHR 2001 <http://www.cidh.org/annualrep/2001sp/cap.6e.htm> and *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas* (1997/1998) <http://www.cidh.org/women/Mujeres98/Mujeres98.htm>.

³¹ Inter-American Court of Human Rights, *Juridical Condition and Rights of Children* (2002), Advisory Opinion OC-17/2002, (Ser.A) No. 18, par. 83, quoting Principle 10 of the International Conference on Population and Development adopted from March 5 to 13, 1994 in Cairo, Egypt (1994).

³² See Article 19.

³³ *Convention on the Rights of the Child*, 20 November 1989, Resolution 44/25 A(XX), Art. 4 and 19.

³⁴ See, for example, the *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171, Art.23-24; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 999 U.N.T.S. 171 Art.10. See also *World Conference on Human Rights: Vienna Declaration and Programme of Action*, (1993), A. CONF.157/23, Art. 45-53.

³⁵ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, 25 May 2000, A/RES/44/25, par. 3.; *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, 14 December 1974, G.A. Res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) par. 146, UN Doc. A/9631 (1974).

³⁶ *Juridical Condition and Rights of Children* (2002), *supra* note 31, par. 55 and 156. See also Inter-American Court of Human Rights. Case of *Villagrán Morales et al. v. Guatemala* (the "Street Children" Case), Judgment of November 19, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 63 (1999), as well as Inter-Am. Ct. H.R. Case of "*Children's Rehabilitation v. Paraguay*". Judgment of September 2, 2004. Series C No. 112.

³⁷ See, for example, *Report on the Third Session*, *supra* note 5, par. 51. *The Situation of Human Rights and Fundamental Freedoms of Indigenous People – Mission to Colombia*, *supra* note 10, par 83 and 84. See also *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN GA Res. A/RES/47/135, UN GA Off. Doc., 47th sess., Doc. A/RES/47/135 (1992), Art. 1.

³⁸ 72 Official Bull. 59.

³⁹ See, for example, articles 2, 3 and 4.

⁴⁰ IACHR, Case 12.053, Report 40/04, *Mayan Communities of the Toledo District (Belize)*; IACHR Annual Report 2004; IACHR, Case 11.140, Report No. 75/02, *Mary And Carrie Dann (United States)*, IAHRC Annual Report 2002.

⁴¹ See, for example: Inter-American Court of Human Rights. Case of *Mayagna (Sumo) Community of Awás Tingni v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79; Inter-Am. Ct. H.R. Case of *The Yakyé Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125

20. Considering the above, it can be affirmed that Indigenous women and girls also benefit from these special protection measures that States should adopt so as to fully and effectively guarantee their right to equality. As reiterated by the Inter-American Commission on Human Rights, “the principle of equality may also sometimes require member states to take affirmative action as a temporary measure in order to diminish or eliminate conditions which cause or help to perpetuate discrimination, *including vulnerabilities, disadvantages or threats encountered by particular groups such as minorities and women.*”⁴² These measures for special protection should be taken into account, particularly when addressing the economic, social, and cultural rights of these persons, in spite of possible conventional limitations on the implementation of those rights,⁴³ as the Inter-American Commission on Human Rights⁴⁴ and the Inter-American Court of Human Rights⁴⁵ have done on multiple occasions. The UN Committee on Economic, Social and Cultural Rights⁴⁶ and the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People have done the same.⁴⁷

⁴² See IACHR, Report on *Terrorism and Human Rights*, *supra* note 20, par. 338. See also UN Commission on Human Rights, *General Comment No. 18* (Non-discrimination), Thirty-Seventh Session (1989) UN Doc. HRI/GEN/1/Rev. 5, par. 10.

⁴³ Art. 26 of the *American Convention on Human Rights; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, Treaty Series, OAS, No. 69 (1988).

⁴⁴ IACHR, Case 12.053, Report 40/04, *Mayan Communities of the Toledo District (Belize)*, *supra* note 40, par. 150: “This Commission similarly acknowledges the importance of economic development for the prosperity of the populations of this Hemisphere. As proclaimed in the Inter-American Democratic Charter, “[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy of the states of the Hemisphere.” At the same time, development activities must be accompanied by appropriate and effective measures to ensure that they do not proceed at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural and spiritual well-being.”

⁴⁵ Inter-American Court of Human Rights. Case of *The Yakye Axa Indigenous Community v. Paraguay*. *Supra* note 41, par. 161-163: 161. This Court has maintained that the right to life is a basic element of the American Convention, as the fulfillment of all other rights depends on the protection of that first right. When the right to life is not respected, all other rights disappear, since the holder of those rights is no more. Given this fundamental nature, restrictive approaches to the right to life are not acceptable. In essence, this right not only includes the right of all human beings not to be arbitrarily deprived of life, but also the right to the non-generation of conditions that prevent access to a dignified life or make such access difficult. 162. One of the State’s undeniable obligations as a guarantor with the aim of protecting and guaranteeing the right to life, is to generate minimum living conditions that are compatible with human dignity, and to not create conditions that make difficult or preclude human dignity. In this respect, the State has the duty to adopt positive, concrete measures aimed at fulfilling the right to a dignified life, particularly for persons who are in a vulnerable, at-risk situation, which must be addressed as a priority. 163. In the present case, the Court must establish whether the State generated the conditions that worsened the difficulty accessing a dignified life on the part of the members of the Yakye Axa Community and whether, in that context, it adopted the appropriate positive measures to fulfill this obligation, taking into account the particularly vulnerable situation in which they were placed, affecting their particular way of life (a way of seeing the world that is different from Western culture, involving a close relationship with the land) and their life projects, both as individuals and as a group, in light of existing international corpus juris on the special protection that must be afforded to members of Indigenous communities, in light of the stipulations of Article 4 of the Convention, in relation to the general duty as guarantor as contained in Article 1.1 and the duty of progressive development contained in Article 26 thereof, as well as articles 10 (Right to Health); 11 (Right to a Healthy Environment); 12 (Right to Nutrition); 13 (Right to Education) and 14 (Right to the Benefits of Culture) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and the relevant provisions of ILO Convention No. 169.

⁴⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Observation No. 16*, 34th Session, Geneva, 25 April to 13 May 2005, E/C.12/2005/4, 11 August 2005, par. 15.

⁴⁷ *Situation of Human Rights and Fundamental Freedoms of Indigenous People*, GA Doc. A/59/258, UN GA Off. Doc., 59th Session, E/CN.4/2004/80/Add.3 (2003), par. 51 and 52. See also *Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *supra* note 13, par. 62 : he recently indicated that [s]pecial attention should be paid at the national and international levels to violations of the rights of women, and especially of Indigenous adolescents and girls; in many countries, they are subjected to various forms of violence, exploitation and discrimination, situations which have been brought forcefully to the Special Rapporteur’s attention. In the context of the status of both women and girls, that of Indigenous women and girls does not appear to have drawn much attention from the authorities or the media. Nevertheless, such violations may be very serious, including physical

1.4. The IACHR should adopt a gender perspective whenever the human rights of Indigenous peoples are at stake

21. Considering the critical situation of Indigenous women, the IACHR should adopt a gender perspective whenever it addresses the human rights of these persons, as recommended by different international human rights protection bodies, both universal and regional.

22. Since 2001, the UN Commission on Human Rights, now the Human Rights Council, stated the importance of including such a perspective in its work. Consequently, it asked its special bodies, particularly its special rapporteurs, to include a gender perspective in their studies and procedures on various subjects, including education, migration, and internal and forced displacements.⁴⁸ More specifically, it asked the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People to adopt this perspective and to pay special attention to discrimination against Indigenous women⁴⁹ and Indigenous children.⁵⁰ Likewise, certain bodies that supervise the compliance with international treaties on the protection of human rights have adopted the same perspective. This includes the Committee on the Elimination of Racial Discrimination, which, in the year 2000, observed that “gender factors [are] interlinked with racial discrimination.”⁵¹ Finally, the Permanent Forum on Indigenous Issues has asked all UN bodies to adopt a gender perspective when addressing situations that affect the rights of Indigenous peoples,⁵² as have the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People⁵³ and the UN Special Rapporteur on Violence against Women.⁵⁴ Both rapporteurs have insisted on the importance of developing studies and obtaining statistics in order to evaluate and respond more effectively to such problems of discrimination.

23. In the Inter-American System, the Inter-American Program on the Promotion of Women’s Human Rights and Gender Equity and Equality, adopted by the OAS General Assembly, provides for the incorporation of a gender perspective into all Inter-American

abuse, rape and sexual harassment; extreme economic exploitation; denial of their civil rights; discrimination in the justice system; racism; and exclusion from public social services, especially in the areas of health, housing and education. The particularly sensitive situation of indigenous girls is of paramount importance in as much as they are often the most vulnerable victims of discrimination, exclusion and marginalization. The Special Rapporteur appeals to the national and international authorities and bodies responsible for promoting gender equality and the rights of the child to pay particular attention to indigenous children and adolescents throughout the world.”

⁴⁸ Particularly on *the right to food* (2001/25), on *adequate housing as a component of the right to an adequate standard of living* (2001/28), on *the right to education* (2001/29), on *extrajudicial, summary or arbitrary executions* (2001/45), on *the right to freedom of opinion and expression* (2001/47), on *the human rights of migrants* (2001/52) and on *torture and other cruel, inhuman or degrading punishment* (2001/62). See also *Internally displaced persons*, CHR Res. 2001/54, UN CHR Off. Doc., 57th Sess., E/CN.4/2001/54, (2001), par. 9 and *Question of enforced or involuntary disappearances*, CHR Res. 2001/46, CHR Off. Doc., 57th Sess., E/CN.4/2001/46, (2001), par. 2. g).

⁴⁹ *Human Rights and Indigenous Issues*, CHR Res. 2001/57, Un CHR Off. Doc., 57th Sess., E/CN.4/RES/2001/57, (2001), par. 2.

⁵⁰ *Ibid.*, par. 3.

⁵¹ *General Recommendation N° 25 regarding the gender-related aspects of racial discrimination*, *supra* note 24, par.3.

⁵² *Report on the Third Session*, *supra* note 5, par. 4.

⁵³ *Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *supra* note 47, par. 54, and, *Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *supra* note 13, par. 64.

⁵⁴ *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, E/CN.4/2005/72/Add.2, (2004), par. 80; E/CN.4/2005/72/Add.3, (2005), par. 66; E/CN.4/2006/61/Add.4, par. 64.

bodies.⁵⁵ Likewise, the Inter-American Commission of Women reiterated the importance of this perspective and specifically asked the Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Women to focus on women's rights and, more specifically, "to create awareness of the need for further action to ensure that women are able to exercise their basic rights [and] to issue specific recommendations..."⁵⁶ The importance of such a perspective was also emphasized by representatives of the American States, for example, Ambassador León Alvarado, Guatemala's Permanent Representative to the OAS, when he spoke favourably of the adoption of a special article on the responsibility of States to guarantee the full enjoyment of women's rights within the draft American Declaration on the Rights of Indigenous Peoples.⁵⁷

24. In accordance with these recommendations from both the universal and regional systems of human rights protection, the IAHRRC should adopt a gender perspective whenever the rights of Indigenous peoples are at stake.

25. The following four cases illustrate double discrimination: access to health care in Mexico, access to education in Argentina, legal discrimination in Canada, and the effects of armed conflict on Indigenous women in Colombia.

2. A CASE FROM MEXICO

26. According to data from the Oficina de Representación para el Desarrollo de los Pueblos Indígenas, there are 12,707,000 Indigenous persons in the Republic of Mexico, which accounts for approximately 13% of the total population.⁵⁸

27. 1994 was a watershed year for the Indigenous men and women of Mexico, with constitutional reform and the statement that the Mexican nation is "unique and indivisible... (and) has a multicultural composition, originating in its indigenous peoples, who are descended from people who lived in the current territory of the country, who live in it now, and who maintain their own social, economic, cultural, and political institutions or parts of these."⁵⁹

28. Despite this recognition, poverty and social exclusion has remained constant throughout history. Furthermore, the constitutional reform of 2001, with respect to Indigenous issues, "does not meet the aspirations and demands of the organized indigenous movement inasmuch as it affords reduced constitutional protection for the human rights of indigenous peoples"⁶⁰. With regard to the economies of Indigenous peoples and

⁵⁵ OAS, General Assembly, 30th Sess., *Approval and Implementation of the Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality*, Off. Doc. OEA/Ser.P, AG/RES. 1732 (XXX-O/00) (2000) par. 3.1.

⁵⁶ OAS, Permanent Council, 36th session, *Report of the Secretary General on the Implementation of "The Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality," pursuant to GA/RES. 2023*, official doc. OAS/Ser.G PC/Doc.4005/05, (2005), par. 3.

⁵⁷ *Meeting in Brazil to negotiate the rights of indigenous peoples ends with progress with respect to indigenous women's rights, March 25, 2006*, OAS press release, E-068/06, online: http://www.oas.org/oaspage/press_releases/press_release.asp?sCodigo=E-068/06 .

⁵⁸ Oficina de Representación para el Desarrollo de los Pueblos Indígenas (ORDPI - Representative Office for the Development of Indigenous Peoples), *Programa Nacional de Desarrollo de los Pueblos Indígenas 2001-2006*, Mexico, ORDPI-INI, 2002, p. 25.

⁵⁹ *Constitución Política de los Estados Unidos Mexicanos* (Political Constitution of the United States of Mexico), DOF 05-02-1917, as reformed in 2006, DOF 14-09-2006, 2006.

⁶⁰ *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People – Mission to Mexico, Rodolfo Stavenhagen*, UN GA Off. Doc., 60th Sess., UN Doc. E/CN.4/2004/80/Add.2 (2004), in the summary.

communities, it has been subjected to historical patterns of development. The Mexican State has not closed the social gap, nor has it provided the Indigenous population with guaranteed access to the enjoyment of their fundamental social and political rights. For this reason, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, recommends that the Government of Mexico "should pay urgent attention to preventing and resolving social conflicts in indigenous regions; that it thoroughly overhaul the indigenous justice system, that it pursue a comprehensive economic and social policy in favour of the indigenous regions with active participation by the indigenous peoples, paying special attention to [...] women and children".⁶¹

29. Indigenous communities are not on equal footing with the rest of the population in terms of access to state services, as they "live in deplorable conditions of poverty without access to social and health services."⁶² While indigenous municipalities represent one-third of all municipalities in the country, they account for 48% of those that are "highly disadvantaged" and 82% of those that may be described as "extremely disadvantaged".⁶³

30. The municipalities that are among the most disadvantaged are in areas with a high concentration of Indigenous people, and are located in the states of Oaxaca, Puebla, Chiapas, Guerrero and Veracruz. According to Consejo Nacional de Población (National Population Council - CONAPO) socioeconomic indicators for 2000,⁶⁴ Chiapas, Oaxaca and Guerrero are the three points of the country's triangle of extreme poverty. The Montaña de Guerrero (Guerrero Mountain) is one of the country's 36 priority areas, which share the common denominator of poverty, migration, violence and militarization.

31. A recent study by the Comisión Nacional para el Desarrollo de los Pueblos Indígenas, entitled *Indicadores con Perspectiva de Género para los Pueblos Indígenas* (Gender-Based Indicators for Indigenous Peoples),⁶⁵ shows that among the poorest and most disadvantaged are Indigenous women, who suffer double discrimination because of their status as Indigenous people and as women. We know that the sample revealed that 636,720 women speak only one language, compared to 371,083 men. The gap widens as students move through the school system, leaving Indigenous women between the ages of 19 and 59 the furthest behind in terms of education.⁶⁶

32. Health and nutrition indicators reflect this situation of inequality.⁶⁷ For example, the life expectancy of Mexicans, as recorded in 1998, was around 74 years of age. However, for Indigenous people, it was around 69 years of age. This difference is also in the mortality rate for children under the age of 5. In 1992, the mortality rate in cities with more than 15,000 inhabitants was close to 30 for every 1000 live births. In municipalities with an Indigenous population of 30% or more, the rate calculated by the Ministry of Health and the National Indigenist Institute - INI was 55 deaths for every 1,000 births. In the case of the Cora (Nayarit), Tarahumara (Chihuahua) and Huichol (Jalisco, Nayarit, Durango) regions, the mortality rate was 89.95 and 100 out of every thousand, respectively. This means that, in the most extreme case, 10% of children die before the age of 5.

⁶¹ *Ibid.*

⁶² See, for example, OAS, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico*, Off. Doc. OEA/Ser.L/V/II.100/Doc. 7 rev. 1 (1998), par. 510.

⁶³ *Ibid.*

⁶⁴ Consejo Nacional de Población (CONAPO - National Council for the Development of Indigenous Peoples), *Índices de marginación 2000* (Exclusion Indicators 2000), Mexico, 2000.

⁶⁵ Comisión nacional para el Desarrollo de los Pueblos Indígenas, *Indicadores con perspectiva de género para los pueblos indígenas* (Gender-based Indicators on Indigenous Peoples), 1st ed., Mexico, CDI, 2006, p. 9.

⁶⁶ *Ibid.*, p. 97.

⁶⁷ *Índices de marginación 2000*, *supra* note 64.

33. As a result of his visit to Mexico in 2003, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People found that, in Chiapas, Guerrero y Oaxaca, "an investigation of 100 indigenous women revealed a total of 209 violations of sexual and reproductive rights relating to pregnancy, birth, post-partum and abortion, and cervical cancer. The risk of dying in childbirth is more than twice as high for an indigenous woman as for a non-indigenous woman."⁶⁸

34. With regard to health, the poor care provided to Indigenous women is alarming.⁶⁹ The fact that many of them do not speak Spanish makes their access to the health care system more difficult.⁷⁰ In addition to inadequate services, there are cases of forced sterilization, which have been justified as birth control measures.

35. The Coordinadora Nacional de Mujeres Indígenas de Mexico (CNMIM – National Coordinating Agency of Mexico's Indigenous Women) has started collecting information from Tzotzil and Tzeltal Indigenous women from the State of Chiapas, and from Amuzga, Nahuatl and Tlapaneca women from the State of Guerrero who underwent tubal ligations immediately after childbirth, without receiving prior information. Health promoters in indigenous communities have stated that they are under pressure from nurses and officials of the Oportunidades program to convince Indigenous women to accept tubal ligations.

36. This information corroborates precedents highlighted by the Comisión Nacional de Derechos Humanos (CNDH) in its General Recommendation 04,⁷¹ which mentions forced sterilization among Indigenous peoples⁷² and family planning practices carried out without

⁶⁸ See *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People – Mission to Mexico*, supra note 60, par. 46.

⁶⁹ The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, said that "The situation of indigenous women and children is a matter of particular concern [and that] Chiapas, Guerrero and Oaxaca are the most backward States in matters of reproductive health." (*Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, supra note 60, par. 46)

⁷⁰ The right to adequate access to health is guaranteed by the Inter-American System and, according to Article 10 (1) of the *Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, November 17, 1988, OAS, Treaties, No. 69) the right to health should be understood to mean every person's right to the enjoyment of the highest level of physical, mental and social well-being." It should also be considered that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (Paragraph 4 of General Comment No. 14, *Right to the Highest Attainable Standard of Health* (Article 12 of the ICESCR), E/C.12/2000/4, CES Off. Doc., August 11, 2000). As a State Party to the *Protocol of San Salvador*, Mexico must take specific measures to ensure access to a health protection system (Article 10 (2) of the *Protocol of San Salvador*, *ibid.*).

⁷¹ *General Recommendation 04: Derivadas de las prácticas administrativas que constituyen violaciones a los Derechos Humanos de los miembros de las comunidades indígenas respecto de la obtención de consentimiento libre e informado para la adopción de métodos de planificación familiar (Pertaining to administrative practices that constitute violations of the Human Rights of members of indigenous communities with respect to obtaining free and informed consent for the adoption of family planning methods)*, Comisión Nacional de los Derechos Humanos de México (National Commission on Human Rights), 2002.

⁷² With regard to forced sterilization, a case that ultimately caused a woman's death was brought before the Inter-American Commission on Human Rights. The woman in question was Mrs. Mestanza, a Peruvian woman who died from medical complications following forced sterilization performed by State agents in 1998. The Peruvian Government recognized that it had failed to fulfill its international obligations with regard to the rights to life, personal integrity and equality before the law as well as the right not to suffer gender-based violence. OAS, Inter-American Commission on Human Rights, No. 71/03 - Petition 12.191 – Friendly Settlement – María Mamérita Mestanza Chávez – PERU – October 10, 2003.; the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem Do Para Convention)* protects the right to life, the right to have physical and psychological integrity respected, the right not to be subjected to torture (torture is understood to include methods that attempt to destroy the victim's personality or diminish their physical or mental capacity, although it may not cause physical pain or mental anguish), the right to have her personal dignity respected and

the women's consent or under pressure (intra-uterine device). The Recommendation also notes that public health institution staff, both at the state and federal levels, have carried out methods for the adoption of family planning practices that restrict the exercise of Indigenous women's right to make free, responsible and informed choices about the number and spacing of their children.⁷³ The CNDH recommended that state and federal health officials implement inter-institutional coordination mechanisms at all levels of government to ensure that all users might exercise the human right to freedom of decision and choice established by Article 4 of the Constitution. It also recommended that relevant administrative measures be adopted to develop and disseminate information material detailing sexual and reproductive rights, in the languages of Indigenous communities.⁷⁴

37. The Committee on the Elimination of Racial Discrimination has also confirmed the existence of forced sterilization and urges the "State party to take all necessary steps to put an end to practices of forced sterilization, and to impartially investigate, try and punish the perpetrators of such practices. The State party should also ensure that fair and effective remedies are available to the victims, including those for obtaining compensation."⁷⁵

38. It is important to state and specify that, for Indigenous women, family planning is an acceptable and sometimes necessary policy (including sterilization), but that it must be carried out with the free consent of the woman and/or couple. Furthermore, women must make their decision freely (without any type of pressure), and with full information on the type of procedure and whether or not it is reversible. The procedure must be performed in hygienic and clinical conditions with the appropriate equipment and by qualified personnel.

39. We therefore reiterate for the urgency with which Mexican society must guarantee Indigenous women's control over their health in accordance with their cultures and own needs.

3. A CASE FROM ARGENTINA

40. The Consejo de Organizaciones Aborígenes de Jujuy (C.O.A.J.) is an Indigenous organization that brings together 170 indigenous communities belonging to the Kolla, Atacama, Ocloya, Omaguaca, Quechua and Guaraní Peoples of the Province of Jujuy.

41. Argentina is a multicultural country, although it was only recognized as such in the National Constitution in 1994. The Indigenous population is estimated at 1,200,000 people.

her family protected. (Article 4 of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women—Belem Do Para Convention*, 9 June 1994, OAS No. 447).

⁷³ Article 6 of the *American Declaration of the Rights and Duties of Man* (OAS, Res. XXX, 9th International Conference of American States, OAS Doc. OEA/Ser. L/V/I. 4 Rev. XX (1948)) describes the family as a basic element of society that must be protected by the State. Furthermore, forced sterilization is an obstacle to the freedom to choose whether or not to have children, while violating the right to a person's physical integrity when no information is provided to the woman. This does not comply with Mexico's obligation, under Article 16 (1) of the *Convention on the Elimination of All Forms of Discrimination Against Women* to ensure that "women have access to all of the information required to exercise the right to decide freely on the number and spacing of their children."

⁷⁴ *Ibid.*

⁷⁵ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention. Concluding Observations – Mexico*, CERD/C/MEX/CO/15, CERD Off. Doc., 68th Sess., UN Doc. CERD/C/MEX/CO/15, (2006), under par. 17. "While the Committee welcomes the criminalization of forced sterilization under article 67 of the General Health Law, it reiterates its concern at the reproductive health situation of indigenous men and women in Chiapas, Guerrero and Oaxaca as far as the alleged practice of forced sterilization is concerned. (Art.5 (e) (iv))"

There are 24 Native Peoples composed of 994 indigenous communities recognized by the National State, spread out through 15 of Argentina's 23 provinces. The main concentration of Indigenous people is in the North of Argentina, with 70% of the total Indigenous population, Jujuy being the province with the greatest number of organized indigenous communities.

42. Argentina set its first indigenous legal precedent with Law 23.302,⁷⁶ the National Law on Indigenous Policy and Support for Indigenous Communities, passed in 1985, followed by the passing of provincial laws. Although National Law 23.302 attempts to address indigenous communities at the national level, the provinces all deal with indigenous issues in different ways. This legal process experienced a turning point in 1994, with the reform of the National Constitution and the approval of Section 75, Par. 17 of Chapter Four relating to the Powers of Congress. This led to having Indigenous rights entrenched in the Constitution, recognizing our prior existence as Indigenous Peoples, guaranteeing the right to identity, to bilingual and intercultural education, and the possession and communal ownership of traditional lands, among other rights.⁷⁷ This constitutional recognition has created momentum to bring provincial constitutions into line,⁷⁸ but some constitutions remain that are assimilationist, such as the Constitution of the Province of Jujuy.

⁷⁶ Law 23302, which created the Comisión Nacional de Asuntos Indígenas para protección y apoyo a las comunidades aborígenes (National Council of Indigenous Affairs for the Protection and Support of Native Communities). Enacted September 30, 1985, Published in the Official Gazette of 12-Nov-1985, Number: 25803.

⁷⁷ *Constitution of the Argentine Nation*, Part Two – Authorities of the Nation, Title 1 – Federal Government, First Division – Legislative Power, Cap. IV – Powers of Congress, Arg. Const. 92, Section 75.

⁷⁸ **Buenos Aires** (constitutional reform 1994): Section 36 subsection 9, **Chaco** (constitutional reform 1994): Section 37, **Chubut** (constitutional reform 1994): Section 34 and Section 95, **Formosa** (constitutional reform: 1991): Section 79, **Jujuy** (constitutional reform 1986): Section 50, **La Pampa** (constitutional reform 1994): Section 6, subsection 2, **Neuquén** (constitutional reform 2006): Section 53, **Río Negro** (constitutional reform 1988): Section 42, **Salta** (constitutional reform 1998): Section 15, **Tucumán** (constitutional reform 2006): *Chapter Five Rights of Indigenous Communities. Section 149*

43. Argentina is a country that has historically denied the presence of Indigenous peoples, which has led to policies of cultural assimilation through homogenizing practices, mainly applied through the education system.⁷⁹

44. In addition to the fact that indigenous lands are subject to legal insecurity and environmental devastation, the social situation of Indigenous people is highly vulnerable. For example, the provinces where Indigenous people are a majority demonstrate the highest poverty rates in the country. Various indicators point to the existence of discrimination against Indigenous peoples with regard to the enjoyment of basic human rights. Given the invisibility and exclusion of Indigenous peoples, Indigenous women suffer double discrimination, for being Indigenous and for being women in Argentina.

45. The situation with regard to education is the most telling with respect to the discrimination experienced by Indigenous women in Argentina.⁸⁰ The main concerns in this area are a **lack of access and the need for the cultural adaptation of education**. In the Puna mountain region, where there are 120 Indigenous communities belonging to the Kolla, Quechua and Atacama Peoples, it is evident the State is not fulfilling accessibility criteria:⁸¹ the figure for elementary education is 92%, 6% for intermediate education, and only 2% for higher education. Similarly, the illiteracy rate in Puna is 3.6 times higher than the national rate and 5.6 times higher for certain districts, such as Sta. Catalina.⁸²

46. Within Indigenous communities, this problem particularly affects Indigenous women. In relation to this phenomenon, the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People has indicated that the difficulties faced by girls and adolescents are often aggravated by other types of exclusions linked to disabilities, ethnic background, sexual preference and religious beliefs or the absence thereof, among other things.⁸³ The problem of the distance of indigenous communities⁸⁴ from schools is compounded by women's traditional responsibilities within the community, such as transmitting culture. The Indigenous women of the region generally finish elementary school, then devote themselves to rural subsistence activities, such as cattle raising, vegetable farming, and handcraft weaving.⁸⁵ The situation of boys is different, as they receive the family's support to move to urban centres to pursue their training and/or find

⁷⁹ *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, supra* note 8, par. 41. Discrimination in education is primarily reflected in the tendency to use school as a preferred means of assimilating indigenous peoples in the cultural model of the majority or dominant society.

⁸⁰ The right to education without discrimination is stated and restated in international instruments: *International Convention on the Elimination of All Forms of Racial Discrimination*. Adopted and opened for signature and ratification by General Assembly Resolution 2106 A (XX) of 21 December 1965 Art. 5 (v), Art. 7, ILO Convention concerning Indigenous and Tribal Peoples, 1989 (No. 169), Article 27 (1), *Convention on the Elimination of All forms of Discrimination Against Women*, Adopted and opened for signature and ratification or accession by General Assembly Resolution 34/180 of 18 December 1979 Art. 10, *Convention on the Rights of the Child* Adopted and opened for signature and ratification by General Assembly Resolution 44/25 of 20 November 1989, Art. 28.

⁸¹ CEACR: *Individual observation on Convention No. 169*, Indigenous and Tribal Peoples, 1989 Argentina, Observation 2004/75th, par. 5. Article 4. Special measures of protection. The Committee notes that, according to the ADEP, deficiencies in health, education and work are affecting the health of members of the indigenous communities in the province of Jujuy, particularly in La Puna, La Quebrada de Humahuaca, Ramal and Valles del Sur, which were brought to light in two field studies carried out in February 2001 and January 2002. The Committee requests that the Government provide information on the measures taken or envisaged, with the participation of the peoples concerned, to safeguard the persons, institutions, property, labour, cultures and environment of the indigenous communities in the abovementioned regions.

⁸² Secretariat of Education of the Province of Jujuy – *Education Statistics*, data as of April 30, 2005.

⁸³ *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN GA Off. Doc., 61st Sess., UN Doc. E/CN.4/2005/88 par. 64.

⁸⁴ *Ibid.* par. 23

⁸⁵ *Ibid.* par. 36

jobs. Out of all students attending elementary education institutions, the proportion of women is 50%. This rate drops to 38% in intermediate education institutions, with minimal figures in the district of Yavi, with a female presence of only 13%.⁸⁶

47. On another front, in addition to the problem of accessibility, there is a lack of accommodation of Indigenous peoples' culture.⁸⁷ Argentina's education policy does not recognize the relevant cultural accommodation for Indigenous peoples in its programs, demonstrated by its failure to implement bilingual, intercultural education in the country.⁸⁸ According to our observations, Jujuy is a province that showcases the main consequences of an education policy that does not respect the culture of Indigenous communities, since the province has no schools that teach in indigenous languages. In Argentina, school remains a systematic tool for the acculturation of Indigenous peoples.

48. A typical example of this situation as it affects Indigenous women in Argentina is the story of Nazaria Juarez, a Quechua woman from the Province of Jujuy, member of the El Angosto indigenous community in the District of Santa Catalina. She told us about her experience in elementary school, where she was the victim of discrimination and underestimation. Because of her indigenous background and because her family only spoke Quechua at home, she was ridiculed by her teachers for not knowing Spanish or because she was Indigenous. After finishing her elementary studies with great hardship, she was not able access a high school education, because her community was more than 100 kilometres away from the city of La Quiaca, where there was a middle school. Because of her family's economic situation, she was unable to emigrate to the city, which put an end to her wish of getting an education. This is a result of the fact that, considering that men a greater chance of getting a job and better access to the labour market, indigenous communities who are forced to choose which of their children to send to study outside of the community choose their sons.

49. Furthermore, in Argentina, school continues to be a tool for acculturation that does not respect indigenous culture. Since women have the responsibility of transmitting culture in Indigenous communities, and since this cannot be done within the education system, families send their sons to school and keep their girls at home to receive the traditional teachings passed down by their mothers.

⁸⁶ Education Statistics, *supra* note 82, data as of April 30, 2005.

⁸⁷ See, in relation to this: *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Rodolfo Stavenhagen, UN GA Off. Doc., 61st sess., UN Doc. E/CN.4/2005/88 add. 4 (2004) par. 7: The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, along with 27 independent experts of the Commission, including representatives of the Secretary General, other special rapporteurs and independent experts of the Commission published a Press Release issuing a call to the international community: "(...) They identified, among others, a range of concerns relating to the access of indigenous peoples to quality education at all levels and some of the existing barriers for indigenous peoples to enjoying a culturally appropriate education. In particular, it was highlighted that cultural diversity of indigenous peoples is not always respected and that discrimination and xenophobia remain the main impediment to the enjoyment by indigenous peoples of the right to education in all regions of the world. Indigenous girls in particular are negatively affected by the existing barriers to fully enjoying this right."

⁸⁸For example, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, said in relation to the Indigenous peoples of America, that: "First, teaching must be done in children's mother tongue. The promotion and dissemination of indigenous languages are key aspects to be considered in providing culturally appropriate education. Language becomes an essential tool for transmitting indigenous culture, values and world view. Secondly, it has been recognized that education must be placed in the context of local indigenous communities' own culture. However, such programmes also promote the opening up of communities to the national society, which means that instruction in the regional or national language must begin at an early age, through a system of bilingual education with an intercultural focus. (*Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, supra* note 87, par. 48).

50. If the high school had been physically and culturally accessible, Nazaria's family would not have had to make a choice among its children. The family would have been able to send their daughter to study and Nazaria could have fulfilled her dream.

51. While the right to education might be considered progressive in nature, the right to non-discrimination when it comes to education is immediately applicable, as stated by the Committee on Economic, Social and Cultural Rights.⁸⁹ Furthermore, the right to education, as enshrined in various international legal instruments, must be available, accessible (which includes non-discrimination, physical access and economic access), acceptable and adaptable.⁹⁰ Similarly, ILO Convention 169 includes the principle of adapting education to culture, in order to meet the specific needs of Indigenous peoples.⁹¹ We find that the situation of Indigenous women with regard to education in Argentina is not only alarming, but also demonstrates the Argentine State's non-compliance with its international obligations.

4. A CASE FROM CANADA

52. Quebec Native Women represents Aboriginal women living in Quebec, Canada. The Association supports them in their efforts to improve their living conditions and achieve equality. Since its inception, it has been battling discrimination against Native women under the *Indian Act*.⁹² Being "Indian" in Canada is not just a question of identity. It is also an imposed legal category created by the *Act*, which controls all aspects of the lives of registered Indians. Historically, the *Act* created Indian reserves and determined who could live on them and who could be an "Indian".

⁸⁹ *General Comments. The Right to Education* (Art.13). Doc. Off. ESC, 28th Sess., 08/12/99. ESC Off. Doc. E/C 12/1999/10 (1999) par. 31

⁹⁰ *Ibid*, par. 6.

⁹¹ ILO, *Convention on Indigenous and Tribal Peoples*, 1989 (No. 169), Article 27 (1).

⁹² *Indian Act.*, R.S.C., 1985, c. I-5

53. In general, the *Act* was detrimental to all Indians with its assimilative orientation, but women bore the brunt of its harmful effects. One of the most damaging aspects of the legislation was the way in which it discriminated against Aboriginal women who married men who were not Indians.⁹³ Unlike men, Aboriginal women who married non-registered men would lose their status, and their children would not be considered Indian.⁹⁴ In 1985, the Canadian government passed Bill C-31,⁹⁵ which ostensibly tried to remove this discrimination. However, this amendment to the *Indian Act* only succeeded in complicating issues.⁹⁶

54. One such example of this discrimination can be illustrated in the case of Brenda Fragnito, a Mohawk woman from the community of Kahnawake.

55. When Brenda married her husband, she did not know what kind of impact this would have on her life. With great sadness, she recounted how she eventually learned that she would never be allowed to move back to her community unless her husband died or she divorced him. She is frustrated that despite the fact that some of her male relatives have inter-married, they can still live in Kahnawake. Their children are also considered Mohawk even though, according to custom, clans are passed down through the mother's line. Brenda's children, on the other hand, have not been able to grow up in their community and live among their people. In addition, Brenda cannot even live on land that she owns. She is obligated to live in a neighbouring community, with the knowledge that when she dies she cannot even be buried with her ancestors. She described how each time she visits Kahnawake, she feels a longing to once again live with her people. Her children have also felt this exclusion and have struggled with issues of belonging and identity. She emphasized, however, that her story was just one of many, and that many other woman in similar circumstances have suffered even worse discrimination.

56. This discrimination contradicts Iroquois customary law, whereby membership, identity and title to land pass through the maternal line. The *Indian Act*, which has been implemented by force, contradicts this law.

57. Bill C-31 briefly did a few things. Women who had lost their status were reinstated and women who married non-Indian men no longer lost their status. However, the Bill also created classes of Indians.⁹⁷ Furthermore, the Bill introduced the second-generation cut-off rule. Thus, children of women who lost their status cannot pass their status down to their children if their partner is a non-Indian. However, the children of Native men who

⁹³ *Indian Act* R.S.C. 1970, c. I-6. s. 12(l)(b), Section 12(1)(b) provided that a woman who married a non-Indian was not entitled to be registered. In contrast, section 11(1)(f) stated that the wife or widow of any registered Indian man was entitled to status. Pursuant to section 109(1), if a male status Indian was enfranchised, his wife and children would also be enfranchised. Section 12(1)(a)(iv), known as the double mother clause, provided that a person whose parents married on or after 4 September 1951 and whose mother and paternal grandmother had not been recognized as Indians before their marriages, could be registered at birth, but would lose status and band membership on his or her 21st birthday.

⁹⁴ See *Attorney General of Canada v. Lavell* [1974] S.C.R. 1349 and *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

⁹⁵ *An Act to Amend the Indian Act*, S.C. 1985, c.27 ("Bill C-31").

⁹⁶ C-31 is not the only example of discrimination that is expressly formulated in Canadian laws. See for example: Canadian Human Rights Act, R.S.C. 1985, c. H-6. Section 67.

⁹⁷ Membership is determined by the rules governing Indian registration. These rules are contained in Section 6 of the 1985 *Indian Act* and allow for individuals to be registered under one of two sub-sections, including: *Section 6(1)* where both of the individual's parents are entitled to Indian registration; and *Section 6(2)* where one of the individual's parents is entitled to Indian registration *under Section 6(1)* and the other parent is not registered. Individuals who have only one Indian parent registered under Section 6(2) do not qualify for Indian registration or First Nations membership.

intermarried are able to pass their status down at least one generation. Thus, there remains residual discrimination against reinstated women in their ability to pass down their status to children.

58. Although women obtained status, they are still being denied their rights due to the fact that many communities are adopting membership codes based upon a criteria created by the Canadian Government that continues to discriminate against Aboriginal Women. Therefore, gaining status is meaningless for many women, as they are still refused the right to move home, vote, and enjoy their culture. In effect, they are still alienated from their communities for marrying someone who is non-status.

59. Being an Indigenous person in Canada has never been easy due to the effects of colonization, residential schools and the racist policies of former governments. However, this difficult situation is made even worse for women, as they have been excluded from their communities for more than 100 years. In addition, Aboriginal women in Canada are prevented from accessing human rights protection under the *Canada Human Rights Act*, as s. 67 of this legislation makes it inapplicable to all matters governed by the *Indian Act*.⁹⁸ Thus, Canada has an obligation to resolve this issue and ensure that these women can claim what is rightfully theirs⁹⁹. The right of these women to equality before law is a fundamental right that is protected by Article II of the *American Declaration of the Rights and Duties of Man*.¹⁰⁰ This document also protects essential rights such as the right to benefit from one's culture (Art XIII) and the right of association (XXII). If these rights were respected, Brenda Fragnito and other women in her situation would finally be able to claim their place as Indigenous women with pride and dignity.

⁹⁸ *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. Section 67 of the act reads as follows: Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.

⁹⁹ In its Concluding Observations, the Committee on Economic, Social and Cultural Rights recommends that the State party, in consultation with First Nations and including Aboriginal women's groups, adopt measures to combat discrimination against First Nations women and their children in matters relating to Indian status, band membership and matrimonial property. In particular, the Committee urges the State party to repeal section 67 of the Canadian Human Rights Act, which prevents First Nations people from filing complaints of discrimination before a human rights commission or tribunal. The Committee also urges the State party to amend the Indian Act to remove any residual discrimination against First Nations women and their children. *Concluding observations of the Committee on Economic, Social and Cultural Rights*, Off. Doc. UN ESCOR, 36th sess., UN ESCOR Doc E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5, (2006) par. 45.

¹⁰⁰ See also: Articles 1 and 2 of the Universal Declaration of Human Rights which provides that: "all human beings are born free and equal in dignity and rights," and that every person is therefore entitled to the rights and freedoms set forth "without distinction of any kind" including sex. See also the general legal obligations set forth in, *inter alia*, Articles 2.1, 3, 4.1 and 26 of the ICCPR and Articles 2.2 and 3 of the ICESCR, which require all parties to refrain from discrimination on enumerated grounds including gender are developed and amplified in the provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women*. The latter sets forth in Article 1 that the term "discrimination against women": "shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms [...]"

5. A CASE FROM COLOMBIA

60. Since the Constitution of 1991, and thanks to the struggles waged by Indigenous peoples, Colombia considers itself to be a pluriethnic and multicultural nation, which recognizes Indigenous peoples' fundamental rights to identity, to land and natural resources, to participation, including prior consultation, to their own models of development (life plans), and to legal or regulatory autonomy (legal pluralism). In spite of this, they are the population that is most affected by human rights violations¹⁰¹ perpetrated by the State and other actors participating the armed conflict raging in the country.

61. There are 90 peoples that self-identify as Indigenous peoples. They are the custodians of 63 different languages, have historically occupied 30,000,000 hectares (close to 700 reserves, collectively owned private property) and preserve 60% of biological diversity and renewable and non-renewable (strategic) natural resources within their lands.

62. Only two peoples have a population of more than 100,000 inhabitants (the Awyuu and Nasa peoples), 40 peoples have populations varying from 1,000 to 30,000 people, 28 peoples have fewer than 500 members, 15 represent fewer than 200, and 6 have fewer than 100. The latter are "invisible" peoples that are being systematically decimated and driven to demographic extinction.

63. The exact number of Indigenous women in Colombia is unknown. However, it has been calculated that approximately 55% of the total national indigenous population of between one million and one and a half million people is comprised of women.

The armed conflict makes the situation of Indigenous women even more difficult

64. Studies show that women suffer the consequences of the armed conflict in Colombia more severely, and furthermore lack social programs.¹⁰² The priority is the democratic security policy, which concentrates resources on the armed conflict and on controlling drug trafficking. Indigenous women lack the means to meet their immediate needs, namely dealing with the very high levels of child malnutrition, and with tuberculosis, malaria, and other diseases affecting the women, children and other members of Indigenous communities

¹⁰¹ Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People - Mission to Colombia*, supra note 10, par. 70; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, GA Doc. A/60/358, UN GA Off. Doc., 60th Sess., E/CN.4/2004/80 (2004) par. 13-62; For a general overview, see: *the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *ibid*, par. 2-32.

¹⁰² Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People - Mission to Colombia*, supra note 10, par.70-71-92 and summary; For the Inter-American System, see: IACHR, *Third Country Report on the Situation of Human Rights in Colombia, Chapter X: the Rights of Indigenous people*, Off. Doc. OEA/Ser.L/V/II.102/Doc.9, rev.1 (1999) par. 36, as well as Chapter XII: *Women's Rights*, par. 39; For a general overview, see: *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, GA Doc. A/60/358, UN GA Off. Doc., 60th Sess., E/CN.4/2004/80 (2004), par. 13-62-72; *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Rodolfo Stavenhagen, HRC Off. Doc., 60th Sess., E/CN.4/2004/80 (2004), par. 32; *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, supra note 8, par. 6.

as a result of a loss of food security.¹⁰³ The lands they occupy are not very productive and, on many of these lands, it is well-known that armed actors are present, and they, among other things, prevent production, freedom of movement and traditional production practices, such as fishing, hunting and gathering fruits, as well as nomadic agriculture in different microclimates.¹⁰⁴ The coca spraying procedures that put the lives and health of Indigenous people at risk should not be forgotten.

65. The recent International Verification Mission (September 20 to 30, 2006), conducted with the participation of UNHCR, UNDP, OCHA and various international NGOs, learned of the worsening situation of human rights violations affecting Indigenous peoples. The Mission found a 300% increase in violations, all attributed to State agents and other actors, according to the report presented by the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, during his visit to the country in 2004.¹⁰⁵

¹⁰³ See, *inter alia*: *Indigenous Issues – Human Rights and Indigenous Issues: report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People - Mission to Colombia*, *supra* note 10, par. 35- 70.

¹⁰⁴ *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *supra* note 47, par. 52; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, *supra* note 101, par. 13.

¹⁰⁵ *Violaciones a los Derechos Humanos e Infracciones al Derecho Internacional Humanitario cometidas contra Pueblos Indígenas en Colombia (Human Rights Violations and Infractions of International Humanitarian Law Committed against Indigenous Peoples in Colombia)*. January - June 006, ONIC-Sindho (08/08/2006).

VIOLATIONS AND OFFENSES	2006	PERCENTAGE
Threats	10818	7.551
Attacks on civil infrastructure	33219	23.187
Combat	15504	10.822
Confinement	63000	43.975
Forced Disappearance	28	0.020
Arbitrary Arrest	279	0.195
Internal Forced Displacement	5731	4.000
Injury	75	0.052
Murder	32	0.022
Death by anti-personnel mine	2	0.001
Forced recruitment	2	0.001
Kidnapping	12	0.008
Reprimand	12532	8.748
Charged with rebellion	3	0.002
Torture	7	0.005
Rape	13	0.009
Total	143263	100.000

Source: ONIC Human Rights Information System, August 9, 2006

66. The recommendations of UN Special Rapporteur for Indigenous People point to the fact that human rights violations are compounded by the violation of Indigenous rights. The use of homes, schools, parks and other public places by public armed forces as trenches is notorious. Furthermore, programs such as the soldier-farmer program and the informer networks promoted by the national government tend to connect the civilian population to one of the actors' sides in the conflict.

67. In this context, Indigenous women live in constant fear and they never feel safe, because they are in the sightlines of all armed actors.¹⁰⁶ In the words of the Inter-American Commission on Human Rights in 1999: "(...)in addition to the serious problem of the increase in the number of displaced women as a result of the internal armed conflict, there are numerous complaints regarding murders, injuries, unlawful deprivation of liberty, and intimidation by the various armed actors."¹⁰⁷

68. The fundamental rights of Indigenous women are violated when: women, adolescents and young girls are murdered, forcefully displaced, disappear, are subject to violations of their physical integrity,¹⁰⁸ forcefully recruited,¹⁰⁹ intimidated and threatened, confined, see their lives threatened, are widowed, suffer the pain of losing their children, go short of food, are prevented from moving freely between their homes and agricultural plots, are kept from celebrating family and community protection rituals, and are singled out, detained and even indicted by association: for being the mothers, girlfriends or spouses of alleged members of the "armies" at war. According to the Commission, internal forced displacement has reached such huge proportions that, in 1999, it was considered one of the most serious aspects of the overall human rights situation in Colombia.¹¹⁰

¹⁰⁶ Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People - Mission to Colombia*, supra note 10, par. 71; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, supra note 47, par. 52; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN GA Doc. A/60/358, UN GA Off. Doc., 60th Sess. par. 62

¹⁰⁷ IACHR, *Third Country Report on the Situation of Human Rights in Colombia, Chapter X: the Rights of Indigenous People*, Off. Doc. OEA/Ser.L/V/II.102/Doc.9, rev.1 (1999) par. 36, as well as Chapter XII: *Women's Rights*, par. 35

¹⁰⁸ Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen – Mission to Colombia-*, HRC Off. Doc., 61st Sess., E/CN.4/2005/88/Add.2, (2004), par.71 and summary; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, GA Doc. A/59/258, UN GA Off. Doc., 59th Sess., E/CN.4/2004/80/Add.3 (2003), par.51-52; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, GA Doc. A/60/358, UN GA official document, 60th Sess. par. 13; For a general overview, see: *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen*, HRC Off. Doc., 60th Sess., E/CN.4/2004/80 (2004), par. 32.

¹⁰⁹ See, for example, Inter-American Commission on Human Rights, *Third Country Report on the Situation of Human Rights in Colombia, Chapter X: The Rights of Indigenous People*, Off. Doc. OEA/Ser.L/V/II.102/Doc.9, rev.1 (1999) par.36.

¹¹⁰ See, for example, Inter-American Commission on Human Rights, *Third Country Report on the Situation of Human Rights in Colombia, Chapter VI: Internal Forced Displacement*, Off. Doc. OEA/Ser.L/V/II.102/Doc.9, rev.1 (1999), par.1

69. Not only are sexual threats or incrimination through emotional ties the preferred strategies for scaring women in the context of the armed conflict, but it so happens that “[...]The various armed actors have been using the strategy of seducing the young women in our community, for the purpose of getting information from them, taking advantage, in many cases, of their naivete, their poverty, and their emotional needs or family problems. This puts their lives and the lives of their families at very high risk.”¹¹¹ This situation, in which young men involved in the war, using the power and seductiveness of weapons and uniform, involve girls and young women¹¹² in emotional relationships for the sole purpose of receiving favours: information, sending messages, carrying forbidden goods, etc. has been repeatedly denounced.

70. There have been several cases in which young women in this situation have become pregnant and been abandoned, leaving them to shoulder the responsibility for their unborn child alone, or forcing them to undergo an abortion. There is also reason to suspect that, as a result of these relationships, there has been an increase in cases of sexually transmitted diseases. This is compounded by the fact that the conflict prevents access to health services, education, jobs, product marketing and self-development.

71. One of the strategies of the democratic security policy is to fill indigenous lands with military forces. This means that hundreds of soldiers and policemen have occupied indigenous lands, with the logical consequences of having men who are alone, far from their homes, thirsty for war and for company to ease their loneliness, the effects of which mainly fall on the shoulders of young women who, in many cases, end up giving in to these soldiers’ emotional and sexual demands.¹¹³ This results in a disintegration of the social fabric, a disruption of family structures and a weakening of the community. These relationships also turn these women into military targets, such as in the case of Toribio (Cauca) where one young woman was murdered after being held with two other women by guerrillas, who accused them of being the “girlfriends” of police officers. A list of 15 women appeared, with a “warning” about what could happen to them.¹¹⁴

¹¹¹ Testimony gathered in the Department of Cauca: ACIN Women’s Program, report to the International Verification Mission, September 2006

¹¹² Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen – Mission to Colombia. HRC Off. Doc., 61st Sess., E/CN.4/2005/88/Add.2, (2004), summary*; For a general overview, see: *Indigenous Issues – Human Rights and Indigenous Issues: report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, HRC Off. Doc. 61st Sess., E/CN.4/2005/88 (2005), par.6.*

¹¹³ Regarding the situation in Colombia in this respect, see: *Indigenous Issues – Human Rights and Indigenous Issues: report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen – Mission to Colombia-, HRC Off. Doc., 61st Sess., E/CN.4/2005/88/Add.2, (2004), par.71 and summary*; *The Situation of Human Rights and Fundamental Freedoms of Indigenous People, GA Doc. A/60/358, UN GA official document, 60th Sess. par. 13-62*; For a general overview, see: *Indigenous Issues – Human Rights and Indigenous Issues: Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, HRC Off. Doc., 60th Sess., E/CN.4/2004/80 (2004), par. 32.*

¹¹⁴ Testimony gathered in the Department of Cauca: ACIN Women’s Program, report to the International Verification Mission, September 2006.

72. According to situations affecting Betoye women (Department of Arauca), on Tuesday, April 17, 2006 there was an incident of attempted rape against Rosa Campo, Gladys Fernández and a 12 year-old girl in the Community of Parreros y Velasqueros. They declared that, as they were going to get some clothes on the other side of the river, they were detained for three hours by members of Mobile Brigade No. 5, who asked them about the guerrillas. "They are the ones that bother us the most in indigenous communities." After extensive harassment, one young Indigenous woman had to go with the troop and prostitute herself with several of them but, since the others did not obey the soldiers, they were insulted and threatened, and collectively defended themselves to avoid being raped.¹¹⁵

73. Fifteen-year old Paola Andrea Yule, was detained and killed by FARC guerrillas on August 19, 2006. She was later found on August 29, 2006, two kilometres outside of the urban area of Toribio, near the San Francisco highway. Paola had been raped, tortured, and one of her breasts had been cut off. The motive for this murder was her relationship with a policeman.¹¹⁶

74. These situations are just some examples of the effects of the armed conflict on Indigenous women.

6. CONCLUSION AND RECOMMENDATIONS

75. Despite the existence of human rights instruments internationally, regionally, and domestically, Indigenous peoples continue to be deprived of their human rights and fundamental freedoms. The general protections in these instruments are still inadequate and bodies such as the Inter-American Commission on Human Rights must continue developing standards that specifically apply to the situation of Indigenous peoples.

76. Among Indigenous groups, women continue to be the most marginalized and suffer disproportionate levels of violence and human rights violations. This amounts to double discrimination and makes women the most vulnerable group in the Americas. However, beyond the scope of Human rights, violence against Indigenous women is also an issue of sovereignty. Indigenous matrilineal cultures have been imposed upon by patriarchal structures and policies that have undermined and purposefully discriminated against the rights and traditional roles of women. In order to remedy this situation, statistical information on violence and discrimination against Indigenous women needs to be gathered. Furthermore, investigation regarding the root causes of this phenomenon is urgently required. Mechanisms also need to be in place so that these women have access to justice as well as juridical standards that can fully respond to their unique situation. These standards need to protect both the individual and collective rights of Indigenous women. In addition, any solutions to the inequalities faced by Indigenous women must involve meaningful consultation with Indigenous peoples, including Indigenous women's representatives, and incorporate indigenous legal systems.

77. We therefore make the following recommendations to the Commission:

¹¹⁵ Testimonies given by Betoye women. Fortul, June 2006.

¹¹⁶ Testimony gathered in the Department of Cauca: ACIN Women's Program, report to the International Verification Mission, August 2006

- ✓ That the Commission conduct research in order to produce a specific report on the rights of Indigenous women in the Americas;
- ✓ That the Commission work on mainstreaming a gender perspective and take into account the double discrimination of Indigenous Women;
- ✓ That the Commission incorporate the theme of Indigenous women into its annual report and into country reports;
- ✓ That the Commission strive to develop legal standards in the inter-American system that apply specifically to Indigenous peoples and to Indigenous women;
- ✓ That the Commission request information from the States concerned by the situations described above and formulate adequate recommendations.