

**Oral Statement of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, James Anaya**

Human Rights Council, Twelfth session (September 2009)

28 September 2009

Mr. President,
Distinguished delegates,
Ladies and gentlemen,

I have the honor to present today my second annual report to the Human Rights Council. I would like to start by expressing my gratitude to the numerous States, indigenous peoples, and others for the support they have provided as I have carried out my mandate over the past year.

In my written report to the Council this year I describe the range of activities I have engaged in since my last report, highlighting my efforts to coordinate my work with other United Nations mechanisms and with relevant regional institutions. Additionally, I devote a part of my report to the major issue of the the duty of States to consult with indigenous peoples on matters affecting them.

Cooperation with other mechanisms and institutions

Mr. President,

Allow me to express my appreciation for the work of the Expert Mechanism on the Rights of Indigenous Peoples, whose Chairperson I have the pleasure of sharing the podium with today. I fully embrace the Council's directive that I am to work in cooperation with the Expert Mechanism, and the Permanent Forum on Indigenous Issues, in order to maximize the effectiveness of my mandate and avoid duplication.

To that end, last February I participated in a seminar in Madrid with the members of the Expert Mechanism and four members of the Permanent Forum, along with other experts from various regions, to discuss methods of coordination among the three mechanisms. This meeting was organized with support from the Government of Spain, to which I am grateful. The meetings' conclusions are in Addendum 7 to my report.

I would like to add that I have also sought to cooperate with agencies of the United Nations Secretariat, specialized agencies and regional human rights institutions in the implementation of my mandate, as detailed in my report to the Council.

Areas of work

Mr. President,

While seeking to cooperate as appropriate with relevant international mechanisms and institutions, I have engaged in a range of activities within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide and to promote steps to improve those conditions. The various activities I have carried out can be described as falling within four, interrelated areas of work. These are promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

Promoting good practices

An important area of my work follows from the directive given me by the Human Rights Council “to identify ... and promote best practices”. In this connection I have worked to advance legal, administrative, and programmatic reforms at the domestic level to implement the standards of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments, on occasion in response to specific requests made by Governments for technical and advisory assistance. My report to the Council provides several examples of these efforts during the period under review.

In my future work, I will continue to promote positive developments and identify models of reform that can be applied in various contexts. I foresee detailing these models, where they exist and have been successful, in my subsequent annual reports to the Council and in other public statements.

Thematic studies

Another area of my work, which is intended to contribute to the development of good practices in specific country situations, involves conducting or participating in studies on issues or themes that are of interest to indigenous peoples across borders and regions of the world. During the period under review, I participated in several thematic seminars organized by NGOs, United Nations agencies, indigenous organizations, and other stakeholders, on specific thematic issues; and I cooperated with the Expert Mechanism on its thematic study on the right of indigenous peoples to education.

I would like to note that, taking into consideration the establishment of the Expert Mechanism with a mandate to provide thematic expertise and recommendations to the Council on issues affecting indigenous peoples, I now see my own work carrying out thematic studies as secondary to the other areas of my work. Nonetheless I will continue to engage or participate in thematic studies in ways that are complementary to the work of the Expert Mechanism and other United Nations bodies.

Thus, I devoted the second half of my annual report to an analysis of the duty of States to consult with indigenous peoples on matters affecting them. My aim is to offer practical insight on the nature of this duty and how it may be implemented. The duty of States to consult, through

special arrangements, with indigenous peoples on legislative or administrative decisions affecting them, such as decisions on the extraction of natural resources on their territories, has strong normative and legal foundations. It corresponds with general principals of democracy coupled with the widespread recognition of the special concerns of indigenous peoples and their typically disadvantaged conditions. It is grounded in the right of indigenous peoples to self-determinations and related human rights. The failure of States to adequately comply with the duty to consult with indigenous peoples is one of the main issues I have been confronting in relation to situations in countries throughout the world. Concerted efforts are needed to reverse this pattern of inadequate compliance or non-compliance.

Country reports

Mr. President,

A third area of my work involves investigating and reporting on the overall human rights situations of indigenous peoples in selected countries. During the period under review, I have completed reports with recommendations on Brazil and Nepal after missions to those countries, and a report after a visit to Chile to follow-up on the report by my predecessor, Rodolfo Stavenhagen. These reports are included, respectively, in Addendums 2, 3 and 6. I also conducted missions to assess indigenous peoples' conditions in Botswana and Australia, and a follow-up visit to Colombia. I am still in the process of developing my reports on those visits. My preliminary observations on these latter three missions and related exchanges of information are included, respectively in Addendums 4, 9 and 10. I would like to express my gratitude to the Governments of all of the countries visited for their cooperation and support.

Because of limitations of time, I am able to now offer only brief comments on my final reports on Brazil, Nepal and Chile. I respectfully refer the members of the Council and others present to the full texts of my reports on these countries and to the documents containing my preliminary observations on Botswana, Australia and Colombia.

With respect to Brazil, I note that the Government already has in place important constitutional and other legal protections for indigenous peoples, and that it is working towards developing a number of significant programmes in areas of indigenous land rights, development, health and education. Nonetheless, indigenous peoples of Brazil continue to face multiple impediments to the full enjoyment of their individual and collective human rights, and in some cases face dire conditions. Further efforts are needed to ensure that indigenous peoples are able to fully exercise their right to self-determination within the framework of a Brazilian State that is respectful of diversity.

My report on Nepal reviews and analyzes the human rights situation of the various indigenous peoples there known as Adivasi Janajati, particularly in light of the ongoing process of constitution-making and political transition and Nepal's expressed commitment to secure their rights. I am encouraged by the Government's expressions of resolve to advance the rights of Adivasi Janajati, which is manifested by its ratification of ILO Convention 169 and its support for the United Nations Declaration on the Rights of Indigenous Peoples. At the same time, I note

a number of ongoing human rights concerns related to a history of discrimination against the Adivasi Janajati and their lack of adequate participation in the political process.

In my follow-up report on Chile, I recognize certain advances by the State towards compliance with the recommendations of my predecessor, such as the ratification of Convention 169 and ongoing constitutional reform related to indigenous rights. I also note that there remain significant challenges, especially in areas of consultation, land and resource rights, and Government policies and action related to acts of protest by Mapuche people. Of particular concern are violent and on occasion deadly confrontations. The Government is addressing this situation, but further efforts are still needed to defeat the atmosphere of mistrust that exists in many places.

Cases of alleged human rights violations

Mr. President

Apart from reporting generally on country situations, a fourth and perhaps my principal area of work involves responding, on an ongoing basis, to alleged violations of the human rights of indigenous peoples in specific cases. During the period under review, I received information about cases of alleged human rights violations in countries on every continent and, in response, sent numerous communications to Governments about these situations. A complete summary of the communications sent, responses received from Governments, and observations can be found in the communications report attached to my report as Addendum 1.

In two of the cases addressed, involving different situations in Panama and Peru, I issued detailed observations and recommendations in the hope that they would be of use to the Governments and indigenous peoples concerned in their efforts to address the problems raised. My investigation of these situations involved on site visits that were conducted with the cooperation of the governments concerned.

In Panama I investigated the situation surrounding the Charco la Pava and other Ngobe communities that will be displaced from their traditional lands if the construction of a hydroelectric dam is completed. The Government has recently reported to me that it has established a forum for carrying out a dialogue with the affected indigenous communities about the hydroelectric project. I acknowledge this as a positive step and urge the Government to implement the other recommendations included in my observations on the situation, including the adoption of measures to comply with international standards of consultation and consent that are applicable to such cases. My observations on the case are included in Addendum 5 to my report.

In Peru I addressed the circumstances surrounding the tragic clash between police and indigenous protestors on June 5 in the area of Bagua, which resulted in numerous dead and dozens of wounded. I would like to note the steps that the Government has taken since I first made public my observations concerning the situation. These include the formation of an independent commission to investigate the circumstances surrounding the events at Bagua, which corresponds with one of my main recommendations. I would like to reiterate, however,

my view that such an independent commission should include some form of international participation, in order to strengthen its independent character and public confidence in it. I would also like to underscore my ongoing concern about the need to fully address the legitimate demands of indigenous peoples in Peru, and the need for good faith dialogue on the part of all concerned. My report on the Bagua case in Peru is presented to the Council as Addendum 8.

I am grateful to the governments of Panama and Peru for their cooperation in my investigation of the Charco la Pava and Bagua cases, respectively, and to the several other governments that have responded to my communications regarded specific cases. I note, however, that during the period under review a number of governments did not respond to communications from me requesting information on alleged human rights violations, and I urge them to do so in the future. As I stated to the Council last year, in order to be able to fulfill my mandate, I aim to engage actively with States, indigenous peoples and other actors to closely monitor and evaluate situations, identify underlying causes of immediate problems, and promote specific action that builds on advances already made.

Mr. President,

Let me conclude by expressing my gratitude for the opportunity to serve as Special Rapporteur with a mandate by this Council to promote the rights of indigenous peoples. As I work to fulfill this mandate, I do so with optimism for a better future for indigenous peoples, encouraged by positive developments in many places, and yet concerned by the reality of ongoing struggles and violations of indigenous peoples throughout the world. I reaffirm my strong commitment to my role as Special Rapporteur, and acknowledge with humility the responsibility it represents.

I thank you all for your kind attention.