

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

**Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples**

Agenda Item 4: The United Nations Declaration on the Rights of Indigenous Peoples

15 July 2010

Mr. Chairperson,
Distinguished members of the Expert Mechanism on the Rights of Indigenous Peoples,
Delegates of Member States,
Representatives of indigenous peoples and organizations,
Ladies and gentlemen

Thank you for the opportunity to address the Expert Mechanism and all those attending this session once again, and to share some thoughts on the agenda item on the United Nations Declaration on the Rights of Indigenous Peoples. My first annual report to the Human Rights Council as Special Rapporteur included an analysis of the Declaration, and I offered some comments on it last year during the second session of the Expert Mechanism. I would today like to reiterate and expand upon some of the views I have expressed in the past, focusing on the need for decided and concerted action for implementing the Declaration.

As a preliminary matter, I am pleased to note that since the adoption of the Declaration in 2007, the very few States that voted against the Declaration have changed or are in the process of reassessing their positions. As others have mentioned, Australia and New Zealand have now both made statements endorsing the Declaration; New Zealand made its statement just last April, at the annual session of the Permanent Forum on Indigenous Issues, and I look forward to discussing with the Government of New Zealand and Maori people the steps being made to implement the Declaration and the challenges that remain in this regard during my visit there next week. Additionally, Canada and the United States have declared that they are reviewing their positions on the Declaration, and I share in the optimism that these review processes will soon lead to similar expressions of endorsement, making opposition to the Declaration a thing of the past. I am also pleased to note that Colombia and Samoa, two of the states that registered abstentions in the vote on the Declaration, made public statements last year expressing their commitment to the principles expressed in the instrument. The expressions of all these countries undoubtedly contribute to the further strengthening of the international commitment to advancing the rights of indigenous peoples that the Declaration represents.

However, while we can celebrate this strengthening of support for the Declaration, it is all

too apparent that a great deal remains to be done to see the objectives of the Declaration become a reality in the everyday lives of the indigenous peoples of the world. It is not going too far to say, I believe, that today the Declaration remains more a reminder of how far there is to go in bringing justice and dignity to the lives of indigenous peoples than a reflection of what has actually been achieved on the ground. It is painfully apparent in my own work as Special Rapporteur, and as is evident from the many statements of indigenous representatives participating in this meeting, that historical patterns of oppression continue to manifest themselves in ongoing barriers to the full enjoyment of human rights by indigenous peoples. As I have said on many occasions, my fear is that the wide gap between the Declaration and its effective implementation will persist, leading to a certain complacency and acceptance of that condition by dominant actors and within the United Nations system. That cannot be allowed to happen.

Mr. Chairperson,

A starting point for the effective implementation of the Declaration is a firm commitment by States and the United Nations system to its rights and principles that is free from vague assertions that the Declaration is not obligatory. On too many occasions in my work as Special Rapporteur I have come across efforts by State and other actors to diminish the normative weight of the Declaration by describing it as an instrument that is not “legally binding.” Of course it can be conceded that, as a resolution of the General Assembly, the Declaration is by its nature, not in and of itself legally binding, given the authority of the General Assembly under the United Nations Charter only to make “recommendations,” except in regard to membership, budgetary, and administrative matters. But understanding about the normative significance and legal obligations related to the Declaration does not end there.

First, whatever its legal significance, the Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function of not only the fact that it has been formally endorsed by an overwhelming majority of UN Member States, but also the fact that it is the product of years of advocacy and struggle by indigenous peoples themselves. The Declaration is the result of a cross-cultural dialogue that took place over decades, in which indigenous peoples took a leading role. The norms of the Declaration substantially reflect indigenous peoples own aspirations, which after years of deliberation have come to be accepted by the international community.

The Declaration’s wording, which has been endorsed by Member States, explicitly manifests a commitment to the rights and principles the Declaration embodies. It is simply a matter of good faith that States adhere to that expression of commitment to the norms that indigenous peoples themselves have advanced.

Furthermore, even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the United Nations Charter, other treaty commitments and to customary international law. The Declaration builds upon the general human rights obligations of States under the Charter and is grounded in fundamental human rights principles such as non-discrimination, self-

determination and cultural integrity that are incorporated into widely-ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to connect to a consistent pattern of international and state practice, and hence to that extent they reflect customary international law, as I have explained in detail in a number of publications.

Mr. Chairperson,

Undoubtedly the adoption of the Declaration by the General Assembly was a momentous event, and recent statements of formal support for the Declaration are to be welcomed. But these achievements cannot be seen as the final or principal goals. Rather, it is the faithful implementation of these rights that must be the focus of concerted attention.

And the significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character. Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.

Allow me, Mr. Chairmen, to offer a few comments on minimum steps that I consider to be required to move forward with implementation of the Declaration beyond its formal endorsement by States.

First, State officials, as well as indigenous leaders, should receive training on the Declaration and the related international instruments, and on practical measure to implement the Declaration. Along with this training, seminars and conferences should be organized at national and local levels to bring together State officials and indigenous leaders to develop strategies and initiatives for implementation, including measures to address historical grievances, in the spirit of cooperation and reconciliation that the Declaration represents.

Additionally, States should engage in comprehensive reviews of their existing legislation and administrative programs to identify where they may be incompatible with the Declaration. This would include a review of all laws and programs touching upon indigenous peoples' rights and interests, including those related to natural resource development, land, education, administration of justice and other areas. On the basis of such review necessary legal and programmatic reforms should be developed and implemented, in consultation with indigenous peoples.

States should be committed to devote significant human and financial resources to the measure required to implement the Declaration. These resources will typically be required for the demarcation or return of indigenous lands, the development of culturally appropriate educational programs, support for indigenous self-governance institutions, and the many other measures contemplated by the Declaration.

The United Nations system and the international community should develop and implement programs to provide technical and financial assistance to States and

indigenous peoples to move forward with these and related steps to implement the Declaration, as a matter of utmost priority. In some instances existing United Nations and international cooperation programs may have to be reformed to align with the goals and objectives of the Declaration.

Mr. Chairperson, I am aware that at least to some extent the minimum steps to implement that Declaration that I have just outlined are already being undertaken by some States and in some cases with the backing of United Nations agencies or international cooperation programs. My sincere hope is that such initiatives will take root much more broadly than they have to date, and that experiences will be shared to strengthen these initiatives.

I would like to conclude, Ms. Chairperson, by noting the role of the Expert Mechanism and my own mandate as Special Rapporteur in promoting the implementation of the Declaration. It is now well understood that the Declaration marks the normative framework for both the Expert Mechanism and the Special Rapporteur in our work examining the human rights issues concerning indigenous peoples around the world and in making relevant recommendations. I would like to acknowledge the Expert Mechanism's important work contributing to an understanding of the Declaration's provisions and their application. I would also like to reaffirm here my strong commitment to my role as Special Rapporteur, and my commitment to help build understanding about the meaning and practical reach of the Declaration, and ultimately to advance its full implementation.

I thank you all for your kind attention.