Over the last two decades the situation of the indigenous peoples worldwide and the enjoyment of their human rights has become a key issue in the international arena. This development is reflected in the establishment of the Working Group on Indigenous Populations (WGIP) in 1982, the proclamation by United Nations General Assembly of the International Decade for Indigenous Peoples, 1995-2004, and the establishment of the Permanent Forum on Indigenous Issues in 2000.

In 2001, the Commission on Human Rights appointed Rodolfo Stavenhagen from Mexico as Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, in response to the growing international concern regarding the marginalization and discrimination against indigenous people worldwide. The mandate, initially created for a period of three years by the Commission in its resolution 2001/57, represents a significant moment for the ongoing pursuit of indigenous peoples to safeguard their human rights, and is complementary to those of the WGIP and the Permanent Forum and aims at strengthening the mechanisms of protection of the human rights of indigenous peoples.

In the above-mentioned resolution the Commission requests the Special Rapporteur, inter alia, to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms; to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people; and to work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

The mandate of the Special Rapporteur was renewed by the Commission on Human Rights for an additional period of three years in April 2004 (resolution 2004/62). In the same resolution, the Special Rapporteur is requested to present a report to the General Assembly on his activities over the three first years of the existence of the mandate. The Special Rapporteur presented two reports to the General Assembly in New York (A/59/258 et A/60/358).

Since his appointment, Mr. Stavenhagen has concentrated on three main areas of work: thematic research on issues that have an impact on the
human rights situation and the fundamental freedoms of indigenous peoples; country visits, and communications with Governments concerning allegations of violations of human rights and fundamental freedoms of indigenous peoples worldwide. The Special Rapporteur has put in place several follow-up mechanisms. Activities and developments in each of these areas of work are briefly highlighted below.

1. Thematic research

Taking into consideration the major human rights concerns faced by indigenous peoples worldwide, and in consultations with, among others, indigenous organizations, Governments, experts of the WGIP and other specialists, the Special Rapporteur identified in his first report to the Commission a number of particular topics that deserve special attention and in-depth research:

(a) The impact of development projects on the human rights and fundamental freedoms of indigenous communities;

(b) Evaluation of the implementation of recent legislation at the national level related to the rights of indigenous peoples;

(c) Human rights issues for indigenous people in the realm of administration of justice, including, where relevant, the relationship between positive and customary (non-written) legal systems;

(d) Cultural rights of indigenous peoples as reflected in bilingual and intercultural education, as well as the preservation and development of their own cultural heritage;

(e) Human rights issues - particularly economic and social rights - regarding indigenous children, especially girls, in different settings such as migration, trafficking of women and girls, violent conflicts, the informal economy, etc.;

(f) Participation of indigenous peoples in decision-making processes, autonomic arrangements, governance and policy-making, with special regard to the full implementation of civil and political rights;

(g) Old and new forms of discrimination against indigenous people within a gender perspective, in the light of the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as measures and remedies undertaken to combat discrimination and implement the human rights and fundamental freedoms of indigenous peoples.

In April 2002, Mr. Stavenhagen presented these topics to the Commission as part of his plan of work for the forthcoming years and informed the Commission that he would concentrate on one topic a year. In 2002, the
Commission formally adopted in resolution 2002/65 the Special Rapporteur's plan of work and requested him to pay particular attention to those topics that impact on the situation of the human rights and fundamental freedoms of indigenous people and which may contribute to advancing the debate on fundamental issues of the "draft United Nations declaration on the rights of indigenous peoples".

Since then, the Special Rapporteur has presented three annual thematic reports to the Commission. The first thematic report (E/CN.4/2003/90) focused on the impact of large-scale development projects on human rights and fundamental freedoms of indigenous peoples and communities. His second thematic report (E/CN.4/2004/80) focused on the question of access to the administration of justice by indigenous peoples and indigenous customary law. The third report (E/CN.2005/88) focused on hindrances and inequalities that indigenous peoples face in relation to the access to and the quality of education systems.

This year, the Special Rapporteur has focused his main report (E/CN.4/2006/78) on the question of constitutional reforms, legislation and implementation of laws regarding the promotion and protection of rights of indigenous people and the effectiveness of their application, as well as on the implementation of international norms and decisions of bodies in charge of overseeing the respect of relevant international treaties and conventions. During the First International Decade on Indigenous Peoples (1994-2004) many countries have carried out legislative processes and constitutional reforms towards the recognition of the indigenous peoples and their rights, including the recognition of languages, cultures and traditions, the need of prior and informed consultation, the regulation of access to natural resources and lands and, in some cases, the recognition of autonomy and self-government.

Despite those advances, there is still an “implementation gap” between legislation and day-to-day reality; enforcement and observance of the law are beset by a myriad of obstacles and problems. The main problem is the vacuum between existing legislation and administrative, legal and political practice. This divide between form and substance constitutes a violation of the human rights of indigenous people. To close the gap and narrow the divide is a challenge that must be addressed through a programme of action for the human rights of indigenous people in the future.

On the basis on his conclusions and taking into account the important research work for the preparation of his report, the Special Rapporteur recommends, inter alia, that Governments assign high priority to the quest for concrete measures and actions that will help close the existing gap between laws for protecting the human rights of indigenous people and their practical implementation. He also recommends that be developed a coordinated and systematic policy, with the participation of the indigenous peoples, that cuts across the various ministries concerned with indigenous issues. In consultation with indigenous peoples’ institutions, the Special
Rapporteur recommends the establishment of bodies for consultation and participation on all general and particular measures that affect them, with special attention to legislation, natural resources and development projects. He considers crucial, in parallel with the new laws, the establishment of monitoring and evaluation mechanisms and practices and mechanisms for the implementation of the standards established with the participation of the indigenous peoples. Parliaments should establish, where they do not yet exist, commissions on indigenous affairs and on human rights, and those already in existence should be made responsible for ensuring that legislative proposals respond effectively to the needs and requirements of the indigenous peoples in consultation with those peoples. Likewise, they should carefully monitor the use of the budgets allocated to the areas of protection and promotion of the rights of indigenous peoples and communities. The Special Rapporteur calls for a prompt adoption of the necessary statutory and organic laws for the effective implementation of the standards established in laws on the human rights of the indigenous peoples. In cases of inconsistency between laws, priority and precedence should be given to those that protect the human rights of the indigenous peoples, and conflicts that may arise from such inconsistencies should be resolved in good faith and by common agreement.

Moreover, the Special Rapporteur recommends the establishment of independent mechanisms, such as the human rights observatories, for determining the appropriate criteria and indicators for systematic monitoring of enforcement of laws concerning the rights of the indigenous peoples. The Special Rapporteur also calls for the respect and full application of international human rights standards relevant to indigenous peoples. The Special Rapporteur concludes his report with a number of recommendations addressed to the international community and civil society.

2. Country visits

A crucial component of the Commission's expert mandate is on-site country visits in order to open constructive dialogue with the Government, indigenous communities, and other relevant organizations, and report to the Commission on Human Rights on the situation of indigenous peoples. Country visits are an excellent way of analysing and understanding in situ the situation of indigenous peoples in the light of every possible circumstance and represent also an important tool to raise awareness in the international community. Country visits are also becoming an important pillar of the mandate as they provide a means to assess the extent to which the protection, assistance and development needs of indigenous peoples and communities are being met at the local and national level.

In 2002, the Special Rapporteur undertook country visits to Guatemala (see E/CN.4/2003/90/Add.2) and the Philippines (see E/CN.4/2003/90/Add.3). In 2003 he visited Mexico (see E/CN.4/2004/80/Add.2) and Chile (see E/CN.4/2004/80/Add.3). In March and May 2004, respectively, the Special Rapporteur visited Colombia (see E/CN.4/2005/88/Add.2) and Canada (see
The Special Rapporteur has finalized the reports on his two last visits, to South Africa (see E/CN.4/2006/78/Add.2) and New Zealand (see E/CN.4/2006/78/Add.3), for presentation to the competent body.

The Special Rapporteur has requested visits to the Governments of Kenya, the Russian Federation and Malaysia. In the context of communications addressed to him on specific situations, the Special Rapporteur has also expressed interest in visiting Botswana, the Lao People’s Democratic Republic and New Caledonia.

3. Communications

The Special Rapporteur receives a large number of communications providing him with information about allegations of violations of the human rights and fundamental freedoms of indigenous peoples. The main sources for these communications are non-governmental organizations, indigenous organizations, intergovernmental organizations and United Nations procedures concerned with the protection of human rights.

He analyses such information and decides whether or not to take action. Given the difficulty in assessing the degree of credibility of any particular allegation, great care must be exercised in the evaluation of every communication and sources are therefore urged to include all relevant documentation and evidence in support of the allegation. In the case of violations of the rights of individuals, full information should include: full name of the victim, clear name of the community at risk when applicable, age, place of residence or origin, profession, marital status etc and the precise circumstances of the incident such as date, place, description of how the event occurred etc. When the victims of alleged violations are communities or members of distinct collectivities (tribal communities, families etc), full information should include social and cultural context, references to public policies and specific circumstances under which the alleged violation occurred, as well as the characteristics of the group and when, if applicable, the nature of the human rights gap and the demands of the people concerned.

The main type of communications sent by the Special Rapporteur are "urgent appeals" in cases of imminent danger of violations of the human rights of individuals, or even entire indigenous communities. He also transmits "allegation letters" to Governments on cases of less urgent character. Over the past two years, the Commission's expert has strengthened the coordination with other human rights special mechanism and participated in joint communications with other special mechanisms of the Commission. Follow-up of the cases in which his intervention has been required is a matter of particular concern to the Special Rapporteur and therefore, a third type of communication is also under consideration in the form of follow-up letters on earlier communications.
Please note that as a general rule, both urgent appeals and letters of allegation remain confidential until published in the annual report of the Special Rapporteur to the Commission on Human Rights. A summary of such communications and the replies received from the concerned Government are formally included in the first addendum to the Special Rapporteur’s annual report to the Commission.

4. Follow-up activities

In all his thematic and country visit reports, Mr. Stavenhagen includes recommendations that he considers important for the advancement of the promotion and protection of indigenous people’s rights. Although mainly addressed to Governments, some are also addressed to United Nations agencies and programmes, indigenous peoples’ organizations and civil society and academic institutions. In this context, the Special Rapporteur has initiated a monitoring process of the implementation of the recommendations included in his reports, with a view to preparing a comprehensive study on the best practices in the implementation of the recommendations, as requested by the Commission in resolution 2005/51.

In preparation of this study, the Special Rapporteur will request specific information from Governments, civil society organizations and agencies and programmes of the United Nation system. He also takes the opportunity of his participation in seminars and meetings organized by indigenous people organizations and academic institutions to discuss effective methods for the implementation of recommendations and its monitoring. Although general information is of great interest, the most useful information for the preparation of this specific study relates to concrete actions carried out pursuant to the Special Rapporteur’s reports or to put into practice specific recommendations included in his reports. Mr. Stavenhagen has prepared a progress report that provides an overview of the main recommendations, as well as information on current activities for the preparation of the study (E.CN.4/2006/78/Add.4), including some follow-up visits to certain countries.

For more information:


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The resolutions and the mandate, the thematic reports, the reports on country visits, and the reports containing summaries of communications with governments are available on the web site of the United Nations High Commissioner for Human Rights: www.ohchr.org