

Information Note on the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

On 26 March 2008, the Human Rights Council appointed Prof. S. James Anaya, for an initial period of three years, as new Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Prof. Anaya is James J. Lenoir Professor of Human Rights Law and Policy at the University of Arizona (United States). Prof. Anaya assumed the mandate on 1 May 2008.

Indigenous peoples across the world experience the consequences of historical colonization or conquest, and face discrimination because of their distinct cultures, identities and traditional ways of life. In recent decades, the international community has given a special importance to the human rights situation of indigenous peoples, as shown in the adoption of international norms and guidelines, as well as in the establishment of specific institutions and bodies specifically targeted at these peoples. The rights of indigenous peoples are further promoted by international and regional human rights mechanisms.

In this context, the Commission on Human Rights decided to appoint in 2001 a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as part of the system of thematic special procedures. The Special Rapporteur's mandate was renewed by the Commission on Human Rights in 2004, and by the Human Rights Council in 2007.

In the fulfillment of his mandate, the Special Rapporteur:

Presents annual reports on particular topics or situations of special importance regarding the promotion and protection of the rights of indigenous peoples;

Undertakes country visits;

Exchanges information with Governments concerning alleged violations of the rights of indigenous peoples; □

Undertakes activities to follow-up on the recommendations included in his reports.

Mandate holders

Prof. S. James Anaya, United States of America (2008-)

Dr. Rodolfo Stavenhagen, Mexican (2001-2008)

Contact information

The mandate of the Special Rapporteur is serviced by the Office of the United Nations High Commissioner for Human Rights:

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Mandate

Human Rights Council resolution 6/12 requests the Special Rapporteur:

- (a) To examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous people, in conformity with his/her mandate, and to identify, exchange and promote best practices;
- (b) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people and their communities and organizations, on alleged violations of their human rights and fundamental freedoms;
- (c) 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;
- (d) To work in close cooperation, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies, and human rights regional organizations;

In carrying out these different activities, the Special Rapporteur is also requested to work "in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session;" to "develop a regular cooperative dialogue with all relevant actors;" to pay a "special attention to the situation of indigenous children and women;" to consider "relevant recommendations of the world conferences and treaty bodies on matters regarding his/her mandate;" and to "submit a report on the implementation of his/her mandate to the Council in accordance with its annual programme of work."

In addition, the resolution establishing the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council requests the Special Rapporteur to attend and to contribute to its annual meeting.

Annual Reports

The Special Rapporteur is requested by the Human Rights Council to present every year an annual report at one of its regular sessions, in Geneva. The Special Rapporteur's annual reports normally include a focus on specific themes of particular relevance for the rights of indigenous peoples, as well as a description of the activities carried out during the year in the framework of the mandate.

The Special Rapporteur's reports on communications are included as Addendum 1 (Add.1) of his annual reports to the Commission on Human Rights/Human Rights Council. Country reports, and other documents, including special studies and reports on seminars, are also included as addenda (Add.2 and ff.) of the annual reports.

Reports to the Human Rights Council

Year	Themes	Doc. Symbol
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2007	Recent trends concerning the situation of the rights of indigenous peoples of the world: recent norms and the implementation gap; the increased loss of lands; the impact of climate change; forest peoples; pastoralist peoples; peoples living in isolation; intellectual property rights; indigenous women; indigenous children; the future of the international protection of the rights of indigenous peoples.	A/HRC/4/32
2006	The implementation of norms at the domestic and international level concerning the rights of indigenous peoples: overview of existing legislation on promotion and protection of the human rights of indigenous peoples; analysis of the implementation of existing legislation.	E/CN.4/2006/78

Annual reports to the Commission on Human Rights*

Year	Themes	Doc. Symbol
2005	Indigenous peoples and education systems. The right of indigenous peoples to education: international legal framework and conceptual development. Factors impeding the access of indigenous peoples to education: discrimination and lack of equal access. High-quality and culturally appropriate indigenous education. Active participation, higher education and establishment of educational systems for and by indigenous peoples. The work of the United Nations and other institutions in the area of indigenous education.	E/CN.2005/88
2004	Administration of justice, indigenous peoples and human rights: The courts and the rights of indigenous peoples. Discrimination and the justice system. The criminalization of indigenous protest activities. Indigenous law and culture and alternative dispute resolution.	E/CN.4/2004/80
2003	The impact of large-scale development projects on human rights and fundamental freedoms of indigenous peoples and communities. Selected case studies: Costa Rica, Chile, Colombia, India. Philippines. Dams, development and human rights.	E/CN.4/2003/90
2002	International norms regarding the rights of indigenous peoples: Legally binding instruments concerning indigenous peoples. Draft declarations. Other international declarations. Declarations and guidelines of various international Bodies. Legislation and reforms at the national level. Major human rights issues confronting indigenous peoples: land rights; homelands and territories; education and culture. The question of definitions. Specific concerns relating to the rights of indigenous people. Future activities of the Special Rapporteur.	E/CN.4/2002/97

* Before the establishment of the Human Rights Council in 2006, the Special Rapporteur reported at the annual session of the Commission on Human Rights.

Annual reports to the General Assembly*

Year	Themes	Doc. Symbol
2007	Activities carried out between October 2006 and July 2007. Situation of the rights of Indigenous Peoples in Asia.	A/62/286
2006	Activities carried out during the period November 2005-October 2006. Remarks on the UN Declaration on the Rights of Indigenous Peoples.	A/61/490
2005	Activities carried out during the period August 2004-August 2005. Status report: major human rights problems affecting indigenous peoples: poverty and the enjoyment of human rights; access to education. Armed conflicts, human rights and indigenous peoples.	A/60/358
2004	Activities carried out during the period August 2001-10 August 2004. Progress and major human rights problems affecting indigenous peoples: rights to land, territory and access to natural resources; social organization and local government; administration of justice; the conflict between legislation and customary law; poverty and access to basic services; political representation, autonomy and self-determination; education and culture; indigenous women and girls.	A/59/258

*Since 2004 to 2007, the Special Rapporteur was requested to present an interim report on his activities to the General Assembly's Third Committee.

Other reports

Year	Themes	Doc. Symbol
2007	General considerations concerning the situation of the rights of indigenous peoples in Asia	A/HRC/6/15/Add.3
2007	Study regarding best practices carried out to implement the recommendations contained in the annual reports of the Special Rapporteur	A/HRC/4/32/Add.4
2006	Summary report of the main conclusions and recommendations from the international seminars on constitutional reforms, legislation and implementation of laws regarding the rights of indigenous peoples (Geneva, 25-26 July 2005; Tucson, 12-14 October 2005)	E/CN.4/2006/78/Add.5
2006	Progress report on preparatory work for the study regarding best practices carried out to implement the recommendations contained in the annual reports of the Special Rapporteur	E/CN.4/2006/78/Add.4
2005	Conclusions and recommendations of the Expert Seminar on indigenous peoples and education (Paris, 18 to 20 October 2004)	E/CN.4/2005/88/Add.4
2004	Conclusions and recommendations of the Expert Seminar on indigenous peoples and the administration of justice (Madrid, 12-14 November 2003)	□E/CN.4/2004/80/Add.4

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Country visits

A crucial component of the Special Rapporteur's mandate is on-site country visits. These visits constitute an excellent opportunity for analysing and understanding in situ the situation of indigenous peoples.

According to the existing procedure, country visits require official invitations from the Governments concerned. During these visits, the Special Rapporteur meets with national authorities, including members of the judiciary and of legislative bodies; UN and other international agencies; civil society and non-governmental organizations. Meeting with indigenous peoples and organizations is also a key element of the Special Rapporteur's visits. See Terms of Reference for Fact-Finding Missions by Special Procedures.

The reports on these visits, published annually as addenda to the Special Rapporteur's report to the Commission on Human Rights/Human Rights Council (Add. 2 and ff.), include an assessment of the relevant institutional and legal framework concerning indigenous peoples in the countries visited, as well as a general description of the main issues affecting the human rights of these peoples. The report include a number of conclusions and recommendations addressed to the Government and to other actors.

On the activities carried out to monitor the implementation of the recommendations included in the Special Rapporteur's country reports, see Follow-up of recommendations

Country reports

Year	Country	Doc. Symbol
2008	Bolivia (advanced unedited version)	A/HRC/9/11/Add.2
2007	Bolivia	A/HRC/6/15/Add.2
2006	Kenya	A/HRC/4/32/Add.3
2006	Ecuador	A/HRC/4/32/Add.2
2005	New Zealand	E/CN.4/2006/78/Add.3
2005	South Africa	E/CN.4/2006/78/Add.2
2004	Canada	E/CN.4/2005/88/Add.3
2004	Colombia	E/CN.4/2005/88/Add.2
2003	Chile	E/CN.4/2004/80/Add.3
2003	Mexico	E/CN.4/2004/80/Add.2

2002	Philippines	E/CN.4/2003/90/Add.3
2002	Guatemala	E/CN.4/2003/90/Add.2

Communications

As part of his mandate, the Special Rapporteur intervenes in response to alleged violations of the rights of indigenous peoples. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process, in general, involves the sending of a confidential communication to the concerned Government requesting information and comments on the allegation and that preventive or investigatory action be taken.

Communication reports^{*/}

Year	Doc. Symbol
2007	A/HRC/6/15/Add.1
2007	A/HRC/4/32/Add.1
2006	E/CN.4/2006/78/Add.1
2005	E/CN.4/2005/88/Add.1
2004	E/CN.4/2004/80/Add.1
2003	E/CN.4/2003/90/Add.1
2002	E/CN.4/2002/97/Add.1

^{*/} The Communications reports reproduce the summary of the communications sent and the replies received in OHCHR's three working languages (English, French, Spanish).

Communications procedure

Types of communications

The communications sent by the Special Rapporteur are of two types: **urgent appeals**, in cases of imminent danger of violations of the rights of indigenous individuals and communities; and **allegation letters**: if violations have already occurred or the situation is of a less urgent character.

Types of cases

The mandate of the Special Rapporteur is broadly defined, and thus his communications have focused on a wide range of issues related to the rights of indigenous peoples, both individual and collective. Past communications include cases of killings, tortures, threats, and other

abuses committed against indigenous leaders and community members. In addition, the Special Rapporteur has sent communications in relation to violations of indigenous peoples' rights over lands and natural resources, such as dispossession and removal, lack of prior consultation regarding development projects, etc. The Special Rapporteur has also intervened with regard to the content of national legislation and policies that have a direct impact on indigenous peoples.

Requirements

No formal requirements exist in order for the Special Rapporteur to send communications. The exhaustion of domestic remedies is not required, nor a detailed legal argument about the case. Any person or organization can send information to the Special Rapporteur irrespective of the relationship with the victim(s) of the alleged violation.

Procedure

As information arrives, the Special Rapporteur first seeks to determine the validity of the information and decides whether it is advisable to send a communication to the Government concerned. The decision to intervene is at the discretion of the Special Rapporteur special procedure mandate holder. This decision will depend on various criteria, related to the reliability of the source and the credibility of information received; the detail provided; and the scope of the mandate itself. Depending upon the specificities of the case, a joint communication may be sent by several Special Rapporteurs.

Follow-up

The Government may react to the Special Rapporteur's letter and investigate the alleged facts, and/or take action to prevent or end any violation, but this is not always the case. In some cases, the Special Rapporteur may follow-up with further communications or other types of actions. However, resource limitations make it impossible to follow-up on every case, and past experiences have shown that a lot of the impact of the Special Rapporteur's actions depends on the mobilization of civil society and indigenous organizations, as well as on their efficient use of the mechanism.

Confidentiality

The communications are confidential, and the sources are not disclosed. A summary of all the communications sent by the Special Rapporteur during the year along with the responses received from the Governments concerned, are published as an annex to the Special Rapporteur's annual report to the Human Rights Council (Addendum 1).

Follow-up

In all his thematic and country visit reports, the Special Rapporteur 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. Experience has shown, however, that the level of implementation of these recommendations is far from being satisfactory.

Studies

On view of the importance of the subject, the Commission on Human Rights, in resolution 2005/51, requested the Special Rapporteur to prepare a comprehensive study on best practices regarding the implementation of his recommendations. In 2006, the Special Rapporteur presented to the Human Rights Council a progress report, providing an overview of the main recommendations, as well as information on activities carried out for the preparation of the final study (E.CN.4/2006/78/Add.4).

In 2007, the Special Rapporteur presented to the Human Rights Council his final “Study regarding best practices carried out to implement the recommendations included in his annual reports” (A/HRC/4/32/Add.4). The basic conclusion of the study is that, implementation needs to be pushed forward in close cooperation with the Government and other stakeholders, including indigenous peoples themselves. In countries where follow-up mechanisms exist, institutional efforts for implementation have been more sustained, leading to concrete changes in law and practice.

Special Rapporteur’s activities

As part of the efforts to monitor the implementation of the recommendations included in his country reports, the Special Rapporteur has undertaken unofficial visits to countries he has visited in the past. These unofficial visits have normally taken the form of expert seminars or of open fora, in which the Special Rapporteur takes the opportunity to gather information from civil society and indigenous organizations, as well as from Government authorities and other relevant actors, concerning the advances and challenges in the implementation of the recommendations.

The follow-up of the Special Rapporteur’s recommendations regarding Guatemala and Mexico is supported by the OHCHR Project Promotion and Protection of Human Rights in Latin America, with special focus on Guatemala and Mexico. The follow-up of the Special Rapporteur’s recommendations regarding Ecuador is supported by the OHCHR Andean Project , aiming at the mainstreaming the rights of indigenous peoples and afrodescendents in the work of UN Country Teams in Bolivia, Ecuador and Peru, and to support civil society organizations in those countries.

In other countries, the Special Rapporteur’s follow-up activities have been supported by Governments, civil society and indigenous organizations.

Year	Country	Activity
2007	Philippines	National Consultation with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (Quezon City, 2-3 February 2007).
2007	Mexico	National Consultations with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.
2006	Canada	Expert Seminar on best practices in the implementation of the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Montreal, 5-6 October 2006).

2006	Canada	“Closing the Implementation Gap”: A forum to follow-up the 2004 mission to Canada by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, Rodolfo Stavenhagen (Montreal, 2-3 October 2007).
2006	Guatemala	Follow-up mission to Guatemala (May 2006).

Information taken from:

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/index.htm>