

Statement UNSR. Tenth Session of the UN Permanent Forum on Indigenous Issues



19 May 2011



Statement by Professor James Anaya Special Rapporteur on the Rights of Indigenous Peoples

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**Madam Chairperson,
Distinguished members of the Permanent Forum,
Representatives of Indigenous Peoples and Members States,
Friends and colleagues**

It is a great pleasure to be able to again address the Permanent Forum and all those attending this year's session. I am grateful for this opportunity to share some of my experiences over the past year as Special Rapporteur on the Rights of Indigenous Peoples, as well as to provide some comments on the work of the Permanent Forum. I would also like to say a special greeting to the new members of the Forum, many of whom I've known and had the privilege of working with over the years.

Coordination with the Permanent Forum

Since my last presentation to the Permanent Forum a year ago, I have worked to continue cooperating with the Forum and with the Expert Mechanism on the Rights of Indigenous Peoples in an effort to maximize the effectiveness of our respective mandates and avoiding duplication. In the past, representatives of Permanent Forum, the Expert Mechanism, and I met to share work agendas, identify the strengths and limitations of our respective mandates, and explore methods of channeling our work in ways that it will be most effective. I hope that in the near future we will be able to again meet to discuss and further develop our methods of coordination.

I am very pleased to be able to continue the practice, initiated as a result of our previous coordination efforts, of holding parallel meetings with indigenous peoples and organizations during the regular sessions of the Permanent Forum and the Expert Mechanism. I would like to thank all those who submitted requests for meetings during this year's session of the Permanent Forum. As in the past, because of time constraints I was not able to schedule meetings with all those who made requests. However, I am committed to examine all cases that are brought to my attention. I would like to remind indigenous peoples and organizations that, even without having face to face meetings or country visits, I routinely consider and in appropriate cases act upon the information that is submitted to me in writing. Detailed information about how to submit information to me is provided at the web site maintained for the mandate of the Special Rapporteur on the Rights of Indigenous Peoples by the Office of the High Commissioner for Human Rights. Also, information about my work as Special Rapporteur and all my reports are available at the web site produced by my support team at the University of Arizona. You can easily find either of these web sites through Google or other search engine. Just enter my name along with Special Rapporteur.

Activities to promote indigenous peoples' rights in fulfillment of the mandate

Madam Chairperson

I would now like to describe a number of the various activities I have carried out over the past year within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide and to promote steps to improve those conditions. These activities fall within four, interrelated areas of work. They are: promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

In promoting good practices one of my main aspirations has been to witness the endorsement of the Declaration on the Rights of Indigenous Peoples by those States that failed to cast affirmative votes for it upon its adoption by the General Assembly in 2007. Last year, we celebrated the announcement of support for the Declaration by Australia and New Zealand. I am very pleased that since last year's session the governments of Canada and the

United States have expressed their support for the Declaration, thus making State opposition to this historic instrument a thing of the past. While we can celebrate the global consensus that now stands behind the Declaration, its implementation remains a constant challenge that must be confronted with concerted efforts at the national and international levels.

With this in mind, I have continued to assist with the advancement of legislative, administrative and programmatic reforms within States. At the request of the Government of Suriname and the indigenous and tribal peoples of that country, I travelled to Suriname in March to provide input on the development of legislation to protect indigenous and tribal land rights, in light of judgments by the Inter-American Court of Human Rights. I provided comments on a Government initiative in Guatemala to develop a regulation on consultation. I have worked with the Office of the High Commissioner for Human Rights on initiatives to develop legislation on consultation in Colombia and on harmonizing the indigenous and national justice systems in Ecuador. In Australia, I attended the biennial conference of the New South Wales Aboriginal Land Council to discuss how the Declaration on the Rights of Indigenous Peoples could be an impetus for reforms in government programming and relations with indigenous peoples.

I have also cooperated with Governments, indigenous peoples, business enterprises, United Nations agencies and other international institutions in the promotion of sound policies, guidelines or international standards in the areas of development cooperation and financing, the environment and climate change, corporate responsibility, and the protection of traditional knowledge and cultural expressions.

Madam Chairperson,

In connection with my work in the area of thematic studies, my third report to the Human Rights Council, made public last September, focused on the responsibility of corporations to respect indigenous peoples' rights and exercise due diligence to ensure that their conduct does not contribute to infringement of these rights.

The issue of corporate responsibility arises frequently in the context of extractive industries operating on or near indigenous peoples' territories. My report to the Human Rights Council this year will address concerns about extractive industries and explore new models and alternatives to the patterns and practices that have deprived indigenous peoples of a range of human rights. Eventually I hope to contribute to a set of guidelines to help reverse historical trends and further the exercise of indigenous peoples' right to self-determination in the face of initiatives to extract natural resources from their lands. Mindful of the Permanent Forum's request in 2008 that I conduct a study on corporations and indigenous peoples, I intend to build on the Forum's own previous work on extractive industries and corporate responsibility. In preparation for this year's study, I directed a questionnaire to indigenous peoples, governments and business enterprises requesting information on their experiences and suggestions in this context. I am grateful for the many, helpful responses I have received, which will help guide me as I prepare my report.

With regards to country reports, since the Forums' session last year I visited New Zealand and completed a report to follow up on the work of my predecessor, Rodolfo Stavenhagen, assessing the human rights of Maori in that country. I also completed a report on indigenous peoples in Russia, following a visit that took me to several places across the vast Russian Federation, and another report on the human rights concerns of the Sami people living in their traditional territory across Norway, Finland and Sweden, following a consultation with Sami and Government representatives in Rovaniemi, Finland. I currently am completing reports on the conditions of indigenous peoples in the Republic of Congo and New Caledonia, having made visits to those countries as well. I would like to express my gratitude to the indigenous peoples and organizations that provided invaluable assistance for the preparation and carrying out of the visits to these countries, as well as to the governments of these countries for their cooperation and support.

And finally, I have continued my task of receiving and, in appropriate cases, acting upon information of alleged violations of the rights of indigenous peoples. As I have mentioned in previous statements to the Permanent Forum, this area represents the greater part of my daily work. It relies mostly on the written information provided to me by indigenous peoples and their organizations, NGOs and other sources. Based on the information received, as well as on any responses from governments, in a number of cases I have formulated detailed observations and recommendations to address the human rights concerns raised. These observations and recommendations appear in my annual reports to the Human Rights Council.

On certain occasions my examination of particular cases involves on-site visits. Last June, I travelled to Guatemala to assess the effects of mining and other industrial activities on indigenous communities. This visit was prompted originally by allegations of human rights violations arising from the activities of the well-known Marlin Mine. My findings from that visit resulted in two reports, one focusing on the general issue of mining in Guatemala, and one on the specific case of the Marlin Mine.

Additionally, last month, I travelled to Costa Rica to assess the situation of the Térraba and other indigenous

peoples affected by the proposed Diquis hydroelectric project – a project that if completed would make for the largest dam and power generation facility in Central America. I am hopeful and even optimistic that my visit and forthcoming report may contribute to the faithful implementation international standards of consultation and free, prior and informed consent, and ultimately to a just resolution of the demands of the indigenous peoples affected by the project.

Observations of the Special Rapporteur on the work of the Permanent Forum

Madam Chairperson,

I would like to now offer some brief comments and reflections on the Permanent Forum's work, taking into account that a decade has passed since the Forum was established by the Economic and Social Council. As the main United Nations body with a mandate specifically related to indigenous issues, the Permanent Forum has become an integral part of the international movement to advance indigenous peoples' rights and has undoubtedly made significant contributions towards this end. The Permanent Forum has provided the principle space at the international level where indigenous peoples can voice their concerns, opinions and aspirations regarding all matters that affect them. The existence of this space has contributed significantly to the promotion of dialogue and exchange of information and perspectives among indigenous peoples, States, the United Nations system, and the broader societies in which indigenous peoples live.

Furthermore, the reports and studies produced by the Permanent Forum have made important contributions to understanding about the issues confronting indigenous peoples and constitute an important point of reference for the work of institutions and programs throughout the United Nations system and beyond. Throughout the last decade, the Forum's annual sessions have focused on themes such as indigenous children and youth; indigenous women; the implications of the Millennium Development Goals for indigenous peoples; lands, territories and natural resources; climate change; and development with culture and identity. This year, the Forum's rapporteurs have looked into important issues such as indigenous peoples and corporations; indigenous peoples and forests; international criminal law and defense of indigenous peoples' rights; indigenous peoples in situations of forced labour; and the status of implementation of the Chittagong Hill Tracts Accord in Bangladesh. These reports represent an impressive documentation of issues concerning indigenous peoples and offer an important analysis of ways for addressing outstanding problems that indigenous peoples continue to face.

Madam Chairperson,

Relative to other United Nations bodies, the Permanent Forum is still in its infancy, and it goes without saying that it will continue to realize ever-greater potential to advance indigenous peoples' rights. I would like to offer a few suggestions of ways in which, in my view, the Permanent Forum could build on and strengthen its work in accordance with its mandate by the Economic and Social Council.

First, in connection with the Permanent Forum's mandate to prepare and disseminate information on indigenous issues and its central role in providing a space for indigenous peoples, States and others to engage in dialogue, I hope that the Permanent Forum will place even greater focus on the educational and awareness raising aspect of its mandate, both at the national and international level.

It is evident in my work as Special Rapporteur that in most places around the world there is lacking a broad social consensus about the importance of advancing indigenous peoples' rights. This lack of social consensus often translates into a lack of political will among State actors and widespread attitudes of racism and patterns of discrimination against indigenous peoples among the public at large, attitudes that are often perpetuated by the media.

In my work, I have been confronted by many misconceptions about indigenous peoples and their rights. For example, I have heard State representatives take the position that securing indigenous rights to land and resources is incompatible with other interests of the State, such as its interests in development, and specifically, in carrying out natural resource extraction projects. I have also heard repeated misperceptions among non-state actors that indigenous peoples are seeking special rights or privileges that are not afforded to the broader society, or that the advancing of indigenous rights will threaten State sovereignty or create so-called "states within a state."

In this context, I believe that there is a paramount need to generate more profound and encompassing dialogue, both at the international and national levels, to help build understanding between indigenous peoples and others, and to help shift any persistent negative attitudes or misunderstandings about indigenous peoples and their rights. In my view, the Permanent Forum could play an important role in promoting this dialogue, including, for example, by facilitating specific arenas for discussion at the national level, engaging political leaders, promoting awareness through film and other art forms, and promoting education on indigenous issues at all levels of school instruction. The advantage of the Permanent Forum in such a campaign as compared to other United Nations

mechanisms stems both from its mandate and the structure of its membership. The Permanent Forum is made up of both members nominated by States and members nominated by ECOSOC in consultation with indigenous peoples, and its members come from all regions of the world. The Forum is thus uniquely positioned within the United Nations system to assist in generating awareness locally and internationally in order to achieve a much-needed greater understanding of indigenous peoples.

A second suggestion relates to the Permanent Forum's mandate to raise awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system. I sincerely hope that the Permanent Forum will develop specific and well-coordinated methods to provide, on an ongoing basis, guidance to United Nations agencies and institutions in relation to their work affecting indigenous peoples. On a daily basis, multiple institutions within the United Nations system – including the Office of the High Commissioner for Human Rights, the United Nations Development Program, UNICEF, UNITAR, the International Labor Organization, the World Intellectual Property Organization, and others – carry out hundreds of activities and manage millions of dollars within programs that have direct or indirect impacts on indigenous peoples. The World Bank and International Financial Corporation fund natural resource extraction and other large-scale development projects carried out in indigenous lands. Programs like the UN-REDD stand to have significant implications for indigenous peoples' rights. Yet, in the course of my work, I find that there is still much work to be done to orient the programs and staff within the UN system to effectively respond to the needs of indigenous peoples in accordance with their internationally recognized rights.

I understand that the Permanent Forum has already been engaged with various components of the United Nations system to an important degree, including through the Inter-Agency Support Group; nonetheless I see an even greater role for the Permanent Forum in this regard. In my own work, I am frequently approached by UN and other international agencies and asked to provide input or advice regarding policies and activities affecting indigenous peoples. In my view, the members of the Permanent Forum could take a leading role in providing such input.

And beyond this, I believe it would be of use for the Permanent Forum to undertake a comprehensive review of the work of international agencies related to indigenous peoples, both at the international and country level, to assess the extent to which their programming conforms to the standards expressed in the Declaration on the Rights of Indigenous Peoples. This review could be facilitated perhaps by assigning specific rapporteurs to the various institutions within the UN system.

Madam Chairperson,

I would like to conclude by expressing my gratitude for the opportunity to address the distinguished members of the Permanent Forum and representatives of indigenous peoples and States present today. As always, I am committed to cooperating with the Permanent Forum in the shared pursuit of promoting and securing the full enjoyment of the rights of indigenous peoples. Despite the challenges that still remain in this shared pursuit, I am confident we can work together to advance toward a better future for the world's indigenous peoples.

Thank you Madam Chairperson, and all those present, for your kind attention.
