

Human Rights and Indigenous Population-An Overview: **OCHA**

The human rights of indigenous peoples around the world have become a major area of concern and a stumbling block in the international arena. This development is reflected in the establishment of the Working Group on Indigenous Populations (WGIP) in 1982, the proclamation of the International Decade for Indigenous Peoples 1995-2004, by United Nations General Assembly, and the establishment of the Permanent Forum on Indigenous Issues in 2000.

In 2001, the Commission on Human Rights, appointed a Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, from Mexico, in response to the growing international concern regarding the marginalization and discrimination against indigenous people worldwide. The mandate, created by Commission on Human Rights resolution [2001/57](#), represents a significant moment for the on-going 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's expert is requested to, among others, 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; 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 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 is expected to present his report to the General assembly in fall 2004 in New York.

Since his appointment, Mr. Stavenhagen has concentrated on three main areas of work: the thematic research on issues that have an impact on the human rights situation and the fundamental freedoms of indigenous peoples; country visits, and thirdly, the communications with governments concerning allegations of violations of human rights and fundamental freedoms of indigenous peoples worldwide. 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 migrations, 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 will 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".

In April 2003 the Special Rapporteur presented to the fifty-ninth Session of the Commission his first thematic report, which focused on the impact of large scale or major development projects on the human rights and fundamental freedoms of indigenous peoples and communities, a subject which many indigenous representatives have repeatedly pointed out as being of crucial importance for the full enjoyment of their human rights at the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues. Mr. Stavenhagen noted in his report that whatever such developments occur in areas occupied by indigenous peoples, it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, and much less foreseen, by the authorities and agents promoting them. He also included a number of observations and recommendations addressed to, Governments, private business enterprises, indigenous communities and the UN system.

In April 2004, Mr. Stavenhagen presented his second thematic report to the Commission which focused on the question of indigenous peoples and administration of justice and in particular on the implementation of recent legislation at the national level related to the rights of indigenous peoples. In his report the Special Rapporteur states, among other issues, that indigenous peoples the world over are usually among the most marginalized and dispossessed sectors of society, the victims of perennial prejudice and discrimination. Even when protective legislation is available, their rights are frequently denied in practice, a pattern that is of particular concern when present in the administration of justice. In this context, the Special Rapporteur stresses that a fair and effective justice system is crucial in fostering reconciliation, peace, stability and development among indigenous peoples.

The report contains information received from different sources indicating that in many countries indigenous peoples do not have equal access to the justice system as others and that in the operation of the justice system they frequently encounter discrimination of all kinds. This is partly due to racism and partly the result of the non-acceptance of indigenous law and customs by the official legal institutions of a national state.

According to the Special Rapporteur indigenous people tend to be over-represented in the criminal justice area, are often denied due process and are frequently victims of violence and physical abuse. Indigenous women and children are particularly vulnerable in this respect. The Special Rapporteur also highlights that some countries have made progress in recognizing the specific needs of indigenous people in the field of justice and have adopted laws and institutions designed to protect their human rights. He also notes that Indigenous customary law is being increasingly recognized by the courts and the lawmakers as well as by public administration. Some countries are experimenting with alternative legal institutions and conflict resolution mechanisms, with encouraging results.

Based on these conclusions, the Special Rapporteur recommends, among others, that States carry out exhaustive reviews and, if necessary, reforms of their justice systems to better protect the rights of indigenous peoples. He invites the Commission on Human Rights to take up this issue with member States. Such reforms should include respect for indigenous legal customs, language and culture in the courts and the administration of justice; the full participation of indigenous people in justice reform and the establishment of alternative justice mechanisms.

Mr. Stavenhagen will focus his main report for 2005 on the question of indigenous peoples and education.

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 for assessing 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 ([E/CN.4/2003/90/Add. 2](#)) and the Philippines ([E/CN.4/2003/90/Add.3](#)). In 2003 he visited Mexico ([E/CN.4/2003/80/Add. 2](#)) and Chile ([E/CN.4/2003/80/Add. 3](#)). In March and May 2004 respectively the Special Rapporteur visited Colombia and Canada. Reports on these last two visits will be presented to the Commission on Human Rights in April 2005.

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 of these communications are non-governmental organizations, indigenous organizations, intergovernmental organizations and other 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, therefore sources are 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 is "urgent appeals" in cases of imminent dangers of violations of the human rights of individuals, or even entire indigenous communities. He also transmits "allegations 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 mechanism 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 which consists in 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 State are formally included in the Addendum 1 of the Special Rapporteur's annual report to the Commission.

For more information:

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The resolutions or 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.unhcr.ch

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