

FM 09 James Oxx

12/02/

CHECK AGAINST DELIVERY

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

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

10 August 2009

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,

Yesterday, August 9, was the International Day of the World's Indigenous Peoples. Nearly 15 years have passed since the General Assembly marked this day to commemorate the indigenous peoples of the world. Since then, indigenous peoples have achieved historic accomplishments and a greater voice at the international level than ever before. I am impressed and enormously proud of the successes achieved in the last 15 years by indigenous peoples. This is truly a cause for celebration.

Most notably, on September 2007, the vast majority of States voted in favor of adoption of United Nations Declaration on the Rights of Indigenous Peoples. The Declaration represents an authoritative common understanding, at the global level, of the content of the rights of indigenous peoples, upon a foundation of universal human rights principles. The Declaration also provides a framework of action towards the full protection and implementation of these rights.

Also, since 1994, three mechanisms within the United Nations have been established to specifically address indigenous peoples' concerns – the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the mandate of the Special Rapporteur on indigenous people that I am privileged to hold. The last of these three mechanisms to be established, the Expert Mechanism, which held its first annual session just last year, marked an important milestone in the progress of the international movement to protect indigenous rights and the beginning of another new chapter in that progress.

With the historic achievements of the adoption of the Declaration and the establishment of three mechanisms within the United Nations machinery that specifically focus on indigenous peoples, the challenge now is to transform the rights enshrined in the Declaration into the day-to-day reality for indigenous peoples.

I would like to warmly congratulate the members of the Expert Mechanism on completion of its first year of work and on the issuance of its first report, "Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education".

CHECK AGAINST DELIVERY

During my statement to the Expert Mechanism at its first session last year, I offered some thoughts on the important role of the Expert Mechanism and on my own work as Special Rapporteur in relation to that role. I am pleased that collaboration between our respective mandates has continued and developed throughout this past year.

An important aspect of this collaboration is to provide input to the thematic studies of the Expert Mechanism based on my experiences as Special Rapporteur. Also, I have started to develop methods for receiving communications in coordination with the Expert Mechanism in order to maximize the participation of indigenous groups, their organizations, and NGOs during its annual session, and I look forward to receiving these communications tomorrow and the day after.

This year, I would like to offer some views on the two agenda items of the second session of the Expert Mechanism: first, its study on "Lessons Learned and Challenges to Achieve the Implementation of the Rights of Indigenous Peoples to Education," and second, on the UN Declaration of the Rights of Indigenous Peoples.

Mr. Chairperson,

In the course of my work as Special Rapporteur, indigenous peoples have conveyed to me their concerns regarding impediments they face to the enjoyment of their right to education. These concerns reflect trends in the shortcomings of educational systems worldwide, and include the lack of institutional capacity to provide good quality education; the unavailability or inadequacy of bilingual and multicultural educational opportunities; and the inadequate incorporation of indigenous languages and cultural perspectives into educational curriculum and texts, among other issues. I shared some of these experiences with the members of the Expert Mechanism, in preparation for their report, and today, I would like to provide more reflections on this matter.

A common problem communicated to me during my work as Special Rapporteur has been the lack of participation of or consultation with indigenous peoples in the development and implementation of educational initiatives that affect them. In many cases, there is still a failure to ensure the adequate participation of indigenous communities in the development of laws and programs related to indigenous education, and indigenous leaders face obstacles to playing a meaningful role in the administration of indigenous education and in the delivery of the education services.

I have also received information expressing concerns about the limited opportunities for indigenous peoples to access good quality education. Further, according to many indigenous representatives with whom I have consulted, schools in principally indigenous areas in many cases lack adequate supplies, funding, and teacher training, and are of poor quality, as compared to non-indigenous schools.

Additionally, during the course of my work as Special Rapporteur, I have heard repeated reports of inadequate incorporation of indigenous languages and cultural perspectives into educational curriculum and texts, which may contribute to the fact that many indigenous groups across the world have low levels of formal education relative to the rest of society. Indigenous peoples have expressed concern about the widespread use of educational materials that are reflective solely of the cultures of dominant groups.

CHECK AGAINST DELIVERY

The study of the Expert Mechanism is instrumental in providing States, indigenous peoples, and other actors with a framework for identifying key issues and developing coordinated action to address these issues. The centrality of education to the effective enjoyment of other rights, including the over-arching right of self-determination, cannot be understated. I would like to affirm the conclusion of the Expert Mechanism that "Education is the primary means ensuring indigenous peoples' individual and collective development; it is a precondition for indigenous peoples' ability to realize their right to self-determination, including their right to pursue their own economic, social and cultural development".

I commend that Expert Mechanism for this important work, and look forward to future studies on other major issues of concern. During my work as Special Rapporteur, I have sought to identify common patterns of problems facing indigenous peoples throughout the world and to develop measures to target those issues directly. I have noticed, frequently and in a wide variety of situations, a lack of adequate implementation of the duty of States to consult with indigenous peoples in decisions affecting them, and a need on the part of Governments and other stakeholders for orientation about the measures necessary for compliance with this duty. I have devoted a portion of my annual report to the Human Rights Council on this issue. Nevertheless, a further look on the content of States' duty to consult by the Expert Mechanism would be most helpful.

Mr. Chairperson,

I would like to also share some thoughts on the second agenda item of this second session of the Expert Mechanism – the UN Declaration. I dedicated my first annual report to the Human Rights Council as Special Rapporteur on the Declaration and I would today like to reiterate and expand upon some of the views expressed in that report.

As I expressed to the Human Rights Council last year, the Declaration reflects and builds upon human rights norms of general applicability, as interpreted and applied by United Nations and regional treaty bodies, as well as on the standards advanced by ILO Convention No. 169 and other relevant instruments and processes.

Accordingly, the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. The standards affirmed in the Declaration share a basic remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, the standards of the Declaration connect to existing State obligations under general human rights instruments.

As I have said before, implementation of the Declaration requires the concerted efforts of multiple actors, including States, indigenous peoples, and United Nations bodies and expert mechanisms.

CHECK AGAINST DELIVERY

For the Declaration to be fully operative, States must pursue a range of affirmative, special measures that engage the various institutions of law-making and public administration. This involves a complex process of legal and institutional reform, judicial action, specific policies, and special reparations procedures. It is a process that requires States' full political engagement and financial commitment, and which is not free from obstacles and difficulties of all sorts.

In addition, because implementing the Declaration depends on the establishment of strong partnerships between States and indigenous peoples, in which both must assume responsibilities, indigenous peoples invariably are crucial actors in the implementation of the Declaration. Most of the provisions of the Declaration, including the articles that elaborate upon the elements of indigenous self-determination in the areas of self-government and autonomy, cultural integrity and social areas, require the active, good faith engagement of indigenous peoples with States and the broader political and societal structures.

Further, civil society actors, including the educational sector and the media, religious groups, non-governmental organizations and the private sector, further have roles in supporting the broad societal changes required to meet the challenges involved in making the United Nations Declaration a living reality.

Within the UN system, Article 42 of UN Declaration on the Rights of Indigenous Peoples establishes an obligation for all relevant UN bodies and specialized agencies to promote the respect for and full application of the provisions of Declaration. A special role in this regard belongs to the three United Nations mechanisms with a specific mandate regarding the rights of indigenous peoples: the Permanent Forum on Indigenous Issues, the Expert Mechanism, and the Special Rapporteur.

In relation to the Expert Mechanism in particular, the preamble of the Human Rights Council resolution establishing the Expert Mechanism expressly refers to the Declaration. This reference provides the Expert Mechanism with a clear normative frame of reference for the fulfillment of its mandate to provide the Council with "thematic expertise" on the rights of indigenous peoples, particularly through studies and research-based advice.

The studies to be undertaken by the Expert Mechanism are therefore of key importance in operationalizing the rights affirmed in the Declaration and in mainstreaming these rights into the Human Rights Council's general activities of human rights promotion and protection. Further, the work of the Expert Mechanism contribute towards a better understanding of the scope, content, and practical application of the Declaration, is of value not only to the Human Rights Council, but also to indigenous peoples, governments, UN bodies, mechanism and agencies, and other stakeholders.

In this regard I believe it is important for the Expert Mechanism to act on its own initiative to develop proposals for its thematic research in relation to issues that are within scope of concern addressed by the Declaration. Such proposals may be generated by the Expert Mechanism's research activities or emerge as a natural outcome of the discussions and consultations during the annual sessions of Expert Mechanism, or elsewhere.

CHECK AGAINST DELIVERY

Let me conclude, Mr. Chairperson, by expressing my gratitude for the opportunity to address the members of the Expert Mechanism and the indigenous peoples, States, and other actors assembled here today, in my capacity as Special Rapporteur. I am committed to coordinating and collaborating closely with Expert Mechanism, to build upon the advances already made to meet the many challenges faced by indigenous peoples in the enjoyment of their human rights.

I thank you for your kind attention.