

CHECK AGAINST DELIVERY



**Oral statement by Mr. Rodolfo Stavenhagen, Special
Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people**

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Mr. President,
Distinguished delegates
Ladies and gentlemen,

I have the honor to present to you my annual report on the activities carried out under the mandate given me by the Commission on Human Rights in 2001.

During the period under review, from the beginning of 2006 until February of this year, I carried out two official missions to assess the situation of the human rights of indigenous peoples in Ecuador and Kenya. The reports of these missions are included as annexes to my main report. My main report focuses this year on the evolution of the human rights of indigenous peoples around the world during recent years, as well as on the challenges faced in the protection of the human rights of these peoples, especially those of the most vulnerable groups, such as forest peoples and traditional pastoralists. I also submit for the Council's consideration a summary of the communications with Governments on alleged violations of the human rights and fundamental freedoms of indigenous people, either in the form of urgent appeals or letters of allegation. I am also pleased to present the study on best practices for the implementation of the recommendations included in my annual reports, at the request of the Commission on Human Rights.

Main report: A/HRC/4/32

On this occasion, I want to draw the attention of this Council to several tendencies in the current situation of the human rights of indigenous peoples in different parts of the world. The report aims at helping guide the action of Governments, international human rights bodies, and civil society in their efforts to strengthen the protection of indigenous peoples' rights as new challenges threaten their survival as peoples.

In recent years, we have witnessed the adoption of new norms, the establishment of new institutions, and the implementation of new policies, both at the national and the international levels, regarding the rights of indigenous peoples. As a result of these processes, indigenous issues are now firmly established in the human rights agenda. However, while the creation of this modern legal and institutional framework represents great progress in the protection of indigenous peoples' rights, there is still an "implementation gap" between the norms and the practice, between the formal recognition and the actual situation of indigenous peoples, who continue to be the victims of serious violations of their individual and collective human rights, and who continue systematically to show lower indicators of human development. Despite the progress achieved and the important efforts being made, during the last few years a number of negative tendencies concerning the situation of indigenous peoples' rights have also been identified.

One of the tendencies that have become stronger in recent years is the decrease of indigenous territories, including the loss of control over their natural

resources. This process has been intensified by the dynamics of the globalized economy and, in particular, by the increased exploitation of energy and water resources.

The environmental impact of extractive industries, for instance in North America and in Siberia; the extension of plantation economies, mainly in areas of South Eastern Asia and in the Amazon region; the destruction of the last native forests of the planet due to unrestrained logging, as exemplified by several countries in Equatorial Africa and Latin America, are all processes that particularly impact indigenous peoples negatively, and that pave the way for massive violations of their human rights. I have visited several of these areas, and have been able to witness personally some of these cases that are reflected in my report. For example, in a recent expert seminar on indigenous peoples and the land that took place in Cambodia, I was informed of the serious situation regarding the loss of lands experienced by the indigenous communities in the country as a result of widespread corruption and economic concessions over ancestral lands, in breach of various provisions of the Land Law. All over South East Asia, indigenous and tribal peoples face dramatic situations as a result of the militarization of their territories and the plundering of their lands for the benefit of commercial plantations, and the construction of megaprojects that have a considerable, if not always beneficial, environmental and social impact. Similar situations exist in other parts of the world; for example in México, regarding the La Parota hydroelectric dam; in the Philippines and Guatemala, where an increase of violence against defenders of indigenous peoples' rights is reported; and in some countries of Africa (Cameroon, Congo, Uganda, Tanzania and others) in which the plundering of the ancestral lands of the most marginalized and vulnerable peoples is increasing, even though there are laws on paper that presumably protect these communities.

In the report, I analyze the situation of specific communities affected by various processes leading to the loss of their lands and traditional resources. This is the case, in particular, of forest peoples, who experience the dispossession of their traditional habitat practically without compensation or economic alternatives, and who face an uncertain future of poverty, loss of identity and social conflict. Particularly worrisome is the situation faced by the small number of communities that still live in isolation in remote areas of tropical forests, and whose traditional territories are now threatened by powerful economic interests, thus facing a serious risk of physical disappearance. This is the case in several South American countries in the Amazon region. The existence of pastoralist peoples in arid and semi-arid regions is also endangered as a consequence of the privatization and fragmentation of their traditional grazing lands, or the creation of protected natural areas. These processes have considerably reduced their traditional habitat, as is the case in various countries in Eastern Africa.

Extractive activities, large commercial plantations and non sustainable consumption patterns have led to broad pollution and environmental degradation, processes that are now the object of major international concern. These processes have a particularly dramatic impact on indigenous peoples, whose ways of life are closely linked to their traditional relationship with their lands and natural resources. The deterioration of this relationship frequently leads to forced displacements of indigenous communities, which in turn result in high levels of poverty and serious nutritional and health problems. A dramatic example of this is

the situation of various Arctic peoples, who now suffer the direct consequences of global warming.

In order to defend their rights and give voice to their needs, indigenous peoples resort to different forms of social organization and mobilization, which frequently appear to be the only way for their demands to be heard. Too often, however, there are instances in which social protest is criminalized, generating new and sometimes serious violations of human rights. I have documented such cases in my reports to this Council, regarding many allegations concerning extrajudicial executions, forced disappearances, torture, arbitrary detention, threats and other forms of harassment. Many of these incidents take place in the context of the defence by indigenous organizations and communities of their lands, natural resources and ancestral territories.

Another expression of globalization and the inequalities and poverty it has generated, are the increasing wanderings of indigenous people. Indigenous migrants are particularly exposed to violations of their human rights in agricultural and mining activities, in urban environments, and at the international level. Indigenous peoples' forced displacement is often the result of the desperate situation they experience in their places of origin. Even though numerous governments have adopted social policies with the objective of "closing the gap" between the indicators of human and social development of indigenous and non-indigenous people, the results obtained are still very limited.

Mr. President,

I must draw the Council's attention, once again, to the persistent disadvantages faced by indigenous women in many parts of the world. During my six years as Special Rapporteur, I have had the opportunity to listen to their stories and to collect a considerable amount of information concerning the discrimination, the violence, and the abuses faced by indigenous women – and, in particular, adolescents and girls. These abuses take place in both the rural and urban areas, in foreign countries to which they are sometimes forced to migrate, and, in some cases, in their own communities. The violation of the rights of indigenous women is a pending issue on the human rights agenda, and the actions undertaken to date by several UN agencies are still incomplete. It is important to stress the enormous efforts realized by some indigenous women's and human rights organizations in this regard.

Visit to Ecuador: A/HRC/4/Add.2

Mr. President,

In 2006, I visited several countries in order to observe the situation of indigenous peoples, and in particular, I carried out missions to Ecuador and Kenya, the reports on which I submit to the consideration of the Council. I would like to thank the Governments of these countries for inviting me and carefully arranging for the visits, as well as for the useful comments they made to the first drafts of my reports. I would also like to thank the indigenous communities and organizations for their trust, support and hospitality, without which these missions could not have taken place.

In April 2006, I undertook a visit to Ecuador, of which I already presented a brief summary in my previous presentation to the Council last September. The Political Constitution of Ecuador affirms several collective rights that are specific to indigenous peoples and nationalities. However, these various rights have not yet been fully incorporated in the relevant secondary legislation, and this has limited their full implementation in practice. The Government has created various state institutions to attend to the problems faced by indigenous peoples, which have opened their doors to the latter's participation in policy implementation. However, in many cases, the effect of these institutions has been limited due to lack of resources.

The absence of a law on indigenous justice creates conflicts of jurisdiction between indigenous traditional justice systems and the courts. The problems faced by indigenous people in relation to access to justice have been aggravated by the lack of an adequate public defense system, the absence of translators, and a low cultural sensitivity on the part of the different legal actors.

Despite economic growth in recent years, the various indicators of social and human development of indigenous peoples in Ecuador remain below the national average, and the migration of members of indigenous communities has increased. Their conditions of life in urban areas, and especially those of indigenous women, are also difficult. Access of indigenous peoples to basic social services such as education and health is limited. Intercultural bilingual education and health programs have not delivered the expected results, mainly due to a lack of budgetary and technical resources.

The gradual deterioration of the indigenous habitat and the impact of extractive activities on the environment and on indigenous peoples' rights are objects of special concern, especially in the Amazon, the northern border areas and the Pacific coast. Special attention should be given to the conditions of life of peoples living in isolation. These peoples are being affected by deforestation and other illegal activities in their territories, which in some cases have put them in serious danger of extinction. Oil exploitation in indigenous territories has been opposed by some communities, as in the case of Sarayaku in the Amazon, who have requested the protection of the Inter-American human rights system. The effects of aerial fumigation of illicit crops on indigenous peoples' health along the border with Colombia, and other consequences of the internal armed conflict in this country, are also object of major concern.

Visit to Kenya: A/HRC/4/Add.3

Last December, I undertook an official mission to Kenya, where I focused on the situation of hunter-gatherer and pastoralist communities, who are demographic minorities and live predominantly in arid and semi-arid areas. These groups have historically been subject to discrimination because of their culture and particular ways of life, and have suffered from social, political and economic marginalization. Their main problems, in terms of human rights, derive from the progressive loss and the environmental degradation of their lands, traditional forests and other natural resources as a result of both colonial and postcolonial dispossession.

In recent decades, various State policies, including several attempts to *modernize and settle nomadic communities*, and the privatization of communal ranches, have aggravated the situation of the economic, social and cultural rights of these communities. This state of affairs has become even more difficult as a result of widespread corruption in the allocation of national and trust lands.

Mention must be made of the increasing difficulties faced by some of these communities as a result of their forced displacement from their ancestral lands as a result of the establishment of protected areas. Even if these parks generate important financial resources for the national economy, their creation continues to raise issues in relation to rights to lands and resources of the neighboring communities. These communities have experienced the banning of their traditional hunting and herding activities in those areas and they have not been able to participate fully in their management nor to benefit from their income.

Social services and infrastructure in indigenous areas are inefficient, and in many cases, simply non-existent, placing them below national poverty indicators. The lack of access to social services on an equal basis with the majority of the population has a number of important implications, particularly for indigenous children and women. They are also victims of discrimination in the field of property rights and of some harmful traditional practices, such as female genital mutilation, which is still inflicted on many women and girls in the country.

The process of democratization in Kenya has allowed indigenous organizations to place their concerns on the national agenda, especially in the discussions regarding constitutional reform. The Government has announced important initiatives such as several projects of communal development in arid and semi-arid regions and the programme of universal primary education. It also recognizes the necessity of affirmative measures in favor of the pastoralist and hunter-gatherer communities, especially as part of the poverty reduction strategy.

Study on best practices in the implementation of the Special Rapporteur's recommendations: A/HRC/4/Add.4

Mr. President,

The implementation of the recommendations made by special procedures was an object of special concern of the Commission on Human Rights, which asked me to prepare a study on the best practices in the implementation of the recommendations included in my thematic and country reports. I am pleased now to present the final study for the Council's consideration. For the preparation of this study, I took into account the results of different national meetings on the follow-up of my previous visits in countries like Guatemala, Mexico, Canada and the Philippines; the proceedings of the International Expert Seminar held in Montreal; as well as the communications sent by several citizen human rights observatories.

The study reflects a number of initiatives by Governments, international agencies, civil society, and indigenous peoples, to follow-up on the

recommendations in my reports. In this connection, one of the “best practices” identified is the project of the Office of the High Commissioner for Human Rights in Mexico and Guatemala, which has undertaken several activities with the active participation of both Governments and indigenous organizations, to contribute to the effective implementation of my recommendations included in the reports on my visits to these countries. One of the main conclusions of the study is that implementation has been more effective in those cases where specific follow-up initiatives exist, as is the case in Mexico and Guatemala, which contribute to improved coordinated and systematic action by the different actors concerned.

The second part of the study includes a revision of the “best practices” in the implementation of recommendations to specific States. The report provides examples of different initiatives of institutional or legislative reforms, as well as of new public policies, put in place as a follow-up to my recommendations. Despite these important advances, the complete picture of the situation of the rights of indigenous peoples in these and in other countries, as I pointed out before, leaves room for significant improvement, and requires increased State efforts to fully abide by their international human rights obligations.

In October 2006, I presented my third report to the General Assembly. I have also continued cooperating with the Permanent Forum on Indigenous Issues, and with human rights mechanisms and specialized agencies of the UN system, such as the International Labour Organization which continues to play a leading international role in this area under the principles of Convention 169.

Concluding remarks: The protection of the rights of indigenous peoples at the Human Rights Council

Mr. President,

I have had the opportunity to observe that indigenous communities in many parts of the world have celebrated the Council’s adoption last year of the Declaration on the Rights of Indigenous Peoples. They feel that finally their claims and aspirations have been heard by the United Nations. Many of these communities are, nevertheless, worried and disappointed by the delay imposed on the adoption of the Declaration by the UN General Assembly, and hope that this delay is merely a temporary one.

Having visited numerous communities and indigenous and human rights organizations during the past six years of my mandate, I would like to draw, once again, the Council’s attention to the importance of this Declaration for indigenous peoples and for the countries in which they live. And I would like to invite the Members and Observers of the Human Rights Council, for the benefit of the common cause that brings us all together in this room, to use all their will and good offices in order to achieve the General Assembly’s adoption of the Declaration as soon as possible.

As an instrument to guide and frame best practices in favor of the human rights of indigenous peoples, the Declaration already represents a key reference for the Council, the Office of the High Commissioner and United Nations

agencies, as well as for international human rights bodies. I hope that the principles of the Declaration will soon be reflected in practice and in concrete actions that will directly benefit indigenous communities.

In its review of the existing mechanisms and their working methods, the Council could include "indigenous issues" as a separate item on its agenda, as well as in the universal periodic review currently under consideration. The Council should also take into account the important legacy of the Working Group on Indigenous Populations as a forum of discussion and technical expertise regarding indigenous peoples' rights, and consider the establishment of a new expert body in this area. A new body should include, as a matter of course, indigenous experts drawn from different parts of the world.

I hope that the Council will also consider the importance of renewing the mandate on the situation of the human rights and fundamental freedoms of indigenous people as an integral part of special procedures. Irrespective of the opinion you may have on the current Rapporteur's performance, whose mandate ends this year, the mandate has been an important instrument for making the situation of indigenous people in the work of human rights bodies and international agencies more visible, and has opened spaces for dialogue among indigenous peoples, States and international organizations.