

THE UN SPECIAL RAPPORTEUR EXPERIENCES AND CHALLENGES

# INDIGENOUS PEOPLES RIGHTS



**THE UN SPECIAL RAPPOREUR**  
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EXPERIENCES AND CHALLENGES

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## THE UN SPECIAL RAPPORTEUR

INDIGENOUS PEOPLES RIGHTS - EXPERIENCES AND CHALLENGES

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# introduction



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Professor Rodolfo Stavenhagen is the first United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people. He was appointed by the UN Commission on Human Rights in 2001 and his mandate is due to end in 2007. After six years of work, it was time to reflect on the mandate and the implementation of his recommendations.

Rights & Democracy, with the cooperation of the UN Special Rapporteur, organized the **International Expert Seminar on Best Practices for the Implementation of the Recommendations of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people** in Montreal, Canada, in October 2006.



The International Expert Seminar brought together representatives of Indigenous peoples from all global regions, UN agencies, NGOs and government with the Special Rapporteur for three days to discuss his work and the realities of implementation. More information on the Seminar, including papers that were commissioned in advance, can be found at [www.dd-rd.ca/site/what\\_we\\_do/index.php?subsection=documents&lang=en&id=1930&page=1](http://www.dd-rd.ca/site/what_we_do/index.php?subsection=documents&lang=en&id=1930&page=1)

Based on the dialogue at the International Expert Seminar, this publication looks at the Special Rapporteur mechanism, its function, and what has been achieved to date. It makes recommendations on best practices to the Human Rights Council, to the Office of the High Commissioner for Human Rights, and to the UN system in general with a view to strengthening the mechanism of the Special Rapporteur. Recommendations are also aimed at Indigenous peoples, NGOs, and States so they can collaborate more effectively with the mechanism and draw more benefits from it.

The organizing Committee for the International Expert Seminar was drawn from the following organizations: Amnesty International Canada, Assembly of First Nations, Eastern Door, Canadian Friends Service Committee (Quakers), Grand Council of the Crees (Eeyou Istchee), International Organization for Indigenous Resource Development, International Work Group on Indigenous Affairs (IW-GIA), Native Women Association of Canada, and Rights & Democracy.

*(left) Rodolfo Stavenhagen, UN Special Rapporteur on the situation of HR and fundamental freedoms of indigenous peoples*

## introduction to the Special Rapporteur mechanism

The mandate, initially created for three years by the Commission on Human Rights in its resolution 2001/57, represents a significant moment for the ongoing pursuit by Indigenous peoples to safeguard their human rights. The resolution requests the Special Rapporteur, *inter alia*,

- to gather, request, receive and exchange information and communications from all relevant sources, including governments and Indigenous people and their communities and organizations, on violations of their human rights and fundamental freedoms;
- 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; and
- to work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights (now the Human Rights Council) and of the Sub-Commission on the Promotion and Protection of Human Rights.

The mandate was renewed by the Commission on Human Rights for an additional period of three years in April 2004 (resolution 2004/62). Since his appointment, Mr. Stavenhagen has concentrated on three main areas of work: thematic research on issues that have an impact on the human rights situation and the fundamental freedoms of Indigenous peoples; country visits; and communications with governments concerning allegations of violations of human rights and fundamental freedoms of Indigenous peoples worldwide. The Special Rapporteur has put in place several follow-up mechanisms. For more detailed information on the Special Rapporteur, please see <http://www.ohchr.org/english/issues/indigenous/rapporteur/>.

## publication structure

This publication begins with an edited transcription of the opening remarks of the Special Rapporteur to the participants at the International Expert Seminar. Professor Stavenhagen used the opportunity to reflect personally with the group on the work so far, and where we are going. His words were intended to stimulate the dialogue between the participants.

Using the presentations and dialogue from the International Expert Seminar,

this publication presents information on the thematic reports, country visits and communications of the Special Rapporteur. The publication reports on common themes, challenges and successes. This publication is intended to share that information widely with those engaged in the struggle for the promotion and protection of the human rights of Indigenous peoples.

*International expert seminar in Canada*



# the role the role



## THE ROLE OF THE SPECIAL RAPPORTEUR IN REALIZING HUMAN RIGHTS FOR INDIGENOUS PEOPLES

*Note: The following is a transcription of opening remarks by Rodolfo Stavenhagen, Special Rapporteur, at the International Expert Seminar held in Montreal, Canada, in October 2006.*

Six years after the appointment of the Special Rapporteur is an occasion to rethink where we are going, where we have come from, and what has been achieved. We have to decide exactly where the next steps will take us – in the United Nations, at the country level and with Indigenous peoples and human rights organizations. In the last few years, I have been able to observe how fragile is the situation of the rights of Indigenous peoples.

We need to think about the decisions we have to make and the alternatives that are before us as we look to the future. This is essential for the strengthening and consolidation of human rights' mechanisms for Indigenous peoples in relation to the overall process of promotion, protection and consolidation of human rights.

This particular mandate and the activities related to it – such as the UN Permanent Forum on Indigenous Issues – is part of a wider, vast, historical movement for human rights in the UN and outside of the UN. The present time is not easy for the human rights movement in the world. There is a crisis! Some would even say that there has been a retreat from human rights. We see this very clearly in the debates at the UN; in the policies adopted by certain countries; in political confrontations at the international and regional levels.

All of these developments affect the human rights of Indigenous peoples. If we speak of specific issues relating to Indigenous peoples in isolation from the wider context we may miss the point and stay under the illusion that we have the answers. This is not the case.

At the United Nations we have seen many years of high level rhetoric and very little

practical success in the human rights field – not only regarding Indigenous peoples. At the governmental level, we find concerns with political issues where human rights may not be the main factor, but rather resolving political problems such as fighting for budgets, winning an election, or keeping power.

## Roles of the Special Rapporteur

When I received the honour of this mandate, I thought it would be smooth going, just the simple issue of reporting on what goes on in the world and then drawing the relevant conclusions. Everybody would work to improve or to correct the situation or fix the system if it needed fixing. This, of course, has not been the case.

The recommendations that I present at the end of my country visits and in my thematic reports are a learning experience. Each recommendation is thought out very carefully before I write it down and sign my name to it. I know that sometimes I go out on a limb but one of the tasks of a Special Rapporteur is to be provocative, to consciously put something on paper that will eventually generate a negative reaction. I am well aware of that. But the Rapporteur does not need to find consensus, he is not making a political speech to get votes. No, it is rather to get an issue across

and start a conversation; to get people debating the issue for, against, how, when, why. That in itself is one of the purposes of the work. These recommendations are not a check list.

The Commission on Human Rights was well aware that it created a mandate that was difficult to put into practice because all the rights that humanity has ever invented affect Indigenous peoples.

How to organize this work was one of the challenges. I chose making thematic annual reports, visiting countries and trying to give an overall picture of what I find in these countries, because that is what Indigenous peoples asked me to do. When I sit in a meeting for eight hours or more and listen to dozens and dozens of people and gather vast amounts of documents, everybody expects you to provide an answer, or a solution right away. It is very

difficult for the Rapporteur to say, “Look, I am not a judge, I am not a politician. I have no power at all, and I don’t carry a magic wand that will say solution number one, solution number two”.

I gather information and I try to do justice to this information in my report, which is limited to 20 pages by UN standards. Every word counts so I try to avoid all adjectives. “The horrible plight of these poor Indigenous”. No. Sometimes I would like to say it because it is true. Or, “The wonderful activities of governments in solving these issues” which some governments would like me to say. It is important to find the way in between.

The recommendations cover a vast array of elements. Some are specific because

somebody asked me not forget a particular issue, because a recommendation may have a positive effect. I see cases where this has happened; people come back saying, “Your recommendation was really useful because we were able to move forward on this particular issue”. Then there are others where, as I said earlier, the function is more provocative – for example: “Reform your constitution”. Even if people say, “Who is this guy to tell us to reform our constitution. He has only been here for two weeks; he knows nothing about the country, much less about constitutions. He doesn’t know how hard we worked at the constitution we have”. Even when I know it is dangerous, or delicate, some debates are needed and it is one of the functions of a Special Rapporteur to flag issues internationally and nationally.

## Accountability

The Human Rights Council is my first accountability. It is a group of States. A collective body is different than individual states, so one of the characteristics of the mandate is full independence. Sometimes people think, “You work for the UN”. I report to the UN but I don’t work for the UN. I am not a functionary of the UN and I don’t have a boss sitting in an office at the UN saying, “You cannot do that” or “Don’t say this”. I don’t work for any government, not even my own government, so I’m not a government agent that has been infiltrated into the system to say things some people

like to hear. I don’t work for NGOs either, and I certainly don’t work for, in the sense of employment, Indigenous peoples. But I do see my role as working for human rights for Indigenous peoples. Otherwise why was this mandate created?

Sometimes people would like the mandate to be something else. During a debriefing at the end of a visit in which I summarized what I had seen, the issues that had not been solved and the human rights violations, the President of Mexico looked sad and said, “You know even presidents like

to hear good things about their administration". I said: "Mr President, I'd love to say all the good things about your administration that you would like me to say, but my mandate was to look at human rights violations." It was exactly the argument I heard in the Philippines: "Why do you say so many negative things about us?" Well, it is in the mandate to look at human rights violations and make proposals as to how they could be dealt with.

Secondly I have to report to the country itself. The "country" is a number of different actors who may have different perspectives on the issues. In the first place, there are the Indigenous peoples. I see my responsibility as issuing reports and recommendations that can be useful to Indigenous peoples in their long struggles for freedom, liberty, human rights, democracy, equality, and all the aspirations that human beings have. Some Indigenous organizations will say, "We have read your reports; we are trying to use your recommendations to get things across". Maybe they work, maybe they don't work. These recommendations are also addressed to governments, hoping that they will take them into account.

Often we find that governments and Indigenous peoples do not talk to each other. They sometimes talk at cross purposes, they shout at each other (or even worse) in some countries. Then recommendations from the Special Rapporteur might be useful to open up spaces where issues can be debated in a non-confrontational way and



*Miriam Chavaajay*



*June Lorenzo*



*Ragnhild Nystad*

get the different actors involved in dialogue and negotiations.

The recommendations cover a lot of areas that come out of my conversations and an analysis of the documentation. As Special Rapporteur I feel privileged: one day I am in a community that complains about extreme violence bordering perhaps on the extinguishment of a group because of a conflict – people are being killed, disappeared, or tortured by different actors – the paramilitaries, the so-called guerrilla

groups, army, or police; the next day I am able to talk with the Minister of Justice or the Minister of Defence or the President of that same country. The answers aren't always satisfactory but sometimes there is concern. There is such a big gap between the actors that it is very difficult to put them together. Sometimes people would like the Rapporteur to become a mediator in conflicts but that isn't in the mandate although there is much need in many countries for mediation.

## Implementation

What do we mean when talking about implementation and follow up? In some places, closing the gap means closing the social indicator gap, providing better services so that Indigenous peoples would be more or less at the same level as the general population in terms of indicators for education, housing, well being, and health. Many government departments make this their purpose – as if by closing the indicator gap human rights issues are resolved. That is obviously not the case, but it is one thing to look at. But do we have disaggregated data? Does the health department or the education department really address and target the people who need specific help, more resources?

Disaggregated data is important because a lot of government policies are targeted and oriented toward short-term results. Governments have to report on the successes of their policies and it is important that they base their projects on adequate data to measure what has been accomplished.

These issues are important, but other issues also come up in the recommendations such as, "Let's reopen the debate on constitutional reform" as suggested to Mexico or, "I recommend that the treaty of Waitangi be constitutionally entrenched in New Zealand". Other levels of recommendations can be wide in scope but disaggregated into a number of more specific

elements. It is a challenge to the people in the country to work on them if they think that the area needs to be addressed. The fact that the Special Rapporteur makes a recommendation doesn't mean that it is going to happen. So what can be done and how do we measure progress?

I think this is what implementation means in so many areas: justice, social services, land issues, development projects, educational and cultural issues, political participation or more diffuse issues like racism. Despite wonderful conventions in the UN, after successive decades against racism, and the legal framework in many countries to combat racism and protect people from discrimination, one of the major complaints remains, "We still suffer from discrimination" and there are many examples.

This discrimination is part of a societal make-up for a number of reasons and you can't pin-point any single authority as being responsible for it. Therefore, I make recommendations to the media. My visits to some countries have generated media reactions carrying racist overtones and I have seen reports in the papers and visual media where the language is infused with racial stereotypes or ethnic stereotypes that continue a long-standing pattern of discrimination. This can't be solved overnight with laws or policy statements. It requires long processes of education and awareness building about the recognition of differences.



*Commissioner Kamel Rezag-Bara*



*Victoria Tauli Corpuz*



*Paul Joffe*

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## Global stages for Indigenous human rights

I will end on changes that I have seen occurring in the UN system over the last few years regarding the rights of Indigenous peoples. It started about 25 years ago with the formation of the Working Group on Indigenous Populations and the first systematic participation of Indigenous peoples.

This was a first stage where people needed to come and complain and it is to the credit of the Secretariat of the UN and the Commission on Human Rights that a space was opened up in the Palais des Nations in Geneva where Indigenous peoples could create global awareness: "We exist, and these are our problems". It was a great contribution to let it happen because some voices were saying, "What is this, how can these people come to the UN, which is a Palais of the States. We don't need this, let them remain outside and talk to their NGOs or to the press but we don't want them in here." But most of the countries said, "Yes, we should listen, because after all these are major human rights issues".

The first stage has now come to an end. It does not mean that there are no longer any complaints about human rights violations but we entered an overlapping second stage where standards were to be set. It has worked well at the national and at the international levels through the first World Decade, through the Plan of Action of the World Conference on Human Rights. Increasing reference to the needs of Indigenous peoples in various conferences on development, on women, on children, on biodiversity, and so on is proof of this success. The rights of Indigenous peoples are now part of the language of human rights, and have made their way into standards, the latest being the debate on the *Declaration on the Rights of Indigenous Peoples*.

As this stage nears to its end, we have now initiated the next stage which deals with the question, "What do we do with all of this, where does it go?" This is the era of implementation. How do we implement? My rec-

ommendations fall in this third stage. The next 10 years are going to be essential. We won't stop the work that has to be done in the implementation of human rights standards concerning Indigenous peoples.

We should always remember that when working at this so-called high level of UN standard setting we are talking about the lives of people, of women, children, men, of communities and their lands, culture, spirituality, identity, and relationships. How can we make our standards, our declarations, our resolutions, our recommendations meaningful to the lives of people on an everyday basis? I think that is the great challenge before us.

*Young tanchangya, Chittagong Hill Tracts, Bangladesh  
Photo: Raja Devasish Roy*



# thematic reports



## GENERAL INFORMATION ABOUT THEMATIC REPORTS

The Special Rapporteur annually submits a report to the Human Rights Council (formerly the Commission on Human Rights). This Annual Report gives a general overview of the activities he has undertaken during the reporting period, including major findings and recommendations drawn from his thematic and country reports, which are submitted at the same time and constitute addendums to the Annual Report.

The first of these Annual Reports (2002) included a programme of work for the preparation of annual thematic reports on some of the major issues of concern to Indigenous peoples. Subsequently, the Commission on Human Rights requested the Special Rapporteur, "To pay particular attention to topics that impact on the situation of human and fundamental rights of Indigenous peoples and that contribute to advancing the debate on fundamental rights in the draft United Nations Declaration on Indigenous Peoples" (Resolution 2002/65).

In order to prepare these reports, submissions are requested from Indigenous peoples, NGOs, UN agencies and governments. Questionnaires are aimed at seeking information on legislation, policies and programmes on the subject. Information about the specific topic of the thematic report is also provided by organizations of Indigenous peoples and human rights organizations as well as by academic institutions. Sometimes expert seminars on the subject are organized.

## THE THEMATIC REPORTS

Initially, Rodolfo Stavenhagen identified seven topics for thematic study. By March 2006 he had presented four thematic reports:

- the impact of large-scale development projects on human rights and fundamental freedoms of Indigenous peoples and communities (2003);
- access to the administration of justice by Indigenous peoples and indigenous customary law (2004);
- hindrances and inequalities that Indigenous peoples face in relation to the access to and the quality of education systems (2005); and
- constitutional reforms, legislation, and implementation of laws regarding the promotion and protection of rights of Indigenous people and the effectiveness of their application, as well as on the implementation of international norms and decisions of bodies in charge of overseeing the respect of relevant international treaties and conventions (2006).

In addition, in April 2007, the Special Rapporteur presented a study regarding best practices carried out to implement the recommendations contained in the annual reports of the Special Rapporteur. The International Expert Seminar was organized to assist with this.

Reports must not exceed 20 pages in length. They usually start by presenting the issue, explaining the problems and challenges faced by the Indigenous peoples, and giving illustrative examples. These are sometimes provided by Indigenous organizations or communities. They may also be drawn from the Special Rapporteur's experiences during his country visits, and talks with leaders and individuals in com-

munities. Recommendations are given at the end of the report.

The final report is presented to the Human Rights Council by the Special Rapporteur. Any State that is cited has the opportunity to speak to the report before it is opened to the floor. Currently, there is no formal process to disseminate the reports further within UN agencies and international organizations.

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## The thematic reports and their implementation

International recognition and development of Indigenous peoples' rights can be viewed in phases. The first was the beginnings of work at the UN and the establishment of UN mechanisms to examine Indigenous rights and issues. The second phase is the development of standard setting. The thematic reports are very important in this second phase. Indigenous peoples representatives, nations and organizations, as well as human rights NGOs, have used the Special Rapporteur's reports to substantiate their positions in the development of international standards and the interpretation of existing international law. A significant example of this is the use of the conclusions and recommendations of the Special Rapporteur in substantiating Indigenous positions towards achieving the final text of the *UN Declaration on the Rights of Indigenous Peoples*.

The thematic reports are also important for the standard settings processes within other institutions such as UN agencies, multinationals, banking institutions. The UN Permanent Forum on Indigenous Issues has encouraged all UN agencies to develop policies on Indigenous peoples.

The third phase, which we are now moving into, is implementation. For many, implementation begins with the *UN Declaration of the Rights of Indigenous Peoples*, which was adopted by the Human Rights Council in June 2006. Lack of political will sidelined the *Declaration* in December 2006 when the General Assembly (GA) deferred final consideration.

Supportive States, Indigenous peoples, and NGOs need to move ahead with implementation as the struggle for GA adoption continues in 2007.

The implementation of the Special Rapporteur's recommendations includes implementation of standards, of policies, and of rights. How has the implementation of the Special Rapporteur's recommendations proceeded and how do we collectively move forward into this third phase and press forward with implementation?

A main conclusion of the International Expert Seminar was that little information on the implementation of the thematic reports is available. This is due in part to the fact that it is not clear who should monitor implementation and how this should happen. It is, therefore, very important to develop recommendations so the thematic reports can be used more – especially in countries where a visit has not happened. There is clearly a need to set up a mechanism that will ensure that the reports are received and utilized by many players. There is further a need to develop indicators and other means that can help monitor and assess the progress of the conclusions of the reports.

The thematic reports can and *should* be viewed as the basis for dialogue for all the players. This follow-up process will rely on a number of players at the international and regional level, at the country level, and at the level of the Indigenous peoples, their organizations and their communities.

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## Implementation at the international level

The role of the UN and its various bodies and agencies is crucial and while some institutions have taken steps to integrate and implement some of the Special Rapporteur's recommendations, there is still much room for improvements. The main question is *how* to do that?

- **The Permanent Forum and The Inter-Agency Support Group**

There is a natural relationship between the Special Rapporteur and the UN Permanent Forum on Indigenous Issues. The Special Rapporteur attends the Permanent Forum sessions and makes a presentation on his work. The Inter-Agency Support Group, which uses themes presented in the thematic reports, and the Permanent Forum are therefore the bodies best suited to monitor follow up on the Special Rapporteur thematic reports and play a major role in their implementation.

The Permanent Forum should invite the Special Rapporteur to the Inter-Agency Support Group meetings so the thematic work can be integrated into action plans. The Special Rapporteur could present an analytical paper on the theme of the session, to be used by the Permanent Forum.

- **Office of the High Commissioner of Human Rights**

The Office of the High Commissioner for Human Rights (OHCHR) works to ensure that recommendations of

the Special Rapporteur are used in the programming of its regional and country offices. Examples where this has worked well include Columbia and Chile. In the Andean region, Guatemala, and Mexico, the OHCHR has organized specific projects to implement the recommendations of the Special Rapporteur.

Also, within the Office there is coordination between the various Special Rapporteurs on cross-cutting issues. For example, the Special Rapporteur on Adequate Housing will examine the work of the Special Rapporteur on Indigenous Peoples and raise specific concerns in his report.

A conclusion of the International Expert Seminar was that increasing the role of the OHCHR would benefit the implementation of the recommendations. It is recommended that the OHCHR disseminate the Special Rapporteur's reports to UN agencies, and convene an annual meeting with these agencies and the Special Rapporteur.

A further recommendation is the creation within the Human Rights Council of a body made up of Indigenous experts and independent experts to focus on Indigenous peoples' human rights. This would include use of the *UN Declaration on the Rights of Indigenous Peoples* and reports of the Special Rapporteur.

- **Other UN agencies** - The Special Rapporteur gives credibility and visibility to critical issues facing Indigenous peoples. This has assisted in UN agencies becoming aware of issues that need consideration.

The reform of the UN contains guidelines that should facilitate the implementation of the Special Rapporteur's recommendations. One is the coordination of efforts between all UN agencies at the country level and at the multilateral level, in order to constitute inter-agency groups. Using the Special Rapporteur's thematic reports is part of the inter-agency group's mandate. This presupposes that the reports are being read and discussed internally in the various UN agencies, that information is shared at the inter-agency levels and that the reports' recommendations are incorporated into the agendas of the UN bodies. Agencies such as the International Labour Organization (ILO), UNESCO, UNDP, IFAD, use the reports, as they apply to their work.

- **The World Bank** - As a "vital source of financial and technical assistance to developing countries around the world," the World Bank plays a role in supporting some of the activities that have been dealt with by the Special Rapporteur in his thematic reports, the best example being large scale development projects. The World Bank is also involved in helping governments in developing policies in such areas as educa-

tion and law enforcement that have direct impact on Indigenous peoples.

In line with the World Bank's policy that "bank-financed projects should be designed not only to avoid adverse impacts on Indigenous people, but just as importantly provide culturally appropriate benefits", it seems obvious that a close cooperation between the Special Rapporteur and the World Bank is crucial. It is recommended that the World Bank make specific use of the thematic reports and integrate their recommendations in their work in countries where there are Indigenous peoples.

- **The Treaty Bodies** - The UN Treaty Bodies have the mandate to review State compliance with the human rights conventions that the State has ratified. To meet their reporting obligation, States must submit periodic reports to the Treaty Bodies. In addition to the government report, the Treaty Bodies receive information on a country's human rights situation from other sources, including other UN human rights mechanisms such as the UN Special Rapporteurs, UN agencies, non-governmental organizations, and academic institutions.

The Treaty Bodies thus coordinate with the Special Rapporteur when examining States and the Special Rapporteur has the opportunity to provide input,

based on his research, to the findings of the Treaty Bodies. In the light of all the information available, the Committee examines the report together with government representatives. Based on

this dialogue, the Committee publishes its concerns and recommendations, referred to as “concluding observations”.

## THE TREATY BODIES

There are seven human rights Treaty Bodies that monitor implementation of the core international human rights treaties:

<b>International Treaty</b>	<b>Treaty body</b>
International Covenant on Civil and Political Rights	Human Rights Committee
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture
International Convention on the Elimination of all Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination
Convention on the Rights of the Child	Committee on the Rights of the Child
International Convention on the Elimination of all Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	Committee of the Protection of the Rights of all Migrant Workers and Members of their Families

## Implementation at the regional level

Regional institutions such as the Inter-American Commission for Human Rights and the African Commission of Human Rights and Peoples are important mechanisms for the realization of the human rights and fundamental freedoms of Indigenous peoples. They both use international instruments, including the reports of the Special Rapporteur, as an authority and as a source of reference for their work.

### THE INTER-AMERICAN COMMISSION

The Inter-American Commission of Human Rights is composed of seven commissioners. It receives complaints and produces recommendations to States that can be realized through negotiations. If negotiation is impossible, then it can bring cases to the Inter-American Court. The Inter-American Commission also has Special Rapporteurs but they are not appointed in that capacity. Special Rapporteurs are Commissioners taking responsibility for one or more themes and countries covered by the Commission.

The Inter-American system has an enforcement mechanism and its work is focused on specific cases and complaints. In this sense it complements the UN Special Rapporteur's work and his reports are used as an authority and as a reference. The Inter-American Commission can also help to enforce some of the UN Special Rapporteur's recommendations by creating jurisprudence through cases.



*Solomon Islands  
Photo: Ian Crawford*

## THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission (comprised of 11 commissioners) has created mechanisms of Special Rapporteurs. There are Special Rapporteurs on freedom of expression, prison conditions, prevention of torture, and the human rights of women. They conduct country visits, gather information and produce recommendations to resolve violations of human rights. The Commission has also created a Working Group on Indigenous Populations/Communities and adopted its report in 2001. The African Union has recently created a Court but there is not yet a mechanism for the enforcement of the Commission's recommendations. It relies on moral pressure.

Since its creation in 2001, the African Commission's Working Group on Indigenous Populations/Communities has made several country visits and taken up issues of concern to the Indigenous peoples of Africa. The UN Special Rapporteur took part in the African Commission on Human and Peoples' Rights' 37<sup>th</sup> session in May 2005. It is recommended that the Special Rapporteur regularly participate in these sessions. The Special Rapporteur and the African Commission could collaborate by sharing information; engaging in joint seminars on particular themes of relevance for Indigenous peoples in Africa or in one of the sub-regions; and using each other's recommendations in their work.

There is no regional commission for Human Rights in Asia but some UN agencies such as the UNDP have regional programmes and can incorporate the recommendations

of the Special Rapporteur's thematic reports into their existing programmes.

Regional banks such as the Asian Development Bank and the Inter-American Bank have developed strategies that take Indigenous concerns into account. As important players in the regions, the Special Rapporteur's thematic reports are extremely relevant to their work.

The common thread between the UN agencies, international and regional mechanisms is that while they acknowledge the usefulness of the reports, and the respect for the conclusions, there is a need for all these mechanisms to formalize their agendas of annually reviewing and assessing the way the reports' recommendations are being integrated and implemented in their work. Currently this is done on an ad hoc basis.

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## Implementation at the country level

- **Indigenous peoples:** Indigenous peoples and their organizations are the main actors in the struggle for their rights and therefore play a main role as leaders of the monitoring and implementation process of the recommendations made in the thematic reports.

They can also use the thematic reports as tools for lobbying purposes, both at government level and at the level of regional banks and multinationals. The dissemination of the thematic reports among Indigenous peoples is therefore important. However, it may be necessary to ensure that they are summarized and translated into local languages and disseminated not only in print but also through local radio programmes so they become more easily accessible and reach local communities.

Indigenous organizations should have a platform of action on how to concretely implement the recommendations; engage in dialogue with their government; and lobby other sectors of society.

- **UN agencies:** At the country level, UN agencies have established inter-agency groups around a leading agency and one of their tasks is to use the Special Mechanism's recommendations, as well as the recommendations of the Permanent Forum on Indigenous Is-

sues, to inform their work in relation, for instance, to the Millennium Development Goals (A/57/387). This means that they should also collaborate with Indigenous organizations and support them in putting pressure on their government when Indigenous rights are threatened.

- **Multinationals:** The conclusions and recommendations of the thematic reports can also be used by Indigenous organizations and their supporters to pressure multinational corporations whose activities affect Indigenous territories. The visibility and credibility provided by the Special Rapporteur takes Indigenous peoples concerns to another level which has a greater impact on corporations. Corporations want access to Indigenous territories for natural resources. Governments want the money of the corporations.

While Indigenous peoples may want money, they also want to secure the conservation of their territories. Dialogue between the players must be carried out with dignity and with an equality of conditions, including benefit from development. An example of such a dialogue has been the holding in Canada of round tables on corporate social responsibility to develop standards for behaviour of Canadian com-

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panies that conduct resource extraction in other countries.

- **NGOs and civil society organizations:** NGOs and civil society organizations could play an important role in the dissemination of the Special Rapporteur's thematic reports and recommendations by taking up the issues in their information and education work, in their projects, etc. Thematic reports can also be a framework and inform the programming of NGOs and funding agencies in general.

Human rights organizations are especially important since their work is to monitor and educate the general public and governments on human rights. Many human rights organizations, however, are by tradition focused on civil and political rights and are new to collective rights and economic, social and cultural rights. Yet, the support of human rights organizations would give more weight and thus help the advancement of Indigenous peoples' human rights, in particular in countries where Indigenous peoples do not have a demographic or political weight.

Human rights organizations could use the thematic reports to better understand the issues and needs of the Indigenous peoples' rights movement. The Interna-

tional Expert Seminar concluded that it would be useful to have a document that highlights the key recommendations from the thematic reports to be used in human rights education.

The example in Chile of an alliance between human rights and Indigenous organizations in the building of an observatory is a way of helping to advance Indigenous peoples' human rights, by monitoring and implementing the Special Rapporteur's recommendations.

Some international NGOs specialize in gathering information about the violation of human rights in connection with large scale development projects, access to justice, or within education. Some are very effective in lobbying governments and international institutions. They, therefore, have an important part to play in the implementation of thematic reports.

There is also a need to further engage other sectors of civil society, such as trade unions, academia, financial institutions, and the media. This must be done with the help of human rights education, and the conclusions of the Special Rapporteur should be an important part of this education.

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## Conclusions and recommendations

### **Recommendations on participation in the preparation of thematic reports**

- At the time of the call for input from the Special Rapporteur, Indigenous organizations should collect documentation on the specific thematic issue and send it to the Special Rapporteur so that their situation is included in the research.
- Human rights and civil society organizations should support Indigenous organizations in this documentation work.
- Regional meetings between the Special Rapporteur and relevant organizations should be held to discuss thematic issues from a regional and trans-boundary perspective.

### **Recommendations on dissemination of the thematic reports**

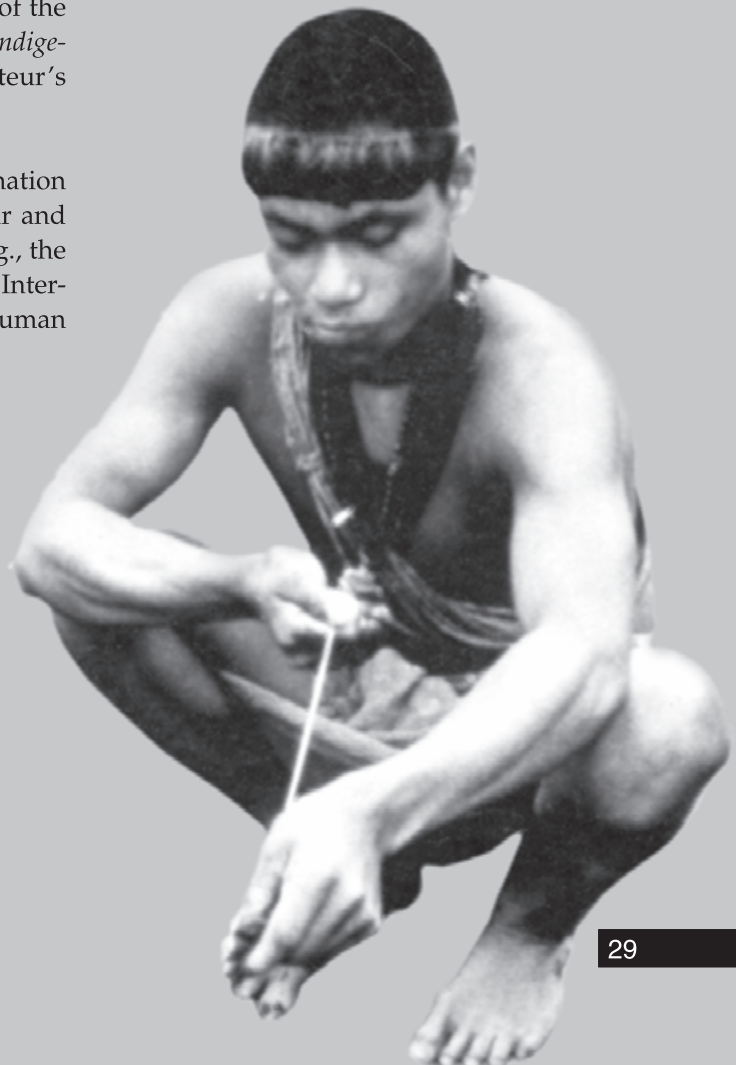
- Plain language summaries of reports and main recommendations should be produced in Indigenous languages and disseminated widely.
- Community based media should be used to disseminate reports in Indigenous languages.

- The OHCHR should disseminate the Special Rapporteur's reports to UN agencies, and convene an annual meeting with these agencies and the Special Rapporteur.

### **Recommendations on the use and implementation of the reports**

- Research, documentation, indicators and report mechanisms should be developed by Indigenous organizations in collaboration with NGOs in order to follow up with the implementation of the Special Rapporteur's recommendations by all stakeholders.
- States and Indigenous representatives should work together to hold expert roundtables to address issues taken up by the Special Rapporteur, and identify ways of implementing some of his recommendations as well as monitoring progress.
- The Permanent Forum on Indigenous Issues should invite the Special Rapporteur to the Inter-Agency Support Group meetings and make sure the group integrates the Special Rapporteur's recommendations.

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- Indigenous organizations should coordinate and collaborate at an international level. The wider the unity of Indigenous organizations, the more effective will be lobbying governments, multilateral institutions, and corporate business.
  - The Human Rights Council should create a body made up of Indigenous experts and independent experts to focus on Indigenous peoples' human rights. This would include use of the *UN Declaration on the Rights of Indigenous Peoples* and Special Rapporteur's reports.
  - There should be regular coordination between the Special Rapporteur and the various regional players (e.g., the African Commission and the Inter-American Commission on Human Rights).
  - The African Commission and the Inter-American Commission on Human Rights should work on regional implications of thematic reports.
  - NGOs should promote the use of thematic reports in their publication work as well as using them as an inspiration for their project work.



# countryreports



## WHAT IS A COUNTRY VISIT?

**There are two types of country visits  
– unofficial and official**

In the first case, the Special Rapporteur visits Indigenous peoples in their territories in an “unofficial” capacity. This can happen at the request of Indigenous peoples themselves and often in connection with a conference or a seminar that allows the Rapporteur to travel to the country and meet with Indigenous communities and organizations.

Official visits are made at the invitation of the State and are the object of an official report to the Human Rights Council (previously the Commission on Human Rights).

The Special Rapporteur has visited a number of communities at the invitation of Indigenous peoples of southern Africa, Japan and the Nordic countries. Since he has not been formally invited by a government, he cannot submit a formal country report. He does, however, mention these informal visits in his Annual Report and may also comment on them in his general recommendations.

## AN UNOFFICIAL VISIT

The Special Rapporteur visited Norway and Saamiland in October 2003 to attend the Forum Conference at the invitation of the University of Tromsø, specifically the Centre for Saami Studies. He also had an invitation from the Saami Parliament, which he visited after the conference. The purpose of the visit was to learn more about the Saami people and their relationship with the State, the issues of the Finnmark Act, land rights and rights to natural resources.

## What is the purpose of country visits?

The purpose of a country visit is “to better understand the situation of Indigenous peoples, to learn about policies and practices designed to promote and protect their rights, and to dialogue with government officials at the national and provincial levels, with representatives of civil society, with the United Nations country team and the donor community on ways to strengthen the responses to the demands and needs of Indigenous peoples.” (E/CN.4/2006/78/ Add.2, p.5)

Such fact-finding missions raise the visibility of Indigenous peoples and their situation, especially at the level of government. They also help in establishing a dialogue that can lead to constructive changes, particularly in the relationship between Indigenous peoples and the State.

This is why Indigenous peoples are anxious to have the Special Rapporteur pay a visit to their country.

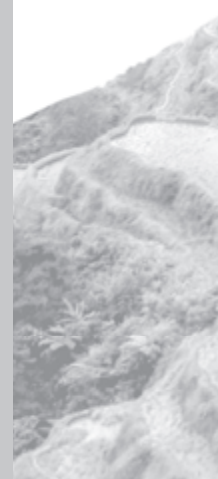
## How does the SR get an official invitation?

As an independent expert appointed by the United Nations, an organization of nation States, the Special Rapporteur may request to visit a specific country but in order to do it, he will have to wait for a formal invitation issued by the government. This is sometimes a limitation, as some governments are more open than others to the comments and criticisms of independent experts. Some States will never invite the Special Rapporteur to visit and report on the human rights violations in their country. Other States have a standing invitation for all Special Rapporteurs so that if a request is made by the Special Rapporteur, the State is likely to issue the formal invitation.

By 2006, the Special Rapporteur had made official visits to 10 countries – Guatemala and the Philippines in 2002; Mexico and Chile in 2003; Colombia and Canada in 2004; New Zealand and South Africa in 2005; Ecuador and Kenya in 2006. He had also made requests for a visit to the governments of the Russian Federation and Malaysia. As well, in the context of communications addressed to him on specific situations, the Special Rapporteur also expressed interest in visiting Botswana, the Lao People's Democratic Republic and New Caledonia.

When countries are reluctant to invite the Special Rapporteur, Indigenous peoples and their supporters can play a decisive role by lobbying their government to issue an invitation. In those cases, it is important to have support from local networks and be able to coordinate the lobbying with other non-governmental organizations. The Office of the High Commissioner for Human Rights in Geneva and its regional offices can also be helpful.

*Rice terraces of batad, Cordillera, Pilippines. Photo: Christian Erni*



## THE VISIT TO THE PHILIPPINES

In the case of the Philippines, the original initiative for a visit of the Special Rapporteur came from Indigenous organizations. In February 2002, during the National Indigenous Peoples' Workshop on the Indigenous Peoples' Rights Act and Development, Indigenous representatives asked the government to invite the Special Rapporteur to officially visit the Philippines.

The visit was prepared by the Indigenous organizations and included:

- a preparatory meeting in Geneva at the UN Working Group on Indigenous Populations in July 2002;
- financial support from an international NGO which allowed for more control of the visit by Indigenous organizations and enabled them to arrange a visit of the Special Rapporteur to small and distant communities;
- a dialogue with the government about how to conduct the visit; and
- coordination between the different Indigenous organizations.

The Philippine Government's official response to the Special Rapporteur's report was so negative that everyone wanted to read the report. It also gave strength to the Indigenous peoples' organizations and today the Special Rapporteur's report is used extensively.



## The visit of the Special Rapporteur

### Preparations

The preparations prior to a visit are critical for its final outcome and take both time and energy. Indigenous organizations can play a crucial role during this phase, especially if they mobilize and collaborate with each other as well as with other important players such as the Office of the High Commissioner for Human Rights, human rights NGOs and other support NGOs, national as well as international.

One important task for the Indigenous organizations is to prepare background information for the Special Rapporteur on their human rights situation. This background information should be as accurate and as well-documented as possible. In some countries, Indigenous organizations coordinate and arrange meetings to jointly compile and prepare this background information which eventually is given to the Special Rapporteur.

The Special Rapporteur's itinerary and meetings are usually decided by the government and will not necessarily include visits to the most marginalized or most threatened Indigenous communities. Indigenous organizations should therefore consider elaborating a "shadow schedule" including visits to, and meetings in, regions and communities considered to be of highest priority and lobby the government to include them in the Special Rapporteur's itinerary.

It should be kept in mind that the Special Rapporteur's schedule will always be very tight, and that not all communities can be visited. Instead the Indigenous organizations must try to arrange for representatives from these communities to meet with the Special Rapporteur in some of the places he will visit. Once the itinerary of the Special Rapporteur has been decided, Indigenous organizations must take responsibility for publicizing his visit among Indigenous communities, explaining its purpose and ensuring that the communities are prepared to meet with the Special Rapporteur.

In order for Indigenous organizations to play a role in the organization of the Special Rapporteur's visits, funding independent from State control is crucial. This may, for instance, help the Indigenous organizations to meet and coordinate prior to the visit and make it possible during the visit for the Special Rapporteur to visit grassroots communities – not just major centers. NGOs – both local and international – have a major role to play here in ensuring and coordinating their financial support.

## The visit itself and its immediate outcome

During his visit and in order to get a broad understanding of the situation of the Indigenous peoples, the Special Rapporteur meets with all the important players – government officials, civil society and Indigenous organizations, and communities.

One of the important purposes of a country visit is for the Special Rapporteur to meet with high level government officials. In some cases, he also has the opportunity to meet with the head of State. These meetings allow the Special Rapporteur to assess the political context and legal framework within which Indigenous peoples live. At the end of his visit, the Special Rapporteur meets once more with government representatives to debrief them on his findings and conclusions.

The Special Rapporteur will furthermore meet with representatives from civil society organizations, including local human rights organizations, political parties and other relevant stakeholders.

In order to get a feeling for the situation of Indigenous peoples, the Special Rapporteur will also visit some Indigenous communities and meet with their members. Indigenous organizations should have representatives following the Special Rapporteur on these visits and seeing that they are well organized and allow the Special Rapporteur to see and be informed about relevant issues. The same applies to the meetings the Special Rapporteur may

have with representatives from communities he is unable to visit.

A major outcome of the Special Rapporteur's visit is that it makes it possible to bring the situation of Indigenous peoples to the government's attention. The Special Rapporteur is aware that his recommendations are not always immediately applicable. But the Special Rapporteur sees it as one of his tasks to be provocative – to raise up an issue and start a conversation.

At the same time, his conclusions give legitimacy to the concerns of Indigenous peoples. This helps in opening up a dialogue between the government and Indigenous peoples and is one of the most important accomplishments of the Special Rapporteur, especially in the many cases where governments and Indigenous peoples are at odds. In Guatemala, for instance, his visit started a national dialogue and in the Philippines, the visit and the report have been the basis for on-going dialogues between Indigenous peoples and the government as well as the private sector.

In some cases, governments show little interest in the Special Rapporteur visit, are not collaborative (New Zealand) or may decline to meet him (Kenya). His visit, nevertheless, remains important as a reference point on Indigenous rights, and Indigenous peoples can use the report and its recommendations to continue to raise the visibility of their issues, and press for constructive changes .

## COUNTRY VISIT TO NEW ZEALAND

In the case of New Zealand, where there was not much collaboration from the State, the visit played another role. For the Maori, the visit “put a pole in the ground” to establish a reference point on Indigenous rights even with the knowledge that the New Zealand government wouldn’t implement his recommendations. Maori organizations are using his recommendations in the shadow reports that they submit to the UN Treaty Bodies on human rights violations.

Another outcome is the media attention – articles, interviews in the press and TV – that the visit of the Special Rapporteur usually receives. This provides an opportunity to discuss the situation of Indigenous peoples, bringing it to the attention of the general public. As Victoria Tauli Corpuz of the Philippines said: “Of all the Special Rapporteurs’ visits, the visit of the Rodolfo Stavenhagen is the only Special Rapporteur visit that has been covered by the media before, during and after the visit. The mission of the Special Rapporteur put Indigenous peoples’ issues onto the national radar screen.”

Sometimes, unfortunately, the Special Rapporteur’s visits can generate a racist overtone and reveal deep-rooted racial or ethnic stereotypes.

### **The country report**

After a country visit, the Special Rapporteur writes a report for the Human Rights Council (formerly the Commission on Human Rights), which is attached as an addendum to his annual report to the Council.

A country visit report cannot exceed 20 pages. This means that the Special Rapporteur cannot report each and every human rights abuse he has been made aware of during his visit but rather concentrate on general trends and give an overview of the main issues affecting Indigenous peoples.

Apart from an executive summary and an introduction stating the purpose of the visit, a country report usually comprises five main sections: (1) the schedule of the visit and the various meetings the Special Rapporteur has had during his stay; (2) the historical background and context



in which Indigenous peoples live; (3) the human rights situation of Indigenous peoples and the priority issues; (4) conclusions; and (5) recommendations. Priority issues include general issues like e.g., land rights, administration of justice, poverty and social services, the right to education, language and culture, etc., as well as country specific issues.

### **Submission and dissemination of the reports**

The Special Rapporteur submits his draft report to the State before the final version is submitted to the Human Rights Council. If there are any factual errors he will correct them. He will not change his report simply if the State disagrees with his conclusions.

In the session of the Council where the report is tabled, the government who hosted the Special Rapporteur's visit gives a public response to the report.

Indigenous organizations can also send their comments both in response to the report and the government's response to it to the Special Rapporteur's office, and they should ensure that their comment on their government's response is made public.

The reports are published by the Office of the High Commissioner for Human Rights (OHCHR), and are available on the OHCHR web site in different languages. There is no formal system for circulating the reports through the UN system.

A major challenge is to disseminate the report country widely so that as many people as possible are aware of its contents

and recommendations. In many countries the government does not do much to circulate the report. Therefore, it is important to mobilize both the local offices of the High Commissioner on Human Rights, local human rights NGOs, and Indigenous organizations to ensure that the report is widely disseminated and publicized. It is also important that the report is made easily accessible to Indigenous communities. In Guatemala, the High Commissioner's office made video and radio tapes available in Indigenous languages to circulate the Special Rapporteur's findings.

### **The report and its recommendations**

Governments usually take the reports very seriously and Indigenous peoples as well as supportive NGOs use the reports as an authority that gives credibility and legitimacy to Indigenous issues and concerns.

The Special Rapporteur's reports should also be viewed as a basis for establishing a dialogue between governments and Indigenous peoples. Even when the recommendations of the Special Rapporteur are not implemented, they have a high degree of legitimacy and impact, and can be used by Indigenous peoples in many ways, for instance to engage their national governments with the issues. As a result of this, changes may eventually happen.

The specific recommendations given by the Special Rapporteur represent an important part of his country visit reports.

For a complete list see E/CN.4/2006.78/Add.4



*Buhid people, Mindoro Island, Philippines. Photo: Christian Erni*

The Rapporteur's recommendations are mainly addressed to the government (including ministerial departments, the judiciary, local authorities). However, depending on the situation in the country visited, the Special Rapporteur may also include other actors such as civil society NGOs, the international community (UN country teams, the International Labour Organization), the academic community (universities and research centres), the Armed Forces and the Indigenous peoples themselves.

The Special Rapporteur never expects his recommendations to be immediately implemented and the recommendations are not binding in legal and political terms.

#### **Follow up and implementation**

Just as the preparation and organization of a country visit are important for the outcome of a visit, the follow up, once the visit is over, is critical for the implementation process.

## EXAMPLES OF RECOMMENDATIONS THAT HAVE BEEN IMPLEMENTED

- In Chile, the Indigenous organizations were able to get a commitment from the newly elected President Michelle Bachelet (January 2006) not to use the anti-terrorist law against Indigenous activists.
- In the Philippines, the Government's Commission on Human Rights has expanded its activities to Indigenous peoples' rights and on-going programmes to train judges and legal prosecutors on how the Indigenous Peoples Rights Act should be integrated into the judiciary.
- In Canada, the national Native women's organization has received government funding for its anti-violence programme.
- In Guatemala, an inter-institutional Forum on Human Rights has been created with technical support from the OHCHR. One of its tasks has been to work on indicators to measure implementation in preparation for a second visit of the Special Rapporteur.
- In South Africa an interdepartmental working group has been created and a policy protocol, that has yet to be made public, has been developed.

Experience shows that governments rarely take the initiative to implement recommendations. Implementation usually happens as the result of the pressure and efforts of Indigenous and other civil society organizations. Indigenous peoples, as the directly concerned stakeholders, therefore, play a major role.

The International Expert Seminar noted that governments had in several cases followed some of the recommendations and taken steps towards implementing them – if not in their entirety, then at least partly.

The lack of political will is usually identified as the major obstacle to implementation. At times, political will does exist at the level of government but not elsewhere in the system, and it is important to examine where this exists. Other obstacles may be just as difficult to cope with, such as bureaucratic inertia, ignorance, incompetence, corruption, a culture of violence and racism. There is a need to identify these obstacles and find ways to respond to them.

## THE CASE OF COLOMBIA

Colombia is facing a contradictory situation where the constitutional court is progressive in terms of recognizing cultural autonomy and identity but the situation of Indigenous peoples is critical due to the internal armed conflicts. The visit by the Special Rapporteur was very important for the Indigenous peoples. They felt empowered and it encouraged the development of human rights work rather than of political agendas. The recommendations of the Special Rapporteur assisted a great deal as did the involvement of human rights NGOs.

## EXAMPLES OF COLLABORATION WITH HUMAN RIGHTS ORGANIZATIONS

In Guatemala, a Forum of Human Rights institution was created which worked on indicators to prepare for the second visit of the Special Rapporteur and measure implementation.

In Chile, the alliance between human rights and Indigenous organizations led to the establishment of an Observatory of Indigenous Rights which has helped to advance Indigenous peoples' human rights and further the implementation of the Special Rapporteur's recommendations.

## The role of Indigenous peoples

Implementation also relies on the way Indigenous organizations can work together, on the quality of their research and documentation of violations of human rights of Indigenous peoples, and on their struggle for concrete actions to improve the situation.

In order to focus their efforts, Indigenous organizations should elaborate a platform of action on how to concretely follow up and implement the recommendations. They should also try to engage in dialogue with their government and lobby other sectors of society in order to create awareness of, and concern for, their situation.

Indigenous organizations could also follow the example of Indigenous organizations in New Zealand who have used the Special Rapporteur report and recommendations in shadow reports they submit to the UN Treaty Bodies on human rights violations, e.g., the Committee on Racial Discrimination.

### **The role of civil society organizations**

Civil society organizations, including human rights NGOs and other support groups, could – and sometimes do – play a major role in the follow-up and implementation process. This is especially true of human rights organizations since their specific role is to document and monitor human rights situations, and educate the general public and governments in human rights. Unfortunately, as already noted in the chapter on Thematic Reports, many human rights organizations are new to collective rights and economic, social and cultural rights, and an effort is needed to get human rights organizations more involved in the rights of Indigenous peoples in their own country, helping them with the monitoring and documenting of human rights violations, lobbying the government and political parties, etc. Local and international support NGOs may also be specialized in gathering information about violation of human rights. Some are very effective in lobbying governments and international institutions and they should play a role in the implementation of country reports.

Funding is crucial for the follow up on the situation of Indigenous peoples' human rights. Here both local and international NGOs can play a role in supporting Indigenous efforts to build up their capacity to lobby for implementation, for documenting violations, and for establishing an effective mechanism to monitor the situation. In the Philippines, for example, an Indigenous Human Rights Watch has been set up by the Indigenous organizations with support from an international NGO. This institution monitors the human rights situation and provides training and human rights education.

### **The role of the UN system including local UN agencies**

Many of the country reports make recommendations to the United Nations and the international community at large, calling for their increased attention when it comes to the situation of Indigenous peoples in a specific country. The Special Rapporteur has also recommended that the United Nations ensure respect for Indigenous human rights when designing policies and initiatives for the various agencies in the country.

At country level, UN agencies have established inter-agency groups around a leading agency and one of their tasks is to use the Special Rapporteur's recommendations to inform their work (A/57/387) so that more attention is being paid to the rights of Indigenous peoples in the areas of their competence.

The UN agencies could also support the Indigenous organizations in defining indicators of implementation. This work would interlink with their involvement in the Millennium Development Goals process, and help to integrate Indigenous concerns into the MDGs.

## ECUADOR - AN EXAMPLE OF THE ROLE OF UN AGENCIES

In Ecuador, the United Nations Development Programme (UNDP) coordinates the work of the UN agencies. This arrangement has created spaces for best practices to emerge:

- Intercultural perspective mainstreamed in all documents
- Creation of an interagency intercultural working group
- Creation of an advisory mechanism of Indigenous representatives
- A common instrument for planning and evaluation taking into account Indigenous perspectives

## What is a success and what makes it a success?

The Special Rapporteur's report and visit do not provide for a "magic fix". The results are diverse but do not generate rapid and drastic changes in Indigenous peoples' situations. The success of a visit is rather an improvement in the conditions for changes. In all country visits, the Special Rapporteur's report *did* make a difference.

The most important success repeatedly drawn from the different experiences is the empowerment of Indigenous peoples: their concerns have been given credibility and legitimacy by being described in a UN report, they have become visible and they are aware of having international attention and support. By mobilizing and collaborating with other Indigenous and civil society organizations, they may even represent a strong movement. This has improved and increased the capacity of Indigenous peoples in interacting with the State. This can be used as a tool for change, as an agenda for implementation, better coordination and cohesiveness between all Indigenous organizations and their supporters.



*Bolivia - Photo: Maximiliano Failla*

## Factors contributing to the implementation of recommendations

- A united Indigenous movement: the wider and stronger the unity of Indigenous organizations, the more effective in lobbying governments and other stakeholders.
- A close coordination and collaboration between Indigenous organizations, human rights organizations and support NGOs.
- The development of research, documentation, indicators and report mechanisms to follow up on the implementation of the Special Rapporteur's recommendations by government and other actors.
- Access to funding: independent NGO funding can be essential for Indigenous organizations to meet, prepare documentation, and strategize.
- The report itself: it represents an important piece of information to refer to and that can be used as guidelines for action at country level but also at UN level in, for instance, the elaboration of shadow reports to the UN Treaty Bodies.
- Willingness of the State to create mechanisms to follow up with the recommendations: parliamentary hearings, interdepartmental group inside the government, office inside a department.
- Inter-agency initiatives at the country level on line with Special Rapporteur's recommendations.

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## Main obstacles to success

- Lack of political will is the most powerful obstacle. This can be a major problem at all levels of the State apparatus.
- Bureaucratic inertia, incompetence and racism are other important obstacles.
- Internal armed conflicts.
- Economic globalization: the economic interests of corporations are taking precedence over human rights of Indigenous peoples and the effect of development is often disastrous.
- Culture of discrimination: racism may exist within the government (authorities at all levels) as well as in the media and in the society as a whole. Cultural changes are difficult to achieve and they are long term challenges.
- Hindrance of domestic political structures: policies and laws might exist but are not implemented.
- Poverty and lack of education are debilitating, impede participation and make it more difficult for Indigenous peoples to put pressure on governments and to take ownership of the recommendations.
- Lack of disaggregated data makes it difficult to identify specific needs and hence identify indicators of progress.
- Lack of a common Indigenous agenda. There is an assumption that Indigenous peoples have a unified voice – which is not always the case. Often it is a challenge to simply agree on the agenda.
- Lack of know-how among Indigenous peoples in reporting and documenting human rights abuses: many Indigenous organizations need capacity building and training in these skills.
- Lack of resources within support institutions such as the OHCHR.
- Lack of awareness and knowledge about Indigenous issues within UN agencies.

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## Conclusions and Recommendations

### **Governments**

- Establish mechanisms for follow up on recommendations and implementation.
- Develop gathering of disaggregated statistical data on Indigenous peoples.
- Develop in collaboration with Indigenous organizations indicators to monitor implementation and results.
- Ensure human rights education to eradicate racism (among public servants at all levels, and throughout the education system).
- Review legal and judicial framework in the light of Indigenous human and fundamental rights.

### **Indigenous peoples**

- Develop a platform for action on how to concretely implement the recommendations.
- Develop indicators to monitor implementation and results.
- Establish a mechanism for follow up on recommendations and implementation.
- Develop lobby strategies for different sectors and players.
- Seek collaboration and coordination with human rights organizations and other support NGOs.
- Establish a Human Rights Watch mechanism.
- Take steps to engage dialogue with government.
- Strengthen international networks and alliances with other Indigenous peoples.
- Use the recommendations to prepare shadow reports to the UN Treaty Bodies and agencies, such as the International Labour Organization (ILO).

### **Civil society including Human Rights and other support NGOs**

- Facilitate training for Indigenous peoples in the documentation of human rights abuses. and the safeguard of their human rights.
- Support the establishment of an Indigenous Human Rights Watch entity.
- Support Indigenous peoples in the preparation and follow up of Special Rapporteur visits.
- Ensure that the Special Rapporteur report and recommendations are widely disseminated and publicized.
- Promote awareness raising on Indigenous issues in the general public.
- Support Indigenous initiatives to follow up the recommendations.
- Promote and facilitate a dialogue between Indigenous peoples and governmental institutions.

### **The Human Rights Council**

- Secure a follow up mechanism for the Special Rapporteur's country reports (e.g. compelling countries as well as Indigenous organizations to regularly report back on progress).
- Secure adequate funding for the Special Rapporteur mechanism.

### **The OHCHR**

- Assist with the development of human rights education materials.
- Assist in making the Special Rapporteur reports accessible to Indigenous communi-

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## What to do

### List for a successful visit of the Special Rapporteur

#### **Important prerequisites for a successful visit are for Indigenous peoples' organizations to:**

- Be able to ensure the collaboration of other Indigenous and non-indigenous organizations.
- Be able to access independent funding.
- Be able to research and provide qualified documentation about human rights violations in your country.

#### **To get a visit of the Special Rapporteur:**

- Approach the Special Rapporteur and send him a letter giving him background information on the situation and explaining why his visit is important.
- Check if your country has extended a standing invitation to UN Special Rapporteurs.
- Ask your government to extend an official invitation to the Special Rapporteur.
- Follow up on the invitation with his office and with your government.
- Contact the OHCHR for advice and support.

#### **Prepare for the visit:**

- Search for independent funding that will give the means to prepare the visit and organise the visit of the Special Rapporteur to communities.
- Coordinate with all stakeholders to make the visit fruitful.
- Negotiate with the government the Special Rapporteur's agenda prior/during the visit.
- Organize prior fact finding missions and research to make data available to the Special Rapporteur.
- Prepare the communities for the Special Rapporteur visit.

ties by translating the reports in Indigenous languages, as well as making videos and tapes based on the reports.

- Provide technical support for the creation of mechanisms that strengthen human rights as e.g. the inter-institutional Forum on Human Rights in Guatemala.

#### **The UN agencies**

- Support Indigenous initiatives aiming at the implementation of the Special Rapporteur recommendations.
- Facilitate a dialogue between Indigenous organizations and the State.

#### **During the visit:**

- Participate in the visits to the communities in order to ensure that the Special Rapporteur gets relevant information.
- Organize gatherings that will allow the Special Rapporteur to meet with people from regions and communities he will not be able to visit.
- Attend the debriefing meeting he will give after his visit is concluded.

#### **After the visit:**

- Comment on the draft version of the report that will be sent to you – to the government and to the general public.
- Disseminate and publicize the report of his visit.
- Prepare to answer to the government's reaction to the report.
- Identify indicators that signal progress in the implementation of recommendations.
- Create a mechanism for monitoring implementation on the basis of the identified indicators.
- Provide updates about government's progress toward implementation for the Special Rapporteur's office.
- Put pressure on government to insure implementation.
- Organize a follow up meeting one year after the visit to assess changes.

#### **For more information**

Engaging the UN Special Rapporteur on Indigenous Peoples: Opportunities and Challenges, Victoria Tauli-Corpuz and Erlyn Alcantara.  
Available in English only at [www.tebtebba.org](http://www.tebtebba.org)

# communications



The Special Rapporteur receives a large number of communications on allegations of violations of the human rights and fundamental freedoms of Indigenous peoples. The main type of communication sent out by the Special Rapporteur are “urgent appeals” in cases of imminent danger from violations of the human rights of individuals, or even entire Indigenous communities. He also transmits “allegation letters” to governments on cases of less urgent character. Follow-up on 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 in the form of follow-up letters on earlier communications.



## Initiating communication

Given the difficulty in assessing the credibility of an allegation, great care must be exercised in the evaluation of communications. Information sent by Indigenous individuals or Indigenous communities must be as precise and well-documented as possible.

In the case of violations of the rights of individuals, information sent to the Special Rapporteur should include: full name of the victim, clear name of the community at risk; age, place of residence or origin, profession, marital status, and other personal information as applicable; 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, full information should include the 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, if applicable, the nature of the human rights gap and the demands of the people concerned.

As a general rule both urgent appeals and letters of allegation remain confidential until published in the annual report of the Special Rapporteur. A summary of such communications and the replies received from the concerned government are formally included in the first addendum to the Special Rapporteur's annual report.

A model for submitting information or appeals to the attention of the Special Rapporteur can be downloaded from the Office of the High Commissioner for Human Rights' website (OHCHR): <http://www.ohchr.org/english/issues/indigenous/docs/rapporteur/model.doc>

**The communication can be sent to the following address  
either by mail, by fax or via email:**

**Special Rapporteur on the situation of human rights and fundamental freedoms  
of indigenous people  
c/o OHCHR-UNOG  
Indigenous and Minorities Team  
1211 Geneva 10, Switzerland  
Fax: 41 22 917 90 10**

## EXAMPLE OF A COMMUNICATION

### **Communication sent:**

On 3 October 2002, in a joint letter of allegation on torture, the Special Rapporteur sent a communication to the government of Argentina enquiring about an attack reportedly perpetrated by the police of Formosa Province against Toba-Qom Indigenous people, part of the Nam Qom community, in reprisal for the murder of a sergeant-major on 16 August 2002. Several members of the community were allegedly detained arbitrarily, threatened and physically abused by the police. In the letter, the government was asked to provide detailed information on this case and to take all effective measures to avoid a repetition of such alleged violations and to compensate the families and victims in accordance with international human rights norms.

### **Communications received**

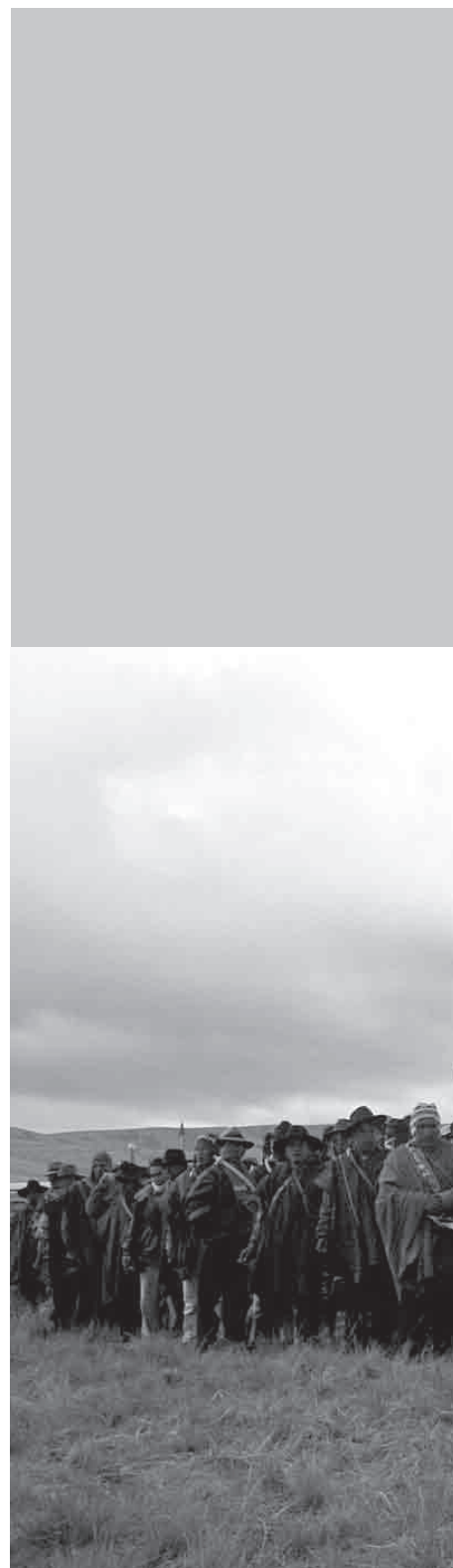
On 29 July 2003, the Special Rapporteur received a reply from the government of Argentina. In its reply, the government stated that all necessary measures to investigate the cases had been taken.

### **Observations**

The Special Rapporteur is grateful for the reply provided by the government of Argentina and its demonstrated will to cooperate with his mandate. In this context, the Special Rapporteur would like to request that the government provide him with the final results of the investigations, as well as the measures adopted to redress the situation.

*Source: E/CN.4/2004/80/Add.1*

*Presidential ceremony, Bolivia, January 2006 - Photo: Maximiliano Failla*



## Follow-up and challenges

An effort is made to follow up on these communications and the Special Rapporteur reports thereon to the Council in his annual report.

Of special concern has been the fact that only a few States involved in this communications system have followed up the letters of allegation and urgent appeals addressed to them in any systematic or satisfactory way. The Special Rapporteur is therefore considering a third type of communication which would consist of follow-up letters.

In view of the need to strengthen the existing mechanism for follow-up to his communications with governments, the Special Rapporteur is developing a procedure for this purpose in coordination with the Office of the High Commissioner for Human Rights. In his report to the General Assembly in October 2006, the Special Rapporteur stated that he had recommended to the Human Rights Council that during the universal periodical review of special procedures, special attention should be given to this serious restriction on the building of an effective system for protecting Indigenous peoples' rights.



# conclusions



The International Expert Seminar was organized as a direct response to the request of the Special Rapporteur to assist with the development of his report on “Best Practices.” The seminar brought together 25 experts from all sectors involved in this work with the following objectives:

- assess the implementation of the Special Rapporteur’s recommendations;
- analyze obstacles to implementation;
- examine conditions leading to best practices;
- make recommendations to improve implementation.

The seminar ended with conclusions, recommendations, and remaining questions regarding the implementation of the reports of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people.

An issue that surfaced repeatedly was how the reports of the Special Rapporteur have a positive effect on the empowerment and mobilization of Indigenous peoples. Major challenges for the implementation of the Special Rapporteur’s recommendations include: racism, lack of political will, lack of resources, lack of a common agenda among Indigenous peoples, economic issues versus human rights in globalization, and the impacts of development.

Major successes deriving from the reports include: achieving change, contributing to unity among Indigenous peoples, and increased visibility/education of Indigenous peoples’ situations. The importance of dialogue was raised by all participants and we were reminded by Gabriel Muyuy Jacanamejoy that, “dialogue must be done with dignity, with an equality of conditions.”

## THEMES FROM THE EXPERT SEMINAR

- the importance of pressure from Indigenous peoples;
- coordination among Indigenous peoples themselves;
- coordination among NGOs and with Indigenous peoples;
- the significance of POVERTY as a main obstacle;
- a lack of will, mainly by States, but also other actors;
- problems with domestic hurdles from civil servants, racism, policy, and lack of resources– even when political will does exist;
- hindrance from domestic political structures;
- the need for educational programs;
- the lack of enforcement of existing policy and laws;
- need for follow up;
- the assumption that Indigenous peoples have unified voice and objectives; and
- the credibility that results from the work of the Special Rapporteur.

In evaluating the implementation of the Special Rapporteur's recommendations, it is useful to reflect, as he described in his report, on best practices so that the Special Rapporteur's recommendations are not independent from social, political and legal processes at the domestic level. The issues highlighted by the Special Rapporteur, particularly in his country reports, are derived from his independent assessment of already existing discussions and demands concerning the rights of Indigenous peoples in the countries he visits. As a consequence, the implementation of the Special Rapporteur's recommendations generally cannot be seen in isolation from ongoing efforts by government actors, civil society organizations, and Indigenous peoples themselves to promote a solution to the substantive human rights issues that those recommendations seek to address.

### **Political will**

At the International Expert Seminar, the lack of political will was raised repeatedly as a major obstacle to implementation. Political will is a large concept which varies in different sys-

tems and areas of the world. Depending on the political structure, we have to examine who holds political will?

Political will relates directly to tensions in the larger society such as ideology, racism, and the need for education. Intolerance for Indigenous rights is larger than racism. We must examine the visions of society—who are the bearers of rights? Individuals and communities have both rights and responsibilities.

Political will relates to dominant ideologies, economic forces, and a lack of historical memory. Where in the system can we deal with political will? Whose political will? To what purpose? How can Indigenous peoples and supportive NGOs respond to this obstacle?

Yet even when political will does exist, there may be other obstacles such as ignorance, incompetence, corruption, and internal conflicts. These obstacles too need to be defined—and ways found to overcome them.

### **Follow-up after the Reports**

There have been many activities by all the players as a result of the recommendations in the reports of the Special Rapporteur. The International Expert Seminar identified that the impact of the country reports' recommendations is easier to assess than that of the thematic reports. This is partly due to the different objectives of these reports. Thematic reports provide an overview of evolving domestic and international legal norms and policies, as well as the challenges regarding the rights of Indigenous peoples. The thematic reports are seen as authoritative sources at the national and international level but a mechanism to monitor their impact needs to be established.

## FOLLOW-UP ACTIVITIES

The Special Rapporteur has put great effort into monitoring and following up on his work. This has included numerous meetings within the Office of the High Commissioner for Human Rights and the UN system in general, follow-up visits—to Guatemala (in 2006), to the Philippines (in 2007), and, pursuant to the Commission on Human Rights' resolution 2005/51, the preparation of a study regarding best practices carried out to implement the recommendations contained in his general and country reports. This study is based on information gathered from different sources.

The Rapporteur invited governments to provide any information they consider useful in identifying best practices in the implementation of the recommendations contained in his reports, including details of their domestic policies or guides to international development cooperation that might be in place to improve Indigenous peoples' standard of living and human rights. He also asked the various agencies and programmes of the UN system as well as Indigenous and civil society to provide relevant information that would be of use in this study.



*José Aylwin, Isabel Madariaga, Chandra Roy and Mauricio René Valdés*

Specific best practices that deserve noting again are the mechanisms established in Guatemala, Mexico, and the Andean region where the Office of the High Commissioner for Human Rights is working with the domestic actors on specific projects to implement the recommendations of the Special Rapporteur.

Recommendations for follow-up identified in the dialogue at the International Expert Seminar include:

- Best practice requires that each of the different stakeholders adopt an active and collaborative approach, interacting with other stakeholders. Stakeholders should collaborate with Indigenous peoples with the objective of addressing obstacles and providing remedies for human rights violations.
- It is essential that human rights education be an integral part of the work of the different stakeholders, each in accordance with their mandate.
- Implementation is enhanced through increased awareness and information. Widespread dissemination and publicizing of the Special Rapporteur's reports, including plain language summaries, are vital within countries. Providing translations of the reports in various Indigenous languages should also be seriously considered.
- Dissemination at community level of a report's recommendation will help generate community-based solutions and involvement.
- Within the Human Rights Council, it is necessary to create a body made up of Indigenous experts and independent experts to focus on Indigenous peoples' human rights. This would include use of the *UN Declaration on the Rights of Indigenous Peoples* and the Special Rapporteur's reports.

As noted by the Special Rapporteur in his report to the Human Rights Council, despite many efforts, Indigenous peoples around the world continue to suffer serious and systematic violations of their rights. They will continue suffering them until the root causes of these violations remain unaddressed. In many cases, instead of "best practices," the Special Rapporteur finds only "best intentions." The challenge ahead will be to turn these "best intentions" into a true and sustainable strengthening of the human rights and fundamental freedom of Indigenous peoples.

(right) Mindoro Island, Philippines - Photo: Christian Erni

