

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

International Expert Group Meeting on Combating Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples

18 January 2012

Introduction

I would like to thank the organizers of this International Expert Group Meeting, the Permanent Forum on Indigenous Issues and its Secretariat, for providing me the opportunity to participate in this event and say some words on the issue of combatting violence against indigenous women and girls. The Permanent Forum is to be commended for convening this expert meeting as part of its work to promote in-depth examination of this important topic, in relation to article 22 of the United Nations Declaration on the Rights of Indigenous peoples. It is worth recalling the words of article 22, which include the following:

“2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”

I look forward to reading the observations and recommendations that follow from this meeting, and to incorporating them where appropriate into my own work as Special Rapporteur. As part of my mandate, the United Nations Human Rights Council has called upon me to pay “special attention to the human rights and fundamental freedoms of indigenous children and women, and to take into account a gender perspective” (A/HRC/15/14(h)).

International standards relevant to combating violence against indigenous women and girls

The expert papers that will be presented and the statements that will come after mine at this meeting will together provide detailed exposition of the problem of violence against indigenous women and its multiple components, as well as close examination of the international standards and procedures, analytical approaches, and other tools available to address this problem. We will no doubt hear compelling stories of suffering as well as be inspired by stories of perseverance and of steps to overcome that suffering; and we will no doubt be challenged in our thinking about how to combat violence against indigenous women and girls into the future. I would like to take this opportunity to add just a few comments to this discussion, without in any way attempting to be comprehensive in addressing particular dimensions of the issue.

Most or all of us present at this meeting are aware that, within the international human rights system there exists today a broad constellation of human rights standards relevant to combating violence against women. As women, indigenous women are guaranteed the rights

enshrined in numerous international human rights instruments that specifically address women as such, most notably the Convention on the Elimination of all forms of Discrimination against Women; the Beijing Platform of Action; and at the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

As indigenous people, indigenous women are guaranteed enjoyment of the rights enshrined, most notably, in the United Nations Declaration on the Rights of Indigenous Peoples. Although not a treaty, the Declaration represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law.

The existence and general content of these two rights regimes – women’s rights and indigenous peoples’ rights – is relatively well understood within many platforms of discussion especially within the international human rights system. However, a question that necessarily comes to the forefront in the context of today’s discussion is: how, exactly, do the human rights guaranteed to indigenous women because of their status as women, and the human rights guaranteed to indigenous women because of their status as indigenous, relate to or interact with each other? Linked to this is the question of in what ways do or should international human rights standards protect indigenous women differently from non-indigenous women?

A holistic approach for combating violence against indigenous women and girls

A point of departure for answering these questions, I think, can be found in the approach articulated by the United Nations Special Rapporteur on Violence against Women, Radisha Manjoo, in her report to the General Assembly in October 2011. Although she was referring to violence against women and children in general terms, the Special Rapporteur emphasized that combating violence against women requires a holistic approach, that is, one which involves (a) considering human rights as universal, interdependent, and indivisible; (b) understanding violence against women as being within a continuum that spans interpersonal and structural violence; (c) acknowledging the structural aspects and factors of discrimination, including structural and institutional inequalities and; (d) examining social or economic hierarchies between women and men and also among women (A/66/215).

In a similar vein, combating violence against women and girls in the indigenous context must be achieved holistically; it cannot be addressed in isolation from the range of rights recognized for indigenous peoples in general. In this regard, violence against indigenous women and girls, which is distressingly all too common across the globe, cannot be seen as separate from the history of discrimination and marginalization that has been suffered by indigenous peoples as a whole. This history manifests itself in continued troubling structural factors, like conditions of poverty, lack of access to lands and resources or other means of subsistence, or poor access to education and health services, factors that bear on indigenous peoples with particular consequences for indigenous women. The history of discrimination of indigenous peoples has also resulted in the deterioration of indigenous social structures and cultural traditions, as well as in the undermining or breakdown of indigenous governance and judicial systems, impairing in many cases the ability of indigenous peoples to effectively respond to problems of violence against women and girls within their communities.

Combating violence against indigenous women and girls, therefore, requires remedying the structural legacies of the history of colonialism and discrimination that indigenous peoples have faced. This includes advancing the range of rights guaranteed for indigenous peoples, most prominently those enshrined in the Declaration on the Rights of Indigenous Peoples. As I have stated in the past, the standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, it is important to note that the Declaration does not attempt to bestow on indigenous peoples a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples—including the situation of indigenous women.

An essential element of the holistic approach: advancing indigenous peoples' self-determination

The holistic approach to combating violence against indigenous women and girls therefore should include, in accordance with the Declaration on the Rights of Indigenous Peoples, advancing indigenous peoples autonomy and self-governance (articles 5 and 18); strengthening indigenous peoples own justice systems (articles 34 and 35); increasing indigenous peoples access to justice (article 40); and improving indigenous peoples' economic and social conditions (article 21), among other measures. And most importantly, addressing violence against indigenous women must in some way go along with advancing indigenous peoples' self-determination. As I and others have stressed in a number of contexts, the right to self-determination, which is affirmed for indigenous peoples in article 3 of the Declaration on the Rights of Indigenous Peoples, is a foundational right, without which the full range of indigenous peoples' human rights, both collective and individual, cannot be fully enjoyed. Enhancing indigenous self-determination is conducive to successful practical outcomes; studies have shown that indigenous peoples that effectively manage their own affairs tend to fare better across a range of indicators than those who do not.

In this connection, I would like to mention three specific ways in which indigenous self-determination may be enhanced in the context of combating violence against women and girls. While the following points are of course not exhaustive, they provide some reflections on the measures needed by States and indigenous peoples themselves to address concerns in this regard.

First, States should avoid responses to social problems affecting indigenous communities, including violence against women and girls, that tend to limit, undermine, or replace indigenous peoples' own authority or self-governance. In this connection, States should avoid making blanket limitations of the jurisdiction of indigenous justice systems over cases of violence against women, based on an assumption that the State justice system is better equipped to handle these cases or that application of indigenous systems in cases involving violence against women results in inherently unfair judgments. In my work as Special Rapporteur, I have observed situations in which States, faced with dire social problems within indigenous communities including violence against women, develop initiatives designed to limit indigenous peoples' control over decision-making or administration of justice, placing such decision-making or judicial control in the hands of the State or third parties. However, State responses that limit indigenous control, in addition to running the risk of undermining indigenous self-determination, have been shown to be less

effective long-term solutions, generally speaking, in comparison to initiatives that indigenous peoples themselves control.

A second, related point is that States should increase indigenous peoples own participation in the design, delivery and oversight of programmes aimed at preventing and providing remedies for violence against women and girls. Developing programmes that are effective and culturally appropriate requires innovation and flexibility, and is not free from challenges of all kinds. As a preliminary matter, it requires consultation with the affected indigenous groups about community needs and programme design, as well as openness to varied models. In particular, it is essential to provide continued support to programmes, especially those designed by indigenous peoples themselves, that have already demonstrated achievements. In my capacity as Special Rapporteur, I have observed numerous successful indigenous-controlled programmes already in place to address issues of domestic violence, alcoholism, community development, and related issues of concern, in ways that are culturally appropriate and adapted to local needs. These kinds of indigenous-run programs must be supported and promoted.

Third, there is a need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacity, as well as their own justice institutions, in order to meet the challenges faced by their communities. Indigenous peoples have a responsibility to work to rebuild strong and healthy relationships within their families and communities, and to take concerted measures to address social ills where these exist. Within their households, their communities, and the broader societies of which they are a part, indigenous peoples must challenge and combat any existing inequitable patriarchal social structures, continued attitudes of superiority of men over women, and supposed culturally-based justifications for battering or discriminating against women. In this connection, indigenous peoples must take concerted efforts to strengthen their own justice systems, where these fall short of providing effective remedies to punish and prevent violence against indigenous women and girls in accordance with relevant human rights standards.

Conclusion

In summary, the holistic approach to combating violence against indigenous women and girls requires that both their rights as women and children, and their rights as indigenous peoples, be advanced. More broadly, the rights enshrined in the Declaration on the Rights of Indigenous Peoples, which are designed to remedy the ongoing legacies of discrimination against indigenous peoples, should be advanced concurrently with programs that are designed specifically to target violence against women and children, in order to address the structural problems affecting indigenous peoples that contribute to this violence. Finally, indigenous self-determination in particular must be enhanced along with efforts that are designed to prevent and punish violence against indigenous women and girls.

In my view, this holistic approach is necessary to combatting the troubling ongoing patterns of violence against indigenous women and girls, and to advancing towards the future envisioned by the General Assembly when it adopted the United Nations Declaration on the Rights of Indigenous Peoples in 2007, a future in which indigenous peoples' distinct identities and cultures are fully valued and in which they have the opportunity to control their own destinies, under conditions of equality, within the broader societies in which they live.

I look forward to hearing the discussions over the next few days, and wish those present all the best for a successful meeting.