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**Statement by Professor James Anaya
Special Rapporteur on the situation of the human rights and
fundamental freedoms of indigenous people**

Ninth Session of the UN Permanent Forum on Indigenous Issues

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New York



Mister Chairperson,
Distinguished members of the Permanent Forum,
Representatives of Indigenous Peoples and Member States,
Friends and colleagues

I am grateful to once again have the opportunity to address the Permanent Forum and all those attending this session in order to share some of my experiences during my second year as Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, and to provide some reflections on the theme of the ninth session of the Permanent Forum: indigenous peoples' right to development with culture and identity.

Mr. Chairperson, allow me first of all to congratulate you on your election as Chairperson of the Permanent Forum. Your experience and dedication to indigenous issues is no doubt a tremendous asset to your leadership of this important United Nations body, whose members I have the pleasure of joining today in what I expect will be a fruitful dialogue on issues of common concern.

Coordination with the Permanent Forum and other mechanisms and agencies

I fully embrace the Human Rights Council's directive that I am to work in cooperation with the Permanent Forum on Indigenous Issues, in order to maximize the effectiveness of my mandate and avoid duplication. During this second year of my mandate as Special Rapporteur, I have sought to continue coordination with the Permanent Forum, as well as with the Human Rights Council's Expert Mechanism on the Rights of Indigenous People. In this connection, last August, I attended the annual session of the Expert Mechanism, and in January, representatives of Permanent Forum, the Expert Mechanism, and I met in New York to coordinate our work. As you are aware, Mr. Chairperson, at that meeting we shared work agendas, identified the strengths and limitations of our respective mandates and explored ways of channelling our work in ways that it will be most effective.

One of the specific outcomes of our coordination efforts is the holding of parallel meetings with indigenous peoples and organizations during the sessions of the Permanent Forum and Expert Mechanism. I have worked to provide indigenous groups attending the annual sessions of the Permanent Forum and Expert Mechanism with the opportunity to present in person information about specific situations that their peoples are facing in the countries in which they live. I would like to thank all those who submitted requests for meetings and corresponding information about matters to discuss during this ninth session of the Permanent Forum. Unfortunately, due to time constraints I am not able to meet with all of those who requested meetings. Nonetheless, I do commit to examine all of the cases that have been brought to my attention, including those situations about which I am unable to meet to discuss this week. Indigenous peoples and organizations should be aware that I routinely consider and in appropriate cases act upon written information submitted to me, without face to face meetings or country visits. I therefore continue

to urge indigenous peoples and organizations to submit written information to me that concerns my mandate through the appropriate channels of the Office of the High Commissioner for Human Rights. My contact information is on the website that the Office of the High Commissioner maintains for my mandate and in a brochure that is being made available in the conference room.

Over the past year, I have also sought to coordinate with other United Nations and regional human rights agencies. In this connection, I have attended conferences addressing indigenous issues in Nicaragua, Trinidad and Tobago, Thailand, and Washington, D.C., which were organized by the Office of the High Commissioner for Human Rights, the United Nations Development Program and the Inter-American Commission on Human Rights.

Activities to promote indigenous peoples' rights in fulfillment of the mandate

Mr. Chairperson,

While seeking to cooperate as appropriate with relevant international mechanisms and institutions, I have engaged in a range of activities within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide to and promote steps to improve those conditions. As I conveyed last year to the Permanent Forum, the various activities I have carried out can be described as falling within four, interrelated areas of work. These are promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

Since assuming my mandate, I have worked to advance legal, administrative, and programmatic reforms at the domestic level and in the area of international cooperation to implement the standards of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments, on occasion in response to specific requests made by Governments for technical and advisory assistance. For example, in December, I carried out a visit to Ecuador to assist with the development of a new law to strengthen the recognition of and respect for indigenous justice systems, within the context of advancing the implementation of new constitutional protections for indigenous rights in the face of ongoing challenges. I thank the Government of Ecuador for its cooperation with my visit. I would also like to mention a conference I attended in Madrid in November, organized by several Spanish NGOs with the support of the Government of Spain, in order to assess the implications for the Spanish State of its ratification of ILO Convention 169 and its support for the Declaration on the Rights of Indigenous Peoples.

Among the good practices I have sought to advance is the endorsement of the Declaration by those States that failed to cast affirmative votes for it upon its adoption by the General Assembly in 2007. I am very pleased, therefore, that the Government of New Zealand announced its support for the Declaration on the first day of this session of the Permanent Forum, thereby strengthening the already widespread international commitment to the principles and aspirations of the Declaration. I also note with a good deal of satisfaction the statement made by the United States on Tuesday that it will review its position on the Declaration in light of its domestic laws

and policies. These developments follow the Speech from the Throne by the Governor General of Canada on March 3, in which the Government stated that it “will take steps to endorse” the Declaration “in a manner fully consistent with Canada’s Constitution and laws.” The United States and Canada are thus close to joining the vast majority of United Nations Member States that support the Declaration, making opposition by some states to the Declaration a thing of the past. I respectfully urge that any formal statement of endorsement by them be made in a manner that is fully consistent with the Declaration’s terms, interpreted as they should be in light of the spirit and objectives of the Declaration and the practical realities faced by indigenous peoples, as well as in light of the full range of applicable human rights norms and legitimate considerations of democratic governance.

Mr. Chairperson,

Related to the promotion of good practices is my work conducting or participating in studies on issues or themes that are of interest to indigenous peoples across borders and regions of the world. In my report to the Human Rights Council last year, I included a discussion of the duty of States to consult with indigenous peoples in light of the Declaration and other relevant instruments. The duty to consult applies in multiple contexts in which indigenous peoples rights and interests are at stake, including in the context of extractive industries that affect indigenous peoples and their lands, which is a matter that is being addressed by the Permanent Forum. I intend to add my own reflections on the issue of extractive industries in my forthcoming third annual report to the Human Rights Council, drawing in part from the discussions advanced at seminar I attended last October in Sitges, Spain, which was organized by the NGOs Kreddha and UNESCO Catalunya. Also in connection with thematic studies, I have sought to contribute to the ongoing study of the Expert Mechanism on the Rights of Indigenous Peoples, including through my participation in a regional consultation conducted by members of the Expert Mechanisms in Chiang Mai, Thailand in January of this year.

Additionally, Mr. Chairperson, since I last reported to the Permanent Forum, I have carried out visits to several countries for the purpose of developing reports to assess the human rights conditions of indigenous peoples in those countries, including visits to Colombia, Australia, the Russian Federation, and most recently, to the Sápmi region—the traditional territory of the Sami people—in the Nordic countries. I would like to thank the governments of these countries for their cooperation and support, and would also like to thank the indigenous peoples and organizations that provided invaluable assistance in preparing and carrying out these visits.

As mentioned earlier, Mr. Chairperson, an ongoing aspect of my work involves receiving and in appropriate cases acting upon information of alleged violations of the rights of indigenous peoples in specific situations. This aspect of my work relies to an important extent on the written information provided to me by indigenous peoples and their organizations, NGOs and other sources. I would like to acknowledge the many individuals and groups that have provided information over the past year, often in relation to very difficult and sensitive situations. During this time, I have received information about situations of alleged human rights violations in countries in every continent and, in response have sent numerous communications to governments about these situations. These cases involve infringements of rights of consultation and consent especially in relation to natural resource extraction and displacement or removal of

indigenous communities; denial of the rights of indigenous peoples to lands and resources; indigenous peoples in voluntary isolation; incidents of threats or violence against indigenous peoples and individuals; and concerns about constitutional or legislative reforms in indigenous subject matter, among other situations.

I have made a concerted effort to engage with governments about credible information of alleged human rights violations in specific cases in which I believe my intervention may be of some use. On occasion this process has involved on-site visits to examine particular cases, such as my visit to Peru last July to assess the tragic events around Bagua. In this and several other cases, I submitted observations and recommendations to governments with the hope that these will assist the governments involved in developing workable and long-term approaches to addressing the situations. I would like to acknowledge the several governments that have responded to my communications regarding specific cases. I note, however, that over the past year a number of governments did not respond to communications from me requesting information on alleged human rights violations, and I urge them to do so in the future.

Indigenous peoples: development with culture and identity

Mr. Chairperson,

I would now like to offer some brief comments related to the theme of this session of the Permanent Forum, indigenous peoples' development with culture and identity, and I do so in connection with my experiences as Special Rapporteur.

The right to development is a right of all peoples, including indigenous peoples. The United Nations Declaration on the Right to Development of 1986 affirms in its article 1 that "development is an inalienable human right" of "every human person and all peoples."¹ While indigenous peoples have the right to develop in common with the broader communities and societies in which they live, they have particular concerns that must at all times be taken into account with regard to development initiatives that affect them. These concerns stem from the extreme disadvantages that indigenous peoples typically have faced across a range of social and economic indicators, the dispossession of lands and natural resources, their historical exclusion from State decision making, and their aspirations to maintain and transmit to future generations their distinct identities and cultures.

I see two broad areas of concern arising from development programs affecting indigenous peoples. One area has to do with those policies and initiatives aimed at the development of the economy or infrastructure of the State generally and that are said to benefit the people of the State as a whole, but that have negative effects on indigenous peoples. These include development programs involving the extraction of natural resources and megaprojects such as the construction of dams and transportation facilities on indigenous peoples' territories. As I

¹ Declaration on the Right to Development, Resolution 41/128 Adopted by the General Assembly in its 97th Plenary Meeting (4 December 1986), art. 1.

have already noted, the problems arising from such development projects affecting indigenous peoples are present in situations I have examined in countries across the globe. These problems relate, essentially, to the absence of adequate mechanism of participation of indigenous peoples in the design and implementation of the development initiatives, the absence of adequate mitigation measures that take into account indigenous environmental and cultural concerns, failure to recognize indigenous property rights in lands and resources, and the absence of equitable sharing in the benefits of the development projects. Article 32 of the Declaration, with its call for the free prior and informed consent of indigenous peoples and measures of redress, provides an important template for avoiding these problems and for the possibility of such economic and infrastructure development projects to not just avoid harm to indigenous peoples but to advance their own development interests along with those of the larger society.

A second area of concern has to do with those development initiatives by States, pursued often with the backing of international actors, that are targeted specifically at indigenous peoples and their social and economic conditions. Many initiatives by States are aimed at the important objective of reducing the disadvantage that indigenous peoples experience in social and economic spheres. In my reports assessing the human rights situations of indigenous peoples in various countries, I detail government policies and programs that are targeted at key issues associated with indigenous peoples' development, including those related to indigenous health, education and poverty reduction.

Despite many positive advancements, I have observed, in general, the need to incorporate into State programs of this type a more integrated approach to addressing the development of indigenous peoples, one that aims to secure for them not just social and economic wellbeing, but that in doing so also advances their self-determination and their rights to maintain their distinct cultural identities, languages and connections with their traditional lands. Self-determination in the development process is a matter of basic human dignity, for indigenous peoples as for all others. Enhancing indigenous self-determination has also been shown to be conducive to successful practical outcomes, and indigenous people who make their own decisions about development have been shown to consistently fare better than indigenous people who do not.

In this connection, as called for by article 32 and other provisions of the Declaration, it is imperative that States and international actors seek to decidedly fold into development programs the goal of increasing indigenous self-determination. But as experience shows, advancing indigenous self-determination requires a practical orientation around specific objectives.

Mr. Chairperson,

On the basis of my experience and of what I have learned from indigenous peoples in various settings, I believe a number of specific objectives must be pursued to enhance indigenous self-determination in the development process. Among these is the objective of enhancing indigenous education and skills capacity in relevant areas. Indigenous peoples are rich in valuable knowledge, but are often lacking in the skills and levels of education necessary to themselves engage and participate in the various components of development programs and projects that affect them in the modern world. In my experience as Special Rapporteur, I have observed many State programs oriented at improving the education of indigenous peoples, and these programs

should be consolidated and strengthened in ways that I have outlined in more detail and specificity in my country reports. Furthermore, the Expert Mechanism, in its first report to the Human Rights Council last year, also offered important observations concerning the right of indigenous peoples to education, and United Nations agencies, including UNESCO, have likewise provided valuable input on this issue.

Beyond increasing indigenous peoples' educational opportunities in general, States and the international community should endeavor to promote the training and capacity-building necessary to allow indigenous peoples to adequately understand, design and implement development activities within or affecting their communities, including in relation to large-scale natural resource extraction and infrastructure projects. While many development projects in various countries include programs for some training and employment opportunities for affected indigenous communities, rarely are indigenous people seen as potential engineers, business administrators, environmental analysts, lawyers or other professionals with the skills that are necessary for the execution of the projects at the managerial level. I firmly believe that ensuring professional training for indigenous peoples that allows their full involvement in the design and delivery of development-related activities should be part of any vision for development as it concerns them.

Further, it is apparent from experiences worldwide that the capacity of indigenous peoples to successfully pursue their own development priorities requires the strengthening of their own institutions and self-government structures. This will empower them to take control of their own affairs in all aspects of their lives and to ensure that development processes are aligned with their own cultural patterns, values, customs and worldviews. In this regard, I echo the statements I have heard from indigenous leaders around the world about the need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacities, in order to meet the challenges faced by their communities with respect to development, including complex decisions regarding natural resource extraction and other major development projects on their lands.

Related to the capacity-building and strengthening of self-government, indigenous peoples should be provided with the opportunity to participate as equal partners in the development process when both their particular interests and the interests of the larger societies of which they form part are implicated. In my experience as Special Rapporteur, especially in my conversations with State officials and representatives of private industry, I have observed, in general, a lack of consideration of options for indigenous peoples to be real partners in development activities. Real partnership would require indigenous peoples to be able to genuinely influence decisions concerning the development activities, fully participate in their design and implementation, and directly benefit from any economic or other benefits that are derived from them.

Finally, I would like to emphasize that indigenous peoples must be allowed the opportunity to continue to progress and improve decision-making concerning development on their own terms, and to remedy any shortcomings through their own forms of internal regulation and accountability. States and other actors should take care to avoid conditioning their development assistance for indigenous communities on predetermined outcomes that are presumed by the outsiders to be the correct outcomes. In other words, indigenous peoples must be allowed the

opportunity to make mistakes, to learn from those mistakes and to build ever greater capacity and wisdom to advance in their own development objectives and choices about the future.

Mr. Chairperson,

I would like to conclude by reiterating my gratitude for the opportunity to address the distinguished members of the Permanent Forum and the representatives of States and indigenous peoples who are present. I reaffirm my commitment to cooperating with the Permanent Forum in our common pursuit of securing the full enjoyment of the human rights of indigenous peoples. This pursuit is one of daunting challenges, but I am encouraged by the many challenges that already have been overcome, by the persistence of indigenous peoples to see their aspirations realized, and by the constant possibilities of further progress into a better tomorrow.

Thank you Mr. Chairperson, and all those present, for your kind attention.