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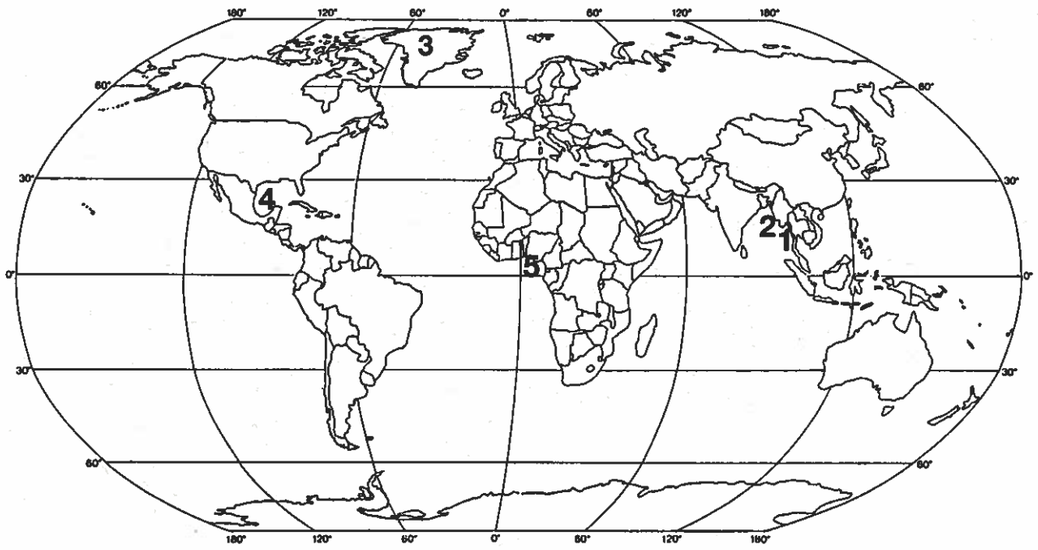

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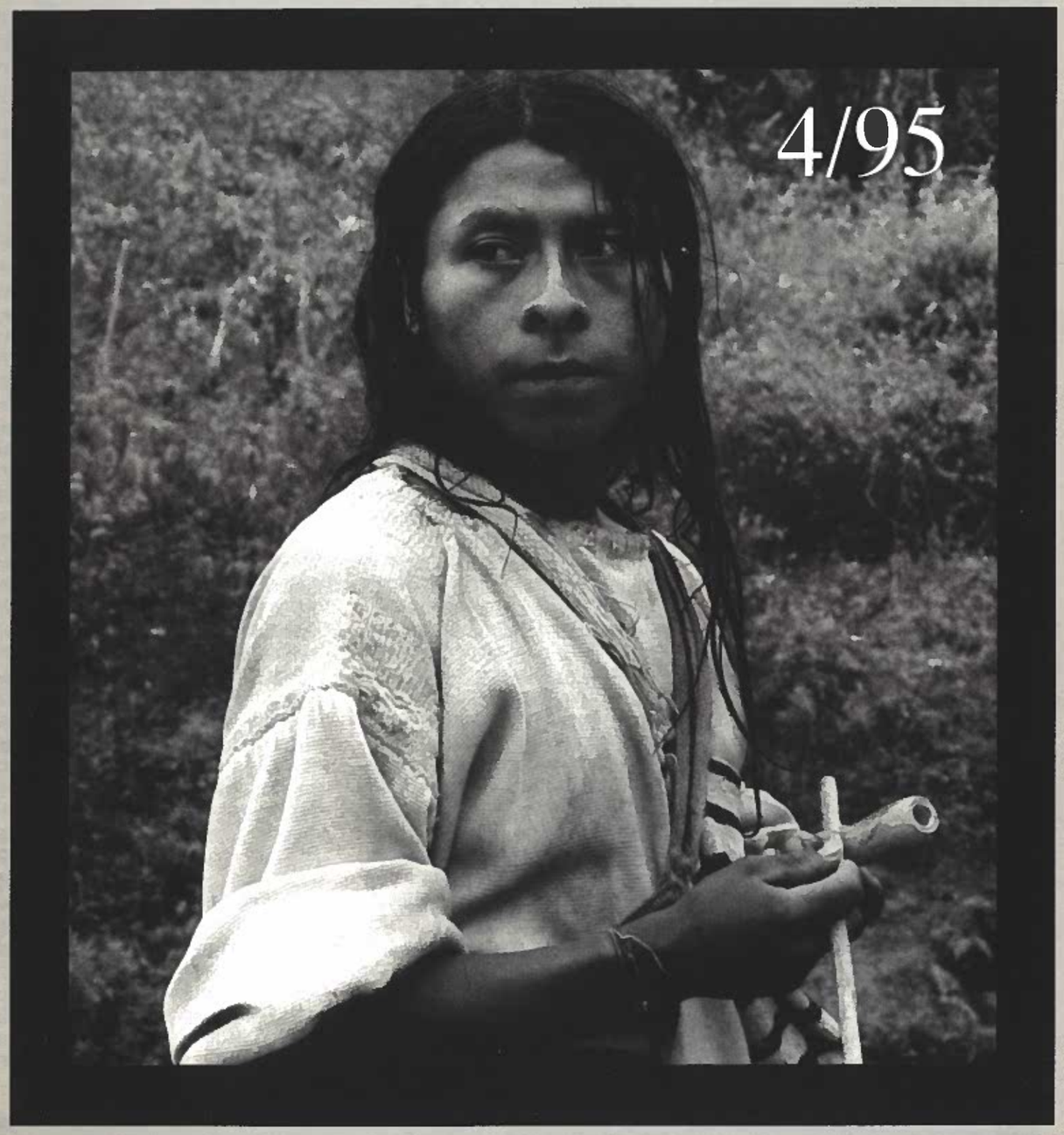
Indigenous Affairs

No.4 - October / November / December - 1995

International Work Group for Indigenous Affairs



Cover: *Arhuaco Indian at Pueblo Bello- the colonist town in the foothills of the Sierra close to Simonarua.*- photo: Luke Holland

Editorial

by Andrew Gray

WHOSE KNOWLEDGE IS IT ANYWAY?

Five years ago, discussions of indigenous rights rarely mentioned the protection of 'intellectual property', 'cultural heritage' or 'traditional resource rights'. However, since June 1993, when the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples was proclaimed in Aotearoa New Zealand, there have been regular statements by indigenous peoples drawing attention to the critical importance of the protection of their cultural and genetic heritage. Indigenous knowledge and other related terms are not simple concepts; they cover both the ideas and material aspects of life which in eurocentric contexts are usually clearly separated.

The international concern about indigenous knowledge has arisen because of several factors. The increased efficiency in screening the genetic make-up of living beings has made bio-prospecting a profitable concern, and the facilities for utilising DNA in the bio-technology industry has given rise to a worldwide interest in gathering raw materials for study. The pharmaceutical industry has understood that working with local communities and, in particular, indigenous peoples, provides an advantageous access to plants which can be useful in developing new drugs; the same goes for seed companies. In these cases, companies take indigenous knowledge and use the benefits for their own profits. Even where some return is sought by indigenous peoples, little support trickles down to the communal owners. Where it occasionally does occur, this limited compensation takes the form of direct payments or trust funds which are controlled by non-indigenous trustees. Bio-prospecting is criticised by indigenous peoples because it exploits their knowledge and converts it into commodities.

A second area which has brought indigenous rights to their culture and knowledge to the forefront has been a recent number of international agreements over intellectual property rights. The Trade-Related Aspects of Intellectual Property Systems (TRIPS) of the General Agreement on Tariffs and Trade (GATT Treaty) are aimed to create 'a level playing-field' similar to the current United States intellectual property system which favours the creating of monopolies by multinational corporations over the patenting of genes. GATT has been the focus of much international protest, particularly in Asia. In the Americas, the North American Free Trade Association (NAFTA) linking Canada, the United States and Mexico is a parallel development, which over the last three years has opened up indigenous territories to expropriation of resources. Indigenous peoples ranging from Treaty Six in Canada to the peoples of Chiapas in Mexico are gravely and actively concerned at the consequences of open ended markets on their cultural and physical well-being.

Bio-prospecting not only covers plants but has included collecting the genes of indigenous peoples for study. Indigenous peoples from all over the world have long complained and protested at the work of archaeologists and anthropologists who have desecrated sacred sites and kept human remains in museums. Nowadays this form of prospecting has taken a new turn. The study of human genes provides a third area which has brought indigenous property rights to the fore in recent years. The Human Genome Diversity Project has recently been established as an academic programme to collect 10-15,000 specimens from 722 'endangered' peoples whose genetic make-up was to be preserved or 'immortalised' for future use and study. By ignoring the causes and threats facing these endangered peoples, the whole research programme has been condemned as cynical, unethical and methodologically flawed.

At the same time, the patenting of human genetic sequences in the United State has caused concern to indigenous peoples who have been fighting off attempts to claim property rights over their life forms. In Panama, the Guaymi still face the patenting of Human T-Lymphotropic Virus Type 2 taken from the blood of an indigenous woman. Although the US government has withdrawn its application to patent one of her genetic sequences, two scientists are still pursuing the possibility. Similar reports of attempts to patent genes have come from Papua New Guinea and the Solomon Islands. Information in Luke Holland's film 'The Gene Hunters' (reviewed in the last Indigenous Affairs), shows how blood samples are frequently taken under false pretences, using the pretext of medical examination. Genetic prospecting demonstrates not only how outsiders take information and can exploit it for economic gain, but can also degrade and destroy the sanctity of life, which is of supreme importance in indigenous spirituality throughout the world.

The recent concern about the use of indigenous knowledge, life forms, cultural heritage and resources for nefarious purposes has taken place in a context of a neo-liberal dogma which is sweeping the world, extending property and free marketing everywhere. Patenting of life forms, bio-prospecting and free trade arrangements are aspects of this neo-colonial wave and has transformed concerns which were previously focused on anthropologists, archaeologists, museums and artists into all aspects of indigenous life. The reasons for the anger felt by indigenous peoples is that the external power of the state and market are entering aspects of life which are sensitive and mark the uniqueness and dignity of indigenous peoples.

Ascertaining which rights are under discussion is not always clear. The concept of intellectual property comes from a eurocentric non-indigenous legal tradition of protection of individual innovations or discoveries, providing the ways in which knowledge can be transformed into a commodity. For many indigenous peoples, this makes intellectual property rights not a system for protection, but a part of the problem. Nevertheless, the Declaration of Mataatua (Article 2.5) shows that for some indigenous peoples, 'intellectual property rights' could be relevant in a context where the following elements are included: recognition of collective ownership; protection against debasement; co-operative rather than competitive regimes; indigenous guardians of the knowledge should be the first beneficiaries; and the rights should cover a multi-generational span. According to this understanding, indigenous 'intellectual property' should not be seen as purely intellectual and commercial. One way of dealing with the problems facing indigenous knowledge is therefore to establish a system of property rights which respects indigenous peoples and enables them to benefit from their knowledge, and provides the conditions whereby they are in control of the process. The statement from Santa Cruz in Bolivia (September 1994) further questions the use of intellectual property systems: 'For indigenous peoples, the intellectual property system means legitimation of the misappropriation of our peoples' knowledge and resources for commercial purposes'. While not rejecting intellectual property altogether, the Santa Cruz statement places the concept within the framework of broader indigenous rights such as self-determination. In point 4, the statement says: 'Biodiversity and a people's knowledge are concepts inherent in the idea of indigenous territoriality'.

Two consultations on indigenous peoples' knowledge which took place in 1995 show indigenous peoples completely opposed to existing intellectual property regimes. In the consultation at Sabah, Malaysia in February, 1995 the indigenous participants said: 'The struggle for self-determination cannot be separated from the campaign against intellectual property rights systems, particularly their applications on life forms and indigenous knowledge. The April 1995 statement from the Fiji consultation says that the participants: 'Reaffirm that imperialism is perpetuated through intellectual property rights systems, science and modern technology to control and exploit the lands, territories and resources of indigenous peoples'.

The differences between the Mataatua, Santa Cruz and the Fiji declarations are not in substance but in emphasis and they illustrate the difficulty inherent in dealing with 'intellectual property rights'. For those indigenous peoples who want to share in the benefits of their knowledge, some aspects of the intellectual property regimes, which are based on commercialisation and rewards, have to be acknowledged. The way to achieve this is to change the system, preserving what is wanted and avoiding the negative threatening aspects. This is the position put forward at Mataatua.

A second position emerges in the subsequent statements and looks at intellectual property systems as part of the general threat against indigenous rights. Here the emphasis is not on coming to terms with intellectual property regimes, but in challenging them altogether. Although

sometimes using 'intellectual property' as a concept, the shift of emphasis consists of a move towards notions of 'indigenous knowledge' and 'cultural heritage'. This is the conclusion reached by Erica Daes' 1993 UN Report: 'Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples', where she refers to 'cultural heritage' as the appropriate rights concept. This eradicates the eurocentric connotations of 'intellectual property'. Her approach is that the best protection for indigenous knowledge is by the recognition of indigenous rights, in particularly rights to lands, territories and resources, because on this basis, indigenous peoples control access to and use of knowledge and resources. In this way, the western intellectual property system becomes redundant.

A third approach comes with the concept of 'traditional resource rights'. This tries to blend the benefits of both the previous emphases and is set out in Darrell Posey's paper in this volume. He links together the general approach of indigenous rights to self-determination, territories and control over their resources to a broad spectrum, as a 'bundle of rights' connecting indigenous peoples to the sustainable and commercial use of their resources. The aim is to complement indigenous rights to self-determination, territories and resources with specific sui generis approaches which can reflect the needs of each people according to their circumstances. The use of the term 'traditional' has to be seen in the context of knowledge which is ever-changing and 'resource' as something which covers both material as well as intellectual phenomena.

Indigenous knowledge, heritage and resources have several characteristics which are not always compatible (see Colchester this volume). On the broadest level compatibility exists by taking a holistic world view which relates ideas and physical phenomena in ways which are different to the dualistic western scheme. This means that encapsulating any one term is difficult: 'intellectual' and 'cultural' verge to the realm of ideas and 'resources' more towards the material. Yet both areas are equally in need of protection. All indigenous peoples agree that protection of these rights is fundamental and that they should be framed by self- determination, control over territory and resources and recognition of indigenous institutions.

In Article 29 of the UN Sub-Commission draft Declaration on Indigenous Rights there is a comprehensive review of these points which reflects the holistic aspect of these rights. This declaration has been approved by the expert bodies of the UN and the article in question is placed under the lands and resources part of the text in order to demonstrate its intimate connection to territorial rights. The article includes all of the elements mentioned hitherto and needs the full support of indigenous peoples as it comes under threat of being re-drafted by governments in the Human Rights Commission:

'Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.' These indigenous rights are all collective and emphasise the communal and inalienable aspects of knowledge. However, this is where incompatibility can arise. Intangible phenomena such as knowledge are not as discrete as territoriality. Information crosses boundaries and many indigenous peoples share the same knowledge which is unknown to non-indigenous peoples. For example the use of a plant in the Amazon may be known to several different peoples. This means that collective ownership exists but can be invested in a variety of different groups or peoples. Furthermore, within the collectivity, indigenous individuals add to knowledge and are recognised for this - for example people with shamanic expertise.

Another difficult area is the inalienable aspect of knowledge. Unless knowledge is kept secret it cannot remain inalienable which means that as in the Mataatua declaration, some accommodation has to be made for peoples who determine that they want to make an agreement with outside interests. This means that commercialisation is not only a constant threat but a genuine temptation for indigenous peoples who in most parts of the world live in conditions of poverty.

Nevertheless, these different perspectives on indigenous knowledge as to the range of collectivity and the extent of inalienability are indigenous problems and how they are resolved depends on their circumstances. One way of tackling the difficulty is to approach contradictions by ensuring that everyone recognises indigenous rights from the general level of protection, and then by using the concepts of control and consent to provide the time and space for indigenous peoples to make their own decisions on a specific level. When appropriate, indigenous peoples may decide to enter into arrangements with outsiders. However before committing themselves, 'sui generis' agreements with each other using their own institutions would be a useful means of ensuring strong and unified positions. Without this, the path is open for continuing exploitation by prospecting companies. For this reason the Fiji statement calls for a moratorium on bioprospecting until appropriate mechanisms are in place.

With broad protection measures, indigenous peoples should be able to work out their own solutions according to the exercise of self-determination. In this way it is possible to see that each element in the confusing labyrinth of intellectual property rights discussions can make sense by distinguishing between general and specific contexts. Ultimately indigenous peoples should have a veto. If anyone presses them for access to their knowledge and resources, they can simply refuse, after all, whose knowledge is it anyway? ❑

SOME DILEMMAS IN ASSERTING 'INDIGENOUS INTELLECTUAL PROPERTY RIGHTS'

Marcus Colchester

Background

Indigenous peoples now face an intensifying challenge to the integrity of their societies. There is increasing pressure from outsiders to document, utilise and commercialise indigenous knowledge and biotechnologies and even genomes. Some of this exploitation is justified in the name of conservation and the validation of indigenous culture. It is also being justified in the wider interests of humankind. At the same time many indigenous individuals, communities and peoples are seeking increasing access to markets and greater cash incomes.

Traditional indigenous cosmologies, social systems, systems for sharing and transmitting knowledge and for regulating access to natural resources are extremely varied. Most differ very greatly from industrial societies. In particular, western legal concepts of 'intellectual property rights' are profoundly different from those of most indigenous peoples' concepts of 'ownership' of knowledge.

Indigenous peoples are now seeking new means of asserting their rights over their traditional knowledge and biotechnologies with a variety of different objectives - *inter alia* to protect the sacred nature of much of their traditional knowledge, to defend the integrity and identity of indigenous societies, to maintain the independence of their agricultural systems, to be financially remunerated for the commercialisation of their knowledge. *It is important to understand that not all these objectives are easily reconciled with each other.* Nevertheless a common ingredient in all indigenous demands is their retention of control over their own heritage. Assertion of indigenous rights over traditional knowledge and biotechnologies is part and parcel of indigenous demands for the right to self-determination.

It is worth stepping back and identifying what are the main threats that indigenous societies face from this new wave of commercialisation.

1. Expropriation of knowledge and biotechnologies
   - loss of control
   - loss of sources of livelihood, wealth, income.
   - increased pressure to expropriate land and resources

2. Debasement of knowledge
   - violation of sacredness
   - loss of identity

3. Commoditisation of knowledge, biotechnologies and natural resources
   - loss of integrity and relatedness of knowledge
   - exploitative relations with outsiders
   - exploitative relations within indigenous societies
   - destructive use of natural resources
   - loss of biological diversity

Past experience:

For indigenous peoples the threats posed to them by the commercialisation of their heritage is neither new nor confined to the control of 'intellectual property'. Indeed the main struggle that indigenous peoples have faced for millennia is to retain control of their territories from neighbouring predatory societies, both indigenous and non-indigenous, a process that intensified with devastating results with the expansion of colonial enterprises. This process has continued to worsen with the emergence of nation states in the north and the south both committed to a similar path of development and predicated on common concepts of legal ownership and rights. Behind all these changes has been the all pervading influence of modern market economies and the conversion of wealth into capital.

The long indigenous experience with the assertion of indigenous land rights has much to teach us about the risks inherent in assertions of 'indigenous intellectual property rights'.

What was immediately apparent to indigenous peoples confronting invading societies were the completely different concepts regarding their relations to land. Yet encroaching western concepts of land ownership were hard to resist and with a mixture of motives - some benign others malign, but all misconceived - many indigenous people were accorded western style titles to land by a great variety of means. In very many cases the results have been devastating. Many indigenous peoples discovered that the recognition of indigenous ownership rights to land was little more than a license to parcel up, commoditise and sell their lands and resources. The result was the fragmentation of indigenous territories and societies and the wholesale alienation of land to outsiders. Outside forces were primarily responsible for this catastrophe but internal divisions within indigenous societies were readily exploited in this dismemberment of indigenous commons systems. Indigenous individuals' short-sightedness, cash interests and personal gain have all played a part in the break up of indigenous territories.

Many indigenous peoples concluded that indigenous and western concepts of land ownership were irreconcilable. A common statement among indigenous people during the 1960s and early 1970s was 'we do not own the land, the land owns us'. However, in the ensuing years there was a more pragmatic acceptance that some kind of legal validation of indigenous land rights was necessary to secure indigenous societies against the force of the market. A conscious strategy was adopted to secure indigenous rights *within* the arena of the State.

The addition of three concepts were crucial to indigenous people in defining their relationship to land in western legal terms. The first was 'collective' or 'communal' ownership as opposed to the individual titles favoured in western economies. The second was the assertion of rights to 'territories' and not 'land', by which indigenous people assert their right to the whole ecosystem in which they live, including surface and sub-surface resources, and not just the 'dirt' on which they dwell and plant crops. The third crucial concept was 'inalienability' by which indigenous people mean not just that the land cannot be taken over by outsiders but that *indigenous peoples cannot alienate themselves from their own territories*. With these crucial modifications to western notions of land ownership, indigenous people feel better able to defend themselves against the pressures of the market in which they are increasingly involved. However, even when these legal safeguards are recognised and respected, indigenous peoples find that they are not automatically proof against exploitation. 'Inalienability' can be got around by a number of means. Imprecisions in the law about which collectivity owns land and resources, and may thus negotiate contracts to allow the commercialisation of resources by outsiders, may favour the interests of a few at the expense of the wider group. For example, 'lease back' arrangements allow indigenous societies to lease their lands to the State and then have it leased back to an indigenous elite intent on commercialising resources at the expense of the wider group.

There are two main lessons in all this. The first is that the overhasty application of western legal concepts of ownership to indigenous commons systems can do more harm than good, hastening rather than slowing down the process of commoditisation of resources and the break up of indigenous society. The second is that resistance to outside pressures depends ultimately on the unity and coherence of the people themselves and is not something that can be provided through outside laws. Where indigenous societies are internally divided, through outside pressures and personal interest, 'ownership' titles may hasten the process of alienation.

Strategies for securing indigenous control

Indigenous people have made a number of statements demanding control of their knowledge and biotechnologies. For example, the 'Charter of the Indigenous-Tribal Peoples of the Tropical Forests', promulgated in Malaysia in 1992, argues that:

'Since we highly value our traditional technologies and believe that our biotechnologies can make important contributions to humanity, including 'developed' countries, we demand guaranteed rights to our intellectual property, and control over the development and manipulation of this knowledge' (Article 44).

Likewise the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, articulated in 1993, also demands the recognition of indigenous peoples as the *exclusive* owners of their traditional knowledge emphasising the *collective* nature of such ownership.

International law is in the process of responding to such demands. The 1993 draft of the proposed UN Declaration on the Rights of Indigenous Peoples states:

'Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

'They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs and visual and performing arts.'

However in South and South East Asia many indigenous people have been much more cautious about asserting their demands in such terms. Echoing indigenous anxieties about the impositions of inappropriate forms of land ownership and as a result of their long experience with the loss of control of their seedstocks to multinational companies spurred by the Green Revolution, they have expressed concern that the assertion of legal ownership of traditional knowledge may hasten rather than delay the commoditisation of their knowledge and natural resources. Such groups 'view the whole notion of intellectual property rights as a sophisticated form of theft of their resources and knowledge'.

Divergent though these two strategies appear, they both aim to protect indigenous peoples from exploitation by commercial interests.

Some kind of legal protection of indigenous traditional knowledge seems warranted, but until the equivalent concepts to 'collective ownership', 'territory' and 'inalienability' have been devised, the fear is that overhasty prescriptions may backfire on indigenous peoples in the same way that individual land titling has. By ascribing rights to inappropriate or ill-defined indigenous individuals or institutions, laws defining indigenous intellectual property rights could facilitate rather than prevent the commoditisation of indigenous knowledge in ways at odds with the broad interests of the peoples concerned.

Legal options

Legal measures, beyond those of standard western property rights regimes, that exist or have been suggested for securing indigenous control of their traditional knowledge and related biotechnologies and resources include the following:

Direct control of natural resources:
- territorial rights, land rights (ILO/WGIP)
- exclusive rights to resources (ILO/WGIP)

Political control over access and use:
- rights of control, management, self-government (ILO/WGIP)
- 'discovery rights' (Lesser)

Existing controls over indigenous knowledge:
- confidentiality, secrecy

New rights over indigenous knowledge:
- Model Provisions on Folklore (UNESCO/WIPO)
- recognised and/or registered community ownership (TWN)

Suggested options to limit power of commercial enterprises:
- prohibition on the patenting of life forms (RAFI/TWN)
- assertion of Farmer's Rights (FAO)
- expansion of concept of Farmers' Rights (GRAIN)
- codes of conduct for bioprospectors (WWF, WRI, Mataatua)
- licensing of prospectors (TWN)
- model agreements between prospectors and peoples (Posey)
- license of right to prohibit monopolisation (Menon)

Outstanding dilemmas:

Some of the dilemmas confronting indigenous peoples in the assertion of their rights to maintain control over their traditional knowledge inhere in the nature of knowledge itself.

The first is that the knowledge is, commonly, very widely shared. Traditional systems of sharing knowledge are often *not exclusive* with the result that knowledge may be common to numerous polities. In effect, therefore, the assertion of exclusive communal ownership and rights to control may not effectively limit access to either the knowledge or the resources to which it pertains as both may be shared between communities, peoples, nations and even continents. Divide and rule is an easy option to commercial operators in these circumstances, especially when dealing with relatively uncentralised indigenous polities.

Even where it may be possible to identify the ethnic group or community which can assert exclusive ownership, the definition of which indigenous institution should rightfully be accorded the legal personality to hold and negotiate use of the knowledgeis very hard. The painful lessons of indigenous peoples in retaining control of their lands and resources must be learned from.

It may be argued that in such circumstances indigenous people are better defended by the existing uncertainty than by the creation of new ambiguous legal mechanisms which would allow outsiders to sign contracts with false indigenous representatives.

In my view, none of the proposals that have so far been put forward by non-indigenous and indigenous people alike offer convincing means of overcoming these problems and, even taken together, the proposed solutions don't add up to much extra protection. Some of the proposals may even create serious new problems.

In particular I am uncomfortable with proposals to compensate indigenous peoples for the use of their knowledge through trustee arrangements not under full indigenous control. This is my main concern with the notion of Farmers' Rights which, as presently conceived, would in practice rely on the FAO to provide compensation packages to 'farmers' for the use of their knowledge by commercial enterprises or third party nations. The likelihood of such compensation equitably reaching the peoples concerned in the appropriate forms seems to me vanishingly small, given the institutional realities of intergovernmental bodies in general and the FAO's in particular. Likewise, given the history of relations between States and indigenous peoples, trustee arrangements which rely on the good offices of State institutions to mediate transactions and pass back compensation should be discounted.

Vesting rights of ownership and control with indigenous peoples and communities is obviously more in line with what most indigenous peoples themselves are demanding. As noted above, my main concern is that the provision of inappropriate rights to negotiate contracts or sell knowledge may accelerate the process of commoditisation. It seems that there is a trade off here which needs to be made clear. Proposals which have been made to introduce *sui generis* legislation to provide means for the recognition and registration of community rights to traditional knowledge, have the principal intention of protecting indigenous knowledge and biotechnology from being monopolised by commercial interests. A cost may be that they facilitate the commoditisation of indigenous knowledge albeit in a less exploitative manner. The social implications could nevertheless be serious and need to be confronted.

One of the problems highlighted by indigenous peoples is the risk of uniform legal solutions being imposed on what are very diverse local social and political realities. The needs of peasant communities struggling to retain control of their seedstock may differ in important ways from indigenous communities trying to prevent the commercialisation of sacred herblore, and will differ again from other indigenous communities trying to assert some kind of copyright over traditional designs produced for the tourist market. Uniform national legislation and, worse still, intergovernmentally imposed international laws (for example under GATT) may thus both pose serious problems to indigenous communities.

It is of course the nature of knowledge, and indeed the whole purpose of culture, that it can be shared and transmitted between individuals and generations. It is thus replicable in a way that land and territory are not. A legal equivalent to 'inalienability' applied to knowledge may thus be a contradiction in terms. If this is so the break up and commoditisation of indigenous knowledge may be an unavoidable consequence of indigenous peoples entering the global market and legal defenses may be able to achieve little more than mitigate some of the worst abuses. It seems obvious that no single legal option will deal with the huge range of problems thrown up by this meeting of worlds. The aim should be to ensure that proposed solutions are mutually reinforcingand not contradictory.

Marcus Colchester is Director of the Forest Peoples Programme, World Rainforest Movement. ❑

THE PATENTING OF HUMAN GENETIC MATERIAL

by RURAL ADVANCEMENT FOUNDATION INTERNATIONAL - RAFI

History of Human Genetic Patenting

Since 1980 it can no longer be said that something is not patentable just because it is living...biotechnology has advanced so rapidly in recent years that there is now virtually no life form which does not have the potential as the subject of a patent application.
Sally I. Hirst[1]

The short history of biotechnology patents for human genetic material began just 14 years ago when the US Supreme Court made its landmark decision in Diamond v. Chakrabarty that US patent law applies to new life forms created by genetic engineering. The court's 1980 ruling established that the question of whether or not an invention embraces living matter is irrelevant to the issue of patentabilty, as long as the invention is the result of human intervention[2]. Diamond v. Chakrabarty opened the door for the patenting of human biological materials, and set a clear precedent for the patenting of life worldwide[3].

Commercial interest in human biological materials was propelled further in 1980 when the US Congress amended its patent laws to encourage patenting and licensing of inventions resulting from government-sponsored research. The result was dramatic. From 1980 through 1984, patent applications by publicly-funded universities and hospitals for inventions containing human biological material increased more than 300 per cent[4].

Aren't Human Biological Materials and other Living Organisms Considered 'Products of Nature'?

Traditionally, industrial patent regimes do not permit the patenting of naturally-occurring materials. In addition to meeting basic criteria for patenting: novelty, utility, non obviousness, there is a well-established doctrine in patent law that 'products of nature' are not patentable. In reference to biotechnology products and processes, however, the US judicial system has interpreted this doctrine in such a way that promotes biopatenting and exclusive ownership of genes, plants, animals and human genetic material. Bioethicist Ned Hettinger explains:

The product of nature doctrine has been rendered vacuous by allowing that the isolation, purification, or alteration of an entity or substance from its natural state turns it into something not 'found in nature.' Thus genes are patentable when they are isolated from their 'impure form' (mixed in with other DNA in an organism's cells). By placing foreign genes into organisms, these organisms also become 'substantially altered' and hence patentable 'works of man'[5].

Biotechnicians who newly alter, isolate, purify, modify, assist and manipulate naturally occurring microorganisms are thus eligible to apply for biopatents under US and European patent laws.

What are Human Biological Materials?

Human biological material is a very broad term that covers replenishing substances from the human body (blood, skin, bone marrow, hair, urine, perspiration, semen, etc.)as well as non replenishing parts such as organs (heart, kidney, etc.)

The human biological materials that are most frequently used in biotechnology are tissues and cells[6]. It is important to understand the distinction that is made between 'un-developed' human biological materials and the biological 'inventions' or commercial products developed from them. So-called 'un-developed' biological materials (human tissues and cells) may be considered biological 'inventions' and hence patentable subject matter when they are used to produce cell lines, hybridomas and cloned genes. The following are basic definitions for three of the most common 'inventions' based on human genetic material:

**Human Cell Line:* A sample of cells removed from the human body that are capable of sustaining continuous, long-term growth in cultures. Cell lines are said to be 'immortal' because they can continue to live indefinitely under artificial conditions (with strict control of temperature, nutrient requirements, and sterile conditions). Human cell lines provide an inexhaustible supply of DNA (the complete genetic code) of the individual from whom they are taken.

**Cloned Genes:* Using genetic engineering, scientists can isolate a human gene or fragment of human DNA and make many copies of it by inserting it into cells (which can be from a non-human species) and letting it multiply. Cloned material can be used to examine how a biological process is regulated, identify and isolate scarce compounds, or produce commercial quantities of important substances. Many patents are being granted for DNA sequence coding for the production of human proteins for biomedicine. Examples of genetically engineered products created through gene cloning are: human growth hormone, human insulin and human alpha interferon.

Hybridomas: A hybrid cell that is capable of multiplying continuously in culture and supplying a specific type of antibody. The hybridoma cell results from the fusion of a particular type of immortal tumour cell line (a myeloma) with an antibody-producing white blood cell (B lymphocyte). The antibodies secreted by hybridomas, known as monoclonal antibodies, have revolutionized the way that human illnesses are diagnosed and treated.

Since the early 1980s, biotechnology and pharmaceutical corporations have applied for patents on thousands of 'inventions' based on human-derived materials. In fact, the patenting of human biological materials is considered so routine that one patent analyst observes it 'is now commonplace and raises no moral issue'[7].

Patent Depositories for Biological Materials

Patent applications in biotechnology usually involve the deposit of biological material in 'culture collections'--institutions designed to preserve living biological materials (microorganisms, cell lines and special gene and cellular products) 'in perpetuity.' The patent laws of the US and most countries require an inventor to give a full disclosure of their invention to the Patent Office. In cases where novel microorganisms are involved, patent law usually requires the deposit of a sample with a recognized patent culture depository. Patent culture depositories are regulated internationally by the Budapest Treaty administered by the World Intellectual Property Organization in Geneva. Since 1981, 26 institutions in 15 states have been officially recognized as culture depositories for the purpose of patent procedure. These institutions contain the living materials (microorganisms, genes, seeds, animal embryos,human and animal cell lines, etc.) that are the basis for virtually all biopatents. Patent depositories contain biological samples collected worldwide.

But not surprisingly, the overwhelming majority of the institutions that preserve these genetic resources are located in industrialized countries of the North. It should be noted that all of the patent depositories listed below vary according to the type of microorganisms that they preserve, and the size of their collections. The United Kingdom, for instance, maintains 7 separate facilities to store food bacteria, yeast cultures, animal cultures, algae and protozoa, marine bacteria, etc. The world's largest patent culture depository is the American Type Culture Collection (ATCC) based in Rockville, Maryland (USA). Founded in 1925, the ATCC became the first approved international patent depository in 1981.

According to the ATCC, the patent office in every country (except China) recognizes deposits made in the ATCC to satisfy deposit requirements for patent purposes. As of December, 1991 the ATCC held 41 per cent (17,724 deposits) of all microorganisms on deposit worldwide for purposes of patent procedure[8].

According to ATCC officials, written authorization must first be obtained from the depositor of the European Patent Office. Once a patent is issued, the restrictions are lifted.

Patenting Human Life: Who Draws the Line?

The 13th Amendment of the US Constitution forbids any grant of property rights in a human being. That much is clear. But science and technology are moving far faster than legal systems, blurring traditional boundaries and definitions. Bioengineers have inserted foreign genes, including human genes, into the chromosomes of many animals, including pigs, sheep, goats and chickens. In the future, genetic engineering will enable scientists to intermingle the genetic material of humans and animals to produce human-animal hybrids. "It may be possible," writes one commentator, "to patent and to enslave human-animal hybrids who think and feel like humans but who lack constitutional protection under the 13th Amendment"[9]. Given that animals containing human genes are already patentable, will it be possible to patent human-animal hybrids? Some are calling on US courts to begin developing a legal theory of 'constitutional personhood' that can be applied to genetically engineered species, and afford them protection under the US Constitution.

On October 24, 1992, the New York Times reported that Dr. Robert Stillman of George Washington University had successfully cloned human embryos. The article pointed out that Stillman's work was "not a technical breakthrough", simply the application of widely known animal cloning techniques to human embryos. Livestock embryos are, in fact, routinely cloned by bioengineers. In 1988, the first frozen animal embryo was accepted for patent purposes at the American Type Culture Collection. What's next? Dr. George Annas of Boston University asks: "Since cloned human embryos are not persons protected by the constitution and theoretically at least could be as 'immortal' as clones cell lines, could a "particularly 'novel' and 'useful' human embryo be patented, cloned and sold?"[10]

Who Owns the Human Genome?

In 1992, National Institutes of Health (USA) researcher, Craig Venter, ignited worldwide protest when he filed for US patents on thousands of gene sequences from the human brain. Venter, a US government employee, was involved in the international collaborative effort to decode the entire collection of human genes called the Human Genome Organization(11). Nobel laureate Dr. James Watson described NIH's decisionto apply for patents on human gene sequences as 'sheer lunacy.' Other scientists expressed fears that the rush to patent and commercialize pieces of the genome project would hinder greater advances that should be the "prized possession of all humanity"[12].

The uproar over the NIH patent applications did not focus entirely on the ethical impropriety of patenting human genes. After all, hundreds of human genes

were already 'owned' by private companies, universities and governments. Previous patents, however, were usually granted in conjunction with a specific process and /or product. By contrast, Venter and the NIH were attempting to patent human gene fragments without knowing what they were, or what role they played in the human body. Some scientists also argued that the use of automated gene sequencers to decode anonymous human genes represented practically nothing in the way of innovation. One biotechnology industry representative observed: "Venter has sequenced them (human genes) by rote in a process that is easier to do than operate a sewing machine"[13].

The US Patent Office ultimately denied the NIH claims on human gene sequences because they failed to meet standard patent criteria--they were not useful, not new and were too obvious, in that they could be derived from existing data banks[14]. The issue, however, sparked debate on the patenting of human genes and prompted some governments to take action against exclusive ownership of human genetic materials.

In December, 1993 French scientists working on the Human Genome Project unveiled a first-generation physical map that covers about 90 per cent of the human genome. In stark contrast to the US government's approach, the French researchers stressed repeatedly that they will make all of their information freely available. Daniel Cohen, Director of the Centre d'Etude du Polymorphisme Humaine (CEPH, Paris) also announced that the Centre is establishing the Africa Foundation to ensure that results of the genome technology will be available to research centres in Africa. "Our goal has been to deliver this map as quickly as possible, even if it needs refinement, so that it can begin to benefit geneticists and ultimately humanity," stated Dr. Cohen[15].

The French government is also considering a bill that would establish a strong precedent in regulating human gene therapies and ownership of the human body. The bill prohibits patenting of human genomes, human genes or partial DNA sequences. Intellectual property would be available only when a gene sequence is used in an industrial process[16].

In November, 1993 the UK's Medical Research Council announced that it will no longer apply for patents on segments of genes discovered as part of the international human genome project[17].

It should be noted, however, that private efforts to commercialize research stemming from the Human Genome Project are advancing at a frantic pace in the United States. Dr. Craig Venter, formerly of NIH, is one of many scientists who have left federally-funded positions to start private companies that are hoping to profit from technologies related to the Human Genome Project. Venter, now a multi-millionaire, owns 766,612 shares of Human Genome Sciences, Inc. worth 13.4 million dollars. The company (which has yet to market a single product)is only one of a dozen human genome companies that have been set up with venture-capital funding in the US in the past few years[18].

From Whom do Biotechnology Companies and Medical Researchers Obtain Human Biological Materials for Research?

According to the US Office of Technology Assessment (OTA), there are three major sources of human tissues and cells: patients, healthy research subjects (volunteers or paid) and cadavers. Tens of thousand of samples of human tissue are routinely used in research, but information on the amount and type of materials used, or their source, is not available[19]. Biotechnology companies often cite information about the source or use of human biological materials as confidential business information. In its 1987 report on the ownership of human tissues and cells, the OTA found that the vast majority of human biological materials are relatively common and easy to obtain, concluding that "it is difficult to ascertain the contributions to any one individual's sample to a final commercial product"[20]. Nevertheless, there are many important and notable exceptions.

In some cases, for example, unique individuals or populations can naturally produce greater than normal amounts of a valuable substance, or some might overproduce it because of an illness. Novel human tissue or cells can become valuable research tools and, in some cases, can be developed to produce valuable commercial products. The following are just two examples:

Selling Human Cells for Profit: The Case of John Moore.

In 1976 surgeons removed cancerous spleen cells from a leukaemia patient, John Moore of California (USA) and later developed a cell line (designated 'Mo') from the cell sample. In 1979, Moore's doctors applied for a patent on the Mo cell line, which was found to produce high levels of useful (and profitable) proteins. (The patent was granted in 1984.) In 1984, John Moore filed a lawsuit claiming that his blood cells were misappropriated and that he was entitled to share in the profits derived from commercial uses of these cells.

The potential value of the pharmaceuticals derived from the Mo cell line could reach several billion dollars - but the California Supreme Court ruled in 1990 that John Moore has rights to none of it[21]. A clear victory for the biotechnology industry, the court ruled that although John Moore had the right to sue his doctors for failing to inform him of the potential commercial value of his cell line, he did not have rights of ownership over his cells after they had been removed from his body[22].

The Al-Milano Gene

In the 1970s, Dr. Cesare Sirtori of Italy's University of Milan discovered that some residents of a small Italian village were carriers of a mutant gene that makes them produce low levels of high density lipoprotein (HDL), and thus protects them from heart disease. The discovery led to the isolation, cloning and patenting of the mutant gene with the promise of developing a genetically engineered product to treat heart disease. Dr. Sirtori now works for Kabi Pharmacia of Sweden, which holds US and European patents on the AI-Milano gene and plans to commercialize it in Europe.

Patenting the Human Cell Lines of Indigenous Peoples

In May 1993, RAFI's Communique 'Patents, Indigenous People and Human Genetic Diversity' sounded an alarm, based on trends in life patenting, about potential abuses and commercialization of human genetic material. It described the Human Genome Diversity Project's (HGDP) proposal to collect and 'immortalize' human tissue from 722 human populations, including many indigenous peoples from around the world. RAFI immediately notified the World Council of Indigenous Peoples (WCIP), the First International Conference on the Intellectual and Cultural Property Rights of Indigenous Peoples and other indigenous organizations about these concerns.

In June 1993, the WCIP and RAFI raised questions about the HGDP at theUnited Nations Human Rights Conference in Vienna, and called for its halt until concerns about human patenting and other ethical considerations had been satisfactorily addressed by indigenous people.

As if to confirm our worst fears, RAFI discovered in August, while researching data from the American Type Culture Collection (ATCC), that the US Government had applied for US and world patents on the cell line of a 26-year old Guaymi Indian woman from Panama (WO 9208784).

We contacted the Guaymi General Congress in Panama City to inform them of these claims and met with them in September. In letters to relevant authorities, the Guaymi demanded that the US government withdraw its patent claims and that the ATCC return the woman's cell line to Panama. RAFI worked with the Guaymi General Congress, the WCIP, the World Council of Churches and a growing list of organizations worldwide, to oppose the Guaymi patent claim and all human patenting.

In early October, RAFI accompanied the Guaymi president and a colleague to Geneva, to protest the US Guaymi patent claim at the inter-governmental meeting on the Biodiversity Convention, and at the GATT Secretariat. Press statements were made in North America and Europe. The President of the Guaymi General Congress, Isidro Acosta, and Jean Christie of RAFI met with the GATT TRIPS Secretariat and determined that human genetic material is not excluded from the GATT agreement.

Later in October, the European Greens introduced an emergency resolution into the European Parliament. It opposed the world and US patent claims, requested data on human patenting in Europe, called for a common European position against human patenting, and urged a halt to the Human Genome Diversity Project. Under mounting pressure, the US government withdrew its claim in early November.

> *I never imagined people would patent plants and animals. It's fundamentally immoral, contrary to the Guaymi view of nature, and our place in it. To patent human material...to take human DNA and patent its products... that violates the integrity of life itself, and our deepest sense morality*[23]Isidro Acosta, President, Guaymi General Congress.

But the case is not closed, and the issue is far from being resolved. The Guaymi General Congress continues to call for the repatriation of the cell line, since there is no guarantee that it will not be used and subsequently patented by others, if it remains in the ATCC.

In December, the World Council of Indigenous Peoples invited Henry Greely, Law Professor at Stanford University, member of the North American Human Genome Diversity committee, and chair of its ethics sub-committee, to discuss the HGDP at their Annual Assembly in Guatemala. After four hours of heated discussion, the WCIP unanimously adopted a resolution to "categorically reject and condemn the HGDP as it applies to our rights, lives, and dignity", and to oppose, monitor, and publicize its progress.

In early January, Miges Baumann of the European NGO, SWISSAID, unearthed two more patent claims by the US government on the human cell lines of indigenous peoples. Both applications are world patent claims pending in Europe.

The first patent application (Publication Number WO93/03759), filed in the name of the US Department of Health and Human Services and the National Institutes of Health, stakes claim to the human T-cell line of a Papua New Guinean. According to the patent application, blood samples were taken from 24 people who belong to the Hagahai people of Madang Province, New Guinea, in May, 1989. The cell line, the first of its kind from an individual from Papua New Guinea, is potentially useful in treating ordiagnosing individuals infected with an HTLV-1 variant virus[24]. Human T-lymphotropic virus type I(HTLV-I) is associated with adult leukaemia and with a chronic degenerative neurologic disease. The novel cell line is of potential value in understanding the enhancement or suppression of an immune response to this virus.

The second patent claim (W -9215325-A), filed in the name of the US Department of Commerce, is for the human T-cell line of a 40-year old woman from Marovo Lagoon in Western Province and a 58-year old man from Guadacanal Province, both of the Solomon Islands. Blood samples were taken in March and August 1990. Similar to the patent claim mentioned above, the cell line may be useful in producing vaccines and/or diagnosing human T-lymphotropic virus type I.

The human cell lines derived from blood samples taken from Papua New Guineans and Solomon Islanders are now on deposit at the American Type Culture Collection in Washington, DC. As noted above, access to these materials is generally restricted while patent claims are pending, even to the governments of Papua New Guinea and the Solomon Islands, without special authorization from the depositor or the European Patent Office.

As with the Guaymi patent claim, RAFI has begun to make information available about these patent claims to contacts in both Papua New Guinea and the Solomon Islands, with the goal of beginning a process to denounce, and hopefully stop, the patent claims. In late January, RAFI met with embassy officials from both Papua New Guinea and the Solomon Islands in New York. Each government is considering taking action in defense of their national sovereignty.

> *Over the last 200 years, non-Aboriginal people have taken our language, culture, health--even our children. Now they want to take the genetic material which makes us Aboriginal people as well.* John Liddle, Director of the Central Australian AboriginalCongress[25].

RAFI continues to call for a complete halt to the Human Genome Diversity

Project and similar efforts being undertaken by independent scientists, institutions, and/or governments to collect DNA samples from indigenous peoples. All such efforts must be carried out with the full approval and participation of indigenous peoples' organizations, under the auspices of the United Nations.

Do US Patent Applications on the Cell Lines of Indigenous Peoples Violate US Laws Governing 'Informed Consent?'

As a means of protecting human subjects, the US government requires that US government researchers (or others who receive federal funding) obtain 'informed consent' from human subjects prior to and during research (protection of Human Subjects, Title 45, Code of Federal Regulations, Part 46). Blood samples, for example, may not be taken by government researchers without first obtaining the 'legally effective informed consent of the subject or the subject's legally authorized representative'.

Informed consent requires, among other things, that the investigator provides an explanation of the purposes of the research, a description of reasonable risks involved, a disclosure of appropriate alternative procedures or treatment, etc. The information must be given in a language understandable to the subject or representative.

Informed consent regulations do not contain specific language requiring that the investigator disclose his/her intention to apply for patents on products/processes derived from human genetic material. Nor is there language requiring disclosure of the prospect of commercial gain resulting from the research. However, informed consent guidelines do require researchers to provide "a description of any benefits to the subject or to others which may reasonably be expected from the research," (CFR-46.116a3) and, "significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation" (CFR46.116b5).

A strong argument can be made that US government researchers are in violation of federal informed consent regulations if they do not disclose to research subjects: 1) their intention to patent products and/or processes derived from human genetic material; 2) the prospect for commercial gain derived from the same.

As noted above in the case of John Moore, the California Supreme Court upheld the right of an American citizen to sue on this basis[26].

Conclusion

In the industrialized world new biotechnologies are being developed at a rate far faster than responsible social policies can be devised to guide them, or legal systems can evolve to adequately address them. In the 1980s, the US and other industrialized nations took giant steps to accommodate the biotechnology industry's desire to patent life, with public debate lagging far behind.

In the mid-1990s the biotechnology industry is lobbying vigorously to see minimum standards of intellectual property enforced worldwide. Will the US precedent for commodification of human biological materials be imposed on developing nations? Both national governments and intergovernmental organizations must now address the issue of life patenting on the basis of ethics and equity, with the full and informed participation of civil society.

The General Agreement on Tariffs and Trade (GATT), and the Convention on Biological Diversity came to a head in the closing weeks of 1993. These multilateral agreements offer two important arenas for action and debate on the patenting of human genetic materials.

The GATT trade related intellectual property agreement (TRIPS) requires that signatory states adopt intellectual property laws covering both microbial materials and plant varieties. Human genetic material is not specifically excluded from the deal.

Meanwhile, the Biodiversity Convention obliges signatory states to recognize the ownership of genetic materials by countries or companies. Germplasm collected in one country prior to the Convention coming into force must be regarded as the property of the country that now stores the material. Thus, the human cell lines of people in Panama, Papua New Guinea and the Solomon Islands stored in the United States and under patent claim by the US government are their legal property and according to corporate interpretations of the Convention, the people and countries involved will have to pay for access to their donated human materials and any medical products derived from them.

Specific actions and divisions include:

*GATT's 118 participating states (the majority from the developing world) must determine whether or not human genetic materials are included in its definition of microbial materials.

*Similarly, contracting parties to the Biodiversity Convention must come to a clear division on the role of intellectual property with respect to biological materials and especially whether or not human genetic materials are part of the Convention.

*The Biodiversity Convention should respond to the request of indigenous peoples for protection from patent claims.

*The US Government should drop all claims to the human cell lines of foreign nationals and repatriate the materials to the indigenous communities or national governments involved.

*International protocols should be developed by the appropriate United Nations bodies for protecting and broadening the rights of human subjects from commercial exploitation and patent claims. The International Bioethics Committee of the UN Education, Scientific and Cultural Organization (UNESCO) is one such body.

A Note on Recent US Action: In October 1993 the Board of the Council for Responsible Genetics (CRG) in Cambridge, Massachusetts adopted a sweeping statement opposing patenting of the human genome. The policy states:

The Human Genome is the common heritage of the human species. No individual, corporation, institution or national entity shall have patent rights to the genome and/or its parts thereof, which are properly outside the realm of patent laws. We therefore call upon the Congress of the United States to pass legislation amending the patent laws to specifically exclude from patenting living organisms and their organs and cells.

Guaymi Indian worker at a banana packing plant in Changuinola-Panama, April 1994. Today the Guaymi have become the focus of interest from geneticists worldwide and the subject of a notorious case, when an attempt was made to patent the cell line of a Guaymi woman without her knowledge or permission. Photo: Luke Holland.

Notes

1) Hirst, Sally I.,»Biopatents: A Sense of Order,» en *Trends in Biotechnology,* August 1992, (Vol.10).
2) U.S. Congress, Office of Technology Assessment, *New Developments in Biotechnology: Ownership of Human Tissues and Cells- Special Report.* OTA-Ba-337 (Washington D.C.: US Govt. Printing Office, March 1987, p. 49).
3) In Diamond v. Chakrabarty the Supreme Court stated that U.S. patent law allow patenting of "anything under the sun that is made by man".
4) U.S. Congress, OTA, March, 1987, p. 50.
5) Hettinger, Ned, *Patenting Life: Biotechnology, Intellectual Property and Environmental Ethics,* July 14, 1993, p. 17-18., unpublished paper. Hettinger is a professor of philosophy at College of Charleston, Charleston, SC.
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8) Information provided by Bobbie A. Brandon, Head, Patent Depository, ATC, personal communication, 31 January 1994.
9) Michael D. Rivard, "A Theory of Constitutional Personhood for Transgenic Humanoid Species", UCLA Law Review, Vol. 39, No. 5, June, 1992.
10) Annas, George J., "Of Monkeys, Man and Oysters" *Hastings Centre Report 17* (August, 1987), p. 22.
11)Launched in 1988, the goal of the international Human Genome Organization is to locate and define the chemical sequences of all 100,000+ human genes. Gene mapping determines the relative location of different genes on chromosomes.
12) "Declaration on Patenting of Human DNA Sequences", issued by scientists attending an international Human Genome Conference in Brazil, May, 1992. The declaration was quoted in "The Great Gene Gold Rush", by Robin Herman, *Washington Post Magazine,* June 16, 1992.
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17) *New Scientist*, 6 November, 1993.
18) Fisher, Lawrence M., "Profits and Ethics Collide in a Study of Genetic Coding", *"New York Times,* January 30 1994, p.16.
19) U.S. Congress, 1987, p.52.
20) Ibid.
21) Hettinger, Ned, p.2.
22) Annas, George J., "Outrageous Fortune: Selling Other People's Cells"," *Hastings Centre Report,* November/December, 1990, p.36.
23) Isidro Acosta, Translated from Spanish. Quoted in RAFI Press Release, "Indigenous People Protest US Secretary of Commerce Patent Claim on Guaymi Indian Cell Line," October 26 1993.
24) Information on these patent applications comes from Miges Baumann, SWISSAID, a development NGO based in Bern. January 14, 1994, received via e-mail.
25) Mr Liddle was quoted in *The Australian*, "Tickner warns over Aboriginal Gene Sampling", by David Nason, January 25, 1994, 2.3.
26) Moore v. Regents of the *University of California.* For discussion see, Annas, George J., "Outrageous Fortune: Selling Others People's Cells" *Hastings Centre Report,* November/December, 1990, pp.36-39. ❑

INDIGENOUS PEOPLES ASSERT THEIR INTELLECTUAL INTEGRITY

In June 1993, the First International Conference on the Intellectual and Cultural Property Rights of Indigenous Peoples was organized and hosted by the nine tribes of the Mataatua region in Aotearoa New Zealand, headed by Ngati Awa. It was certainly not the first time that indigenous peoples had discussed intellectual property, but it gave momentum to discussions that were occurring in many places, and brought the weight of many discussions together. Its concluding statement, the Mataatua Declaration, has since received widespread support from the international indigenous community, with signatories from indigenous peoples from over 60 countries.

Later in 1993, RAFI completed a study for the United Nations Development Programme (UNDP), on how indigenous peoples might be affected by new global debates surrounding biodiversity and intellectual property rights. In August 1994, *Conserving Indigenous Knowledge: Integrating Two Systems of Innovation* was published by the UNDP in English and Spanish. The report documents two related trends: one toward patenting of living organisms; and the other toward 'piracy' from the South of biological resources and indigenous knowledge about them- for commercial uses in the North. RAFI asserts that intellectual property rights- then being negotiated by GATT, and newly enshrined in the Biodiversity Convention- are a new mechanism for the North to control biological resources and related indigenous knowledge from the South. RAFI's report suggested some alternatives and strategies for the consideration of indigenous peoples, and proposed that the UNDP fund several gatherings where indigenous peoples from different continents could consider these issues, and develop strategies to confront them.

Parallel to these events, RAFI and Swiss Aid were unearthing information about patent claims on the cell lines of indigenous peoples (see RAFI Communique's 'Patents, Indigenous Peoples and Human Genetic Diversity,' May, 1993 and 'Patenting of Human Genetic Material,' Jan./Feb., 1994). Concern and protest was mounting around the world about life patenting in general, and the patenting of human genetic material in particular. Indigenous people were among the most vocal critics of human patenting, seeing themselves as the 'targets' of research and the unwitting subjects of corporate patent claims.

The UNDP immediately took up RAFI's recommendation for regional workshops. It proposed the idea to indigenous peoples' organizations in Latin America, Asia and the Pacific, and ultimately agreed to fund three events- to be planned and run by host organizations in each region. RAFI was invited as 'international consultant' to each of these meetings, where our work was complimented by that of regional consultants who reviewed the regional context, relevant experiences and legislation. With our Southern counterparts, we tried to provide enough information for delegates to discuss the issues and facilitate the development of responses.

The first workshop was held in Santa Cruz de la Sierra in Bolivia in late September 1994. Organized by COICA, the Coordinating Body for Indigenous Peoples' Organizations of the Amazon Basin, it brought together 35 indigenous leaders from 12 countries in Central and South America.

The second workshop was held in Tambunan, Sabah, East Malaysia in February 1995 organized by Philippines based SEARICE, and PACOS (Partners of Community Organizations of Sabah). It too had about 35 participants- indigenous representatives from 12 Asian countries.

The final meeting in the Pacific was coordinated by the Pacific Concerns Resource Centre in Suva, Fiji. It was held in April 1995, with 25 indigenous participants from 14 Pacific countries.

The participants came from dramatically varied contexts, and though there were marked differences between the three gatherings, all were remarkable in their success, and consistent in their conclusions. At all three meetings, participants stressed the connection between biodiversity, indigenous knowledge and intellectual property, on the one hand, with cultural survival, land and self-determination on the other.

"I am really shocked by this information we are hearing [about patenting of living things]. It is almost unbelievable. But I have a comment. We must not focus only on 'biodiversity' and knowledge, because we are talking about much more than that. We are really talking about our whole world view, our cultures, our lands, our spirituality as indigenous peoples. These are all linked. We must look at the whole picture". Stella Tamang, Federation of Nationalities, Nepal, at Asian Consultation/ Workshop.

Each concluded that the intellectual property systems of the industrialized world were alien to indigenous peoples. While all three groups made short-term proposals to defend themselves from exploitation, all recognized the need for longer term strategies which would take as their starting point indigenous cultures, legal concepts and notions of knowledge and innovation.

"A system of protection and recognition of our resources and knowledge must be designed which conforms with our world view and contains formulas that, in the short and medium term, will prevent the appropriation of our resources by the countries of the North and others." (Excerpt for the Final Statement, Indigenous Peoples, Biodiversity and Intellectual Property, Santa Cruz de la Sierra, Bolivia, 30 September 1994.)

All three conferences expressed the need for policy measures to protect indigenous peoples from 'biopiracy', and all committed themselves and their organizations to a programme of education, research and action- including actions to make indigenous people heard at international discussions in the year ahead.

"Indigenous peoples are willing to share our knowledge with humanity, provided we determine when, where and how it is used. At present the international system does not recognize or respect our past, presentand potential contributions."
(Excerpt from the Final Statement, South Pacific Consultation on Indigenous Peoples Knowledge and Intellectual Property Rights, Suva, Fiji, April 1995.)

Participants at all three conferences declared their opposition to patenting of living organisms. Fortuitously, the Sabah meeting concluded on the eve of the European Parliament's (EP) vote on life patenting. Outraged by information that cell lines of people from Panama, Papua New Guinea and The Solomon Islands had been claimed by the US government in patent applications, the Asian conference sent a strong statement to members of the European Parliament, just hours before the vote in Brussels. In their statement, participants opposed patents on all living things, and made particular reference to patenting of human cell lines. At a critical moment, Asian indigenous people thus added their voice to many others from around the world. On March 1, the European Parliament voted against the bill, (see update below).

Indigenous Peoples Call for Life-forms Patent-Free Zone in the Pacific

In Fiji, participants went a step further. They resolved to take matters into their own hands, and to 'initiate the establishment of a Treaty declaring the Pacific region to be a life forms patent-free zone.' More specifically they agreed to:

- Include in the Treaty protocols govering bioprospecting, human genetic research, 'in-situ' conservation by indigenous peoples, 'ex-situ' collections and relevant international instruments.
- Issue a statement announcing the Treaty and seeling endorsement by the South Pacific Forum and other appropriate regional and international fora.
- Urge Pacific governments to sign and implement the Treaty.
- Implement an educational awareness strategy about the Treaty's objectives.

The Pacific Concerns Resource Centre is now in the process of drafting the Treaty, which they intend to complete by August of this year.

Similarly, the Fiji conference called for a moratorium on bioprospecting in the Pacific and urged indigenous peoples 'not to co-operate in bioprospecting activities until appropriate protection mechanisms are in place.'

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Indigenous Intellectual Property Rights and Development Cooperation: the Role of the Cooperation Agencies

BY MARIA NOGUEROL ALVAREZ
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We are currently witnessing a significant crisis of the Western, civilizatory developmentalist paradigm, which is proving incapable of curbing or remedying the three crucial problems of contemporary humanity: increasing poverty, the escalating anomy among the citizens of different nation states, and the ecological deterioration of the planet. The human race is, for the first time in history, being forced to face up to what appears to be a worldwide threat, where all sectors must take a stand.

Moreover, today we must find a way to accommodate nature and technology: a way to articulate these two logics in copiloting the great self-eco-organising system, the planet Gaia, to use the term coined by James Lovelock[1].

It is in this global context where the current problem and crisis of biodiversity, and the respect for and protection of indigenous intellectual and cultural property rights have become central issues.

To focus our argument, our point of departure must be that biodiversity, or the diversity of living organisms and the ecosystems which they belong to, which are continually interdependent, are immersed in a crisis as serious as the world crisis of cultural diversity.

Indigenous peoples who live in areas of rich biodiversity (which contain around 95 per cent of the world's cultural diversity) have proved that they are the best preservers and guardians of the environment and ecosystems, and of the biodiversity in which they live: they act as the custodians of their ancestral territories which they administrate according to their own cultural principles.

Indigenous peoples possess a great variety of strategies and cultural alternatives for adapting to their environment and to their own social structures. These enable them to develop their own diverse processes and models, as well as flexible production systems which allow them to live sustainably: this is clear, for example, from their long history of subsistence and adaptation to the jungle areas.

One very sensitive aspect of that diversity is indigenous cultural development and the practice of spirituality. Their spiritual experiences are closely linked to their survival strategies. As indicated by the Spanish-Catalan anthropologist, J.M. Fericgla[2], the indigenous shamans and charismatic leaders act as catalysts of symbols and myths through the so-called Altered State of Consciousness, or Holorenic States, and they organise the cosmology, using collective emotional empathy to periodically create and recreate cultural strategies for collective survival.

But it is precisely this rich biodiversity and cultural diversity which is behind situations which are threatening indigenous lives, territories and cultures.

According to the Biological Diversity Convention, biotechnology is defined as any technology which uses biological systems and live organisms or their derivatives for the creation or modification of products or processes for specific uses.

According to international free trade treaties, the products and processes obtained through biotechnology are protected by patent. On the other hand, biodiversity resources in their natural state, i.e. the natural species cultivated using traditional or feral systems, such as the indigenous peoples' community knowledge, are currently not included under patent systems or similar arrangements (UPON '91), and are considered «the common heritage of humanity». This does not apply to biotechnology, a resourcewhich does have specific owners and treatment under the Convention.

All this is clear proof of the West's intention to protect its leading resources (biotechnology), and to remove measures to protect biodiversity which they do not possess in order to remain in a dominant position in world trade. Thus, using intellectual property systems, they protect scientific innovation and pave the way for the pillaging of the jungle, and of indigenous people's genetic and cultural resources.

For the indigenous peoples, the lack of protection resulting from the extension of the patent system, the interest on the part of biotechnology companies in the potential of the biodiversity in their territories, and the freedom with which genetic resources are being treated (one only has to recall the attempt by some US, scientists to patent the genes of a Gaymí woman in Panama, which triggered a widespread protest at international level), are becoming threats which may one day have dire consequences if specific action is not taken.

Thus, despite the recognition which indigenous knowledge has been granted in the Agreement on Biological Diversity, it nonetheless remains outside the patent system and is being pillaged, sacked and robbed by all kinds of organisations which seek to use it for lucrative purposes. These organisations use the patent systems and other types of protection to which they have access to make huge profits (for instance, in the case of the products used by the pharmaceutical industry based on indigenous knowledge, which generate millions. The indigenous peoples have not even been acknowledged for their contribution to world health; indeed, they are looked down upon and scorned by their very «vampires»).

But the problem could get much worse in the near future, since the appropriation of biodiversity could affect indigenous territorial rights, which are the principal demand and condition for the continued existence of the communities. The more indigenous peoples lose control over their «commercial potential», the more it will be in governments' interest to maintain protected areas under their control and to reduce the issuing of territorial rights.

Thus, biodiversity is, today, a double-edged sword for the indigenous peoples: on the one hand, it holds the possibility of a worthy future for these peoples, based on their system of knowledge and potentialities, which is worth protecting in its entirety, but it will be impossible to patent fully according to Western notions. On the other hand, it is coveted by Western capital and is therefore liable to become a missile aimed at the indigenous communities in the form of biotechnology and patent protection systems.

In other words, biodiversity could be a way out for modern indigenous economies; but it could also give rise to serious problems in the future if its commercial revaluation leads to loss of control over their traditional way of life. In effect, without social control over their production and commercialisation, the indigenous peoples cannot and will not ever be able to enter the market on an equal footing. A people cannot live as a people if it does not control its own resources, future, and, above all, its own development.

However, today, the indigenous peoples are affirming their right to self-determination and various contemporary indigenous organisations have emerged, which, since the 1980s, have become fully consolidated over the past five years, and whose most difficult challenge at the moment is to establish national movements: a challenge which is currently coalescing around the struggle for the recovery of 'Cultural Control', in the words of G. Bonfil Batalla[3]

This increasingly powerful indigenous lobby, which is trying to modify the paternalist attitudes of the past, has been successful in some areas in the international fora which deal with indigenous affairs; for example, ILO Convention 169 and the draftDeclaration of the Rights of Indigenous Peoples being prepared by the UN, as well as the declaration of the International Year of Indigenous Peoples in 1993, and of the Decade of Indigenous Peoples in 1994.

At present, indigenous peoples are not passive receivers of conservation and preservation strategies, but political agents taking an active part in deciding their destiny with the right to control their own lives. They want respect for their territories and cultures and the right to determine and to build their own future development, i.e. indigenous self-determination, which is closely linked to the notion of sustainable development. Increasingly, self-determination is at the root of indigenous movements the world over. It implies the right of indigenous peoples to live their own lives as they wish and to develop action and strategies in keeping with their needs, controlling their own resources at all times.

This brings us to the concept of ethnodevelopment, which means that the indigenous peoples keep control over their lands, resources, social and cultural organisation, and are free to negotiate with industry and the state regarding the type of relationship they want to engage in with them, as Rodolfo Stavenhagen[4] has pointed out. This includes, thus, a pluralist notion in defining the process of self-management in the intercultural encounter.

In this way, the issue of intellectual property rights is based on the most fundamental principle of indigenous self-management, and they must be in keeping with the rest of the indigenous political platform, i.e., they must be conducive to an indigenous people's recovery of cultural control; they must also be compatible with a wide participatory spectrum which will establish a sui generis system, a far-reaching strategy to establish a framework of action for the indigenous communities.

What could the key features of this strategy be?

Let us look at possible measures from two fundamentally different perspectives: those of the indigenous organisations themselves and those which should correspond to the views of cooperation agencies working with indigenous issues.

First, the indigenous organisations need to design their own framework for action aimed at taking control of a strategy which would lead to clearly-defined objectives, given that, as Diego Iturralde[5] points out, these concerns have only recently been included in the platforms of the indigenous movements, at least in Latin America.

With regard to the national governments, these indigenous organisations should use their national constitutional rights and other existing legal norms to begin to legalise internal mechanisms for applying the Biodiversity Convention, ensuring high participation on the part of the indigenous organisations. This participation should be aimed at strengthening the indigenous position; and to ensure this, a plan for training, information and debate in the indigenous communities would have to be included, which would also cover government institutions and authorities, and other, non-governmental organisations and bodies. The plan would require the formation, in each country, of a body which would coordinate all related activities, with similar bodies in other countries and with the multilateral fora which discuss these matters.

Global politics must offer a solution to the problem of access to indigenous peoples' biological and genetic resources, ways of protecting their knowledge and resources, the limits to the intellectual property rights of Western companies over indigenous knowledge; and the creation of specific means to protect products based on indigenous knowledge.

A broad range of indigenous organisations are already defining their positions regarding this problem. The first substantial indication of this was the recent Mataatua Declaration, which was approved by important indigenous organisations; this event was convened by the New Zealand Maori Congress. COICA, (Confederation of Indigenous Organisations of the Amazon Basin), another important regional organisation, this time Spanish American, has prepared various manifestos putting forward demands and action proposals regarding the problem of indigenous peoples' intellectual and cultural property rights.

COICA's point of departure is to recognise that indigenous peoples are capable of administrating their own traditional knowledge, but are also willing to offer that knowledge to the rest of humanity, on condition that their fundamental rights to define and control their knowledge are protected by the international community. This will ensure that the first beneficiaries of this knowledge are the indigenous people themselves, participating at leadership level in any projects concerning intellectual and cultural property; as well as controlling any profits which result from them.

COICA considers it necessary to create political, legal and institutional instruments and mechanisms which would provide national and international guarantees to adequately and effectively protect intellectual and cultural property rights. In adopting these norms, it will also be necessary to set in motion a wide-ranging information and public consultation process with the indigenous peoples and other concerned social sectors.

Moreover, it is crucial to promote the participation of indigenous peoples in the revision of existing resource management technologies from the developed countries, changing their consumerist and predatory nature by incorporating the knowledge and practices of indigenous management from the various planetary ecosystems.

Among the other points on the COICA programme, the following are worth highlighting:

- Evaluation of indigenous experiences in the production, marketing and transformation of biotechnological resources.

- Evaluation of the results of research carried out by environmentalists, laboratories and companies; of proposals by UN bodies, academics and companies, on relations between indigenous organisations and laboratories, on the marketing of medicinal plants.
- A study of national and international legislation, and of the experiences of indigenous peoples in the world with a view to respecting their intellectual and cultural property rights.
- Indigenous training and participation in international organisations, such as UNDP, WIPO, UNESCO and GATT, on indigenous peoples' intellectual and cultural property rights; and indigenous experiences in defending these.
- Compliance with points 8j and 10c of the Biodiversity Convention.
- Information and education of International Public Opinion on indigenous intellectual and cultural property rights, based on various campaigns.

Regarding the suggestions of the cooperation agencies working with indigenous peoples, concrete strategies must also be devised to address the problem of indigenous peoples' intellectual and cultural property rights in the framework of the existing development methodology, within a structure of close collaboration with the indigenous organisations themselves and taking the following fundamental points into account at all times:

- The recognition of indigenous autonomy regarding the determination of access to their territories, resources and knowledge as the basis for controlling their economy.
- The recognition of the value of the collective systems of indigenous knowledge with regard to the protection of the rights over their use.
- The use of indigenous participation methods in formulating strategies and projects.

With regard to the Spanish Cooperation with indigenous communities, we are paying special attention to the formulation and financing of projects for indigenous self-development, both their own and those submitted by Spanish non-governmental organisations requested by the indigenous communities themselves within a framework of self-government. Particular attention will be paid to those which deal with the problem of indigenous intellectual and cultural property rights.

Another important facet currently being prioritised and financed, is support for Spanish American indigenous organisations so that they may participate directly in the processes of preparation and negotiation of projects which affect their self-development, territorial demarcations and the discussion and formulation of intellectual and cultural property rights, in response to the demands of the indigenous organisations themselves. These demands were stressed before in the COICA programme and have been put forward by a large number of Spanish American indigenous organisations to the Spanish Cooperation itself through the international fora to which it belongs. These fora basically consist of: the Fund for the Development of Latin American and Caribbean Indigenous Peoples, which was founded at the Summit of Spanish American Heads of State and Government in Madrid in 1992, called the «Indigenous Fund», which the majority of Spanish American countries belong to both at governmental level, and at the level of their indigenous organisations.

It was precisely the legitimate representatives of these indigenous organisations who, at the I General Assembly of the Indigenous Fund in May 1995 in Santa Cruz de la Sierra, Bolivia, put forward, through a common manifesto, what they considered to be a fundamental demand for collaboration between the Indigenous Fund and the Development Agencies. This would facilitate indigenous participation in the different international assemblies and fora which deal with their rights; and in the training of indigenous peoples aimed at reaffirming indigenous cultures and their traditional institutions.

In effect, these are the two guiding principles which the Spanish Cooperation has put forward, and its financing is currently directed at fomenting indigenous participation in various types of fora and in the processes of formulating their own development strategies and projects. They are showing a special interest in those which are concerned with indigenous intellectual and cultural property rights, through subsidies granted to the Indigenous Fund and Spanish Non-Governmental Organisations.

Besides this, financial resources are being channelled into training and education projects and programmes (with priority given to bilingual education), and to the above-mentioned organisations, implementing them directly in the nation states of each Spanish American country by including them as Programme financing guidelines in the Mixed Bilateral Cooperation Commissions.

With regard to the Spanish Cooperation, we are paying special attention to the formulation and financing of indigenous self-development projects proposed either by the indians themselves or by Spanish NGOs, based on demands by the indigenous communities within a framework of self-management. Priority will be given to projects which tackle the problem of indige nous intellectual and cultural property rights.

María Noguerol Alvarez
Head of Indigenous Project Service of the Spanish Agency for International Cooperation (AECI). General Directorate of the Institute for Spanish American Cooperation.

Notes

(1) «Las Edades de Gaia. Una biografía de nuestro planeta vivo», James Lovelock. Barcelona 1993. Metatemas 29. Tusquets.

(2) «El sistema dinámico de la cultura y los diversos estados de la mente humana». Josep María Fericgla. Cuadernos de Antropología. Barcelona 1989, Anthropos.

(3) «La teoría del control cultural en el estudio de los procesos étnicos». Papeles de la Casa Chata, Year 2, No.3, 1987, CIESAS, México D.F.

(4) «El Reconocimiento de los derechos culturales: sentido y estructuración de la demanda indígena y de las respuestas estatales». Conferencia en el Curso «Encuentro de Artistas e Intelectuales Amerindios y Españoles». Universidad Complutense de verano, El Escorial 1995. Diego Iturralde is Technical Secretary of the Development Fund for Indigenous Peoples of Latin America and the Caribbean.

(5) idem. ❑

INMEMORIAL PROPERTY AND INTELLECTUAL PROPERTY OF INDIGENOUS PEOPLES

by Marcial Arias and Atencio López

Over recent years there has been a proliferation of blatant theft of indigenous peoples' knowledge, all kinds of knowledge from scientific knowledge to artisan work. Although at present governments are passing laws defending the rights of the author, this is not sufficient because they only provide protection at the level of the individual and not at the level of peoples. Furthermore, rather than helping, these laws also serve to legalise the theft of immemorial property and intellectual property.

Immemorial property is the knowledge which conquistadors and colonisers took quite arbitrarily to other parts of the world, even relocating communities in America, communities of which our peoples are no longer aware today. The conquest and colonisation served to destroy and rob the knowledge of our peoples and sophisticated methods were used to destroy us intellectually, although we know that the real contribution of our peoples, while difficult to assess, is enormous in terms of the development of humanity. For example, it is inconceivable that humanity today would continue to use the Gregorian calendar when the Aztec and Mayan calendars are more precise. As far as methods for the conservation of the environment are concerned, it has been proven that the indigenous peoples have contributed to the maintenance and future existence of mother earth but today we are accused of destroying the forests. This is how they are trying to destroy us morally, undermining us until we finally deny our own knowledge.

One of the most serious cases is the patenting and commercialisation of indigenous peoples' human genes. This has produced a situation where many researchers, when they arrive in our communities, do not disclose the real objective of their work and use the opportunity to carry out their villainous deeds. This is how researchers took blood samples from our indigenous brothers in Panama, Colombia, Peru, among others.

In 1993 the troubles of the Gnobe (Guaymi) people came to light and one Gnobe woman in particular whose blood captured the attention of international science. It all began in 1991 when the 26-year old Gnobe woman became very ill and went to a hospital in Panama City for medical help. The doctors diagnosed the fatal illness leukaemia. The Gnobe woman never imagined that the Panamanian doctors, in league with North American scientists, had taken samples of her blood for laboratory experiments which would end in the immortalisation of her gene or cell. Since that time the doctors have kept the name of the Gnobe woman secret and it has not been possible to locate her and find out if she is still living or not.

This gene was on the point of acquiring other owners, the supposed 'discoverers' called Michael Dale Laimore and Jonathan E. Kaplan. The United States government, through the Secretary for Commerce, was interested in registering the gene as part of the programme of patenting living organisms, be these animals, plants or microorganisms. According to Kaplan, theirs was purely a study of "a retrovirus which infects indigenous Panamanians and could provide new clues about the first American inhabitants". But everything changed when they attempted to become the gene's absolute owners and applied for a Guaymi Patent Claim number WO-9208784-A1 on the 29th May 1992.

Following the requirements of the World Organisation for Intellectual Property it was registered internationally under the number US9108455. In the United States it was 'top priority application' number US612707 with the title 'Linfotropical Human Virus Type 2 of the indigenous Guaymies of Panama' based on the 'cell of a 26-year old Guaymi women living in Panama'. The woman's gene has been immortalised in liquid nitrogen and held in the American Type Culture Laboratories which has its headquarters in Rockville, Maryland, near Washington DC.

The doctors involved in this experiment deny that these studies form part of the experiments on human beings called the 'Human Genome Project', a project which aims to extract cells from many indigenous communities around the world.

The commercialisation or sale of patents to multinationals from the pharmaceutical industry for millions of dollars will be turned into thousands of millions of dollars of profit for the companies while the 'Indian guinea pigs' remain and will continue to remain in misery and poverty, ignorant of the traffic in their organs by the big multinationals and the destroyers of human life.

The Guaymi case has been denounced in international fora and human rights institutions as well as the UN. Sad to say, in Panama the government and humanitarian organisations took little notice because of a lack of awareness of the matter. Only a few understood and once the government learned it took the position of the North American scientists and even tried to utilise some indigenous organisations to ridicule the denunciations.

But thanks to public denunciations made through GATT talks in Geneva in October 1993, as well as in Canada and the United States, and reinforced by indigenous and non-indigenous solidarity at the international level, the application was revoked in the United States. At least this is what we believe and what was announced in the famous 'Science' journal in its section 'Sciencescope' on the 5th December 1993, where ironically Kaplan said they were abandoning the patent application because "there was no commercial interest".

Because of these events, all terminology concerned with intellectual property needs to be situated in space and time and not only based in the creative and intellectual development of the individual but, rather, to protect the immemorial, ancestral and collective rights of the original peoples. Moreover, governments ought to implement just laws in accordance with historical developments taking into account our rich customs and traditions, above all our art and artisan work as well as protecting our knowledge of medicines derived from the biodiversity.

Marcial Arias and Atencio López are members of Asociación Napguana of Panama.❑

The Guaymi Patent Claim

Publication Number	WD 9208784 AI
Publication Date	1992 05 29
Application Number	US 612, 707
Filing Date	1991 11 14
Priority Application	US 612, 707 1990 11 15
Title	HUMAN T-LYMPHOTROPIC VIRUS TYPE 2 FROM GUAYMI INDIANS IN PANAMA
English Abstract	The present invention relates to a human T-lymphocyte line (HTLV-II/G12.1) infected with a HTLV-II virus from the Guaymi Indians of Panama and to the infecting HTLV-II species (G12.1). Cells of the present invention are CD2+, CD3+, CD4+/CD8- and CD25+. The cells also express mature HTLV-II retroviral particles. This is the first isolation of HTLV-II from a defined non-intravenous drug using population. The present invention further relates to methods of identifying anti-HTLV-II. The present invention also relates to a variety of bioassays for the detection and diagnosis of HTLV infections.
Applicants	THE UNITED STATES OF AMERICA represented by THE SECRETARY, UNITED STATES DEPARTMENT OF COMMERCE; Washington, DC 20231 US
Inventors	LAIRMORE, Michael, Dale 2127 River Run Trace Worthington, OII 43210-1093 US KAPLAN, Jonathon, E. 2319 Echo Hills Circle, N.E. Atlanta, GA 30345 US
IPC Version Number	5
IPC Code(s)	C12N 5/00 C12N 7/00 C120 1/70 A61K 49/00
Designated States	AT (epo) AU BE(epo) CA CH(epo) DE(epo) DK(epo) ES(epo) FR(epo) GB(epo) GR(epo) IT(epo) JP LU(epo) NL(epo) SE(epo)
Language of Filing	ENG
Agent	OLIFF, James, A. Oliff & Berridge P.O.Box 19928 Alexandria, VA 22320 US
Image Disc Number	This document is on Espace World disc #1992/020

INDIGENOUS PEOPLES AND TRADITIONAL RESOURCE RIGHTS

by Darrel A. Posey

The following article is the summary of a report by Darrell A. Posey[1] and the conclusions arising from a workshop on Indigenous Peoples and Intellectual Property Rights held at Green College, Oxford in June, 1995.

Indigenous Peoples have increasingly become the focus of international interest in debates on human rights, biodiversity conservation, environment and development. The United Nations has emerged as a primary forum for the discussion of their problems through ECOSOC's Working Group on Indigenous Populations, the Year and Decade of Indigenous People, the proposed Permanent Forum for Indigenous People, and the Commission on Sustainable Development. It is through the Earth Summit agreements - Earth Charter, the Convention on Biological Diversity (CBD), Agenda 21, Commission on Sustainable Development - that traditional and Indigenous Peoples' issues have received the greatest global attention.

Access to, protection of, and benefit sharing from wider use and application of traditional technologies and genetic resources are essential elements of the CBD. So far it has been thought that the extension of Intellectual Property Rights (IPR) would be the mechanism by which these issues could be resolved. Many also have seen IPRs as a means to facilitate exploitation of genetic resources for biotechnology. Better use of traditional knowledge could significantly reduce the research and development costs of new products. This is used as an additional argument to justify and attract funds for in situ conservation of biodiversity.

These views are not shared by traditional and Indigenous Peoples, nor by many environmental and human rights groups. For them IPRs represent a serious threat to local economies, cultures, and biodiversity. Many indigenous groups have become well-informed, articulate and effective in representing concerns around the world about the loss of local autonomy; loss of biological and cultural diversity; and the increasing tendency for common property resources[2] to be seen and treated as commodities. Such thinking coincides with wider recognition of the limitations of 'top-down' development; better appreciation of traditional systems which use resources sustainably and maintain the diversity and health of ecosystems; and deeper understanding of the potential value of traditional knowledge and genetic resources.

Another source of criticism of IPRs is that they can threaten the free exchange of information and resources that has benefited humanity through research, scholarship, and development of medicines, agriculture, forest and bioresources generally. Yet the present free-for-all is also unsatisfactory, and grossly inequitable for Indigenous Peoples. Few companies which exploit their bioresources accept pre-contract and post-profit responsibilities to local communities. In many cases even the most ethically-minded companies find it hard to identify legally constituted entities, bona fide community representatives, and the form and distribution of benefits.

Another problem arises form the use of public funds to collect plant, animal, and cultural material for scientific purposes. Research, even in universities and museums, is increasingly funded by commercial interests,leaving unresolved the disconcerting question of who controls the resulting data. Purely scientific data banks have become the mines for 'biodiversity prospecting'[3]. Publishing of information, traditionally the hallmark of academic success, has become a means for conveying restricted (or even sacred) information into the unprotectable public domain.

Governments are eager to exert control over traditional resources, but often do not have the means to exercise the responsibility that this demands. Even the valuation of indigenous technologies makes assumptions about a 'need for development' which has been historically used to marginalize and exploit indigenous communities and their resources. The likelihood that benefits will ever 'trickle-down' to local communities is remote.

Internationally law hardly exists in this area. It seems unlikely that existing legal structures built on or around IPRs could be adapted to enhance the conservation of biological diversity or to empower indigenous, traditional and local communities. A more promising approach would be to combine systems from a wide range of international agreements to identify 'bundles of rights' which could be brought together to establish Traditional Resource Rights (TRRs) within a new system of national and international law. This will require a process of dialogue between indigenous, local communities and governmental and non-governmental institutions on an agenda which includes local economic interests, accountability, human rights and environmental concerns for long-term sustainability.

It should also recognize that old notions of sovereignty are being eroded as authority disperses upwards to international institutions to cope with global problems, downwards to local organizations, and sideways in direct communication between individuals anywhere in the world. The result should lead to new attitudes towards Indigenous Peoples and their knowledge, new codes of ethics and standards of conduct, socially and ecologically responsible business practices, and new concepts of property, ownership and value.

Museums, research institutes and universities are in an excellent position to push forward the debate on IPRs, TRRs and the creation of new and more equitable systems. They should seize the opportunity with urgency and vigour.

Notes

1. *Indigenous Peoples and Traditional Resource Rights: A Basis for Equitable Relationships?* By Darrel A. Posey
2. Resources held in common for the good of all
3. Searching for wild species whose genes can provide the raw materials for biotechnology

The complete report can be obtained from the Green College Centre, Radcliffe Observatory Oxford OX2 6HG. ❑

THE Mataatua DECLARATION ON CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES

In recognition that 1993 was the United Nations International Year for the World's Indigenous Peoples.

The Nine Tribes of MATAATUA in the Bay of Plenty Region of Aotearoa, New Zealand, convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, (12-18 June 1993, Whakatane).

Over 150 delegates from fourteen countries attended including indigenous representatives from Ainu (Japan), Australia, Cook Islands, Fiji, India, Panama, Peru, Philippines, Surinam, USA and Aotearoa. The Conference met over six days to consider a range of significant issues including the value of indigenous knowledge, biodiversity and biotechnology, customary environmental management, arts, music, language and other physical and spiritual cultural forms. On the final day, the following Declaration was passed by the Plenary.

Preamble

Recognising that 1993 is the United Nations International Year for the World's Indigenous Peoples;

Reaffirming the undertaking of the United Nation Member States to:
"Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices" - United Nations Conference on Environmental Development; UNCED Agenda 21 (26.4b);

Noting the Working Principles that emerged from the United Nations Technical Conference on Indigenous Peoples and the Environment in Santiago, Chile from 18-22 May 1992 E/CN.4/sub2/1992/31.

Endorsing the recommendations on Culture and Science from the World Conference of Indigenous Peoples on Territory, Environment and Development, Kari-Oca, Brazil, 25-30 May 1992;

We
Declare that Indigenous Peoples of the world have the right to self determination; and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property.

Acknowledge that Indigenous Peoples have a commonality of experiences relating to the exploitation of their cultural and intellectual property;

Affirm that the knowledge of the Indigenous Peoples of the world is of benefit to all humanity;

Recognise that Indigenous Peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community;

Insist that the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge;

Declare that all forms of discrimination and exploitation of indigenous peoples, indigenous knowledge and indigenous cultural and intellectual property rights must cease.

1. Recommendations to Indigenous Peoples

In the development of policies and practices, indigenous peoples should:

1.1 Define for themselves their own intellectual and cultural property.

1.2 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Intellectual and Cultural Property Rights.

1.3 Develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge.

1.4 Prioritise the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practises.

1.5 Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.

1.6 Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties.

1.7 Assess existing legislation with respect to the protection of antiquities.

1.8 Establish an appropriate body with appropriate mechanisms to:

a preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain

b generally advise and encourage indigenous peoples to take steps to protect their cultural heritage

c allow a mandatory consultative process with respect to any new legislation affecting indigenous peoples' cultural and intellectual property rights.

1.9 Establish international indigenous information centres and networks.

1.10 Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Coordinating Body for the Indigenous Peoples Organisations of the Amazon Basin (COICA).

2. Recommendations to States, National and International Agencies

In the development of policies and practices, States, National and International Agencies must:

2.1 Recognise that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.

2.2 Recognise that indigenous peoples also have the right to create new knowledge based on cultural traditions.

2.3 Note that existing protection mechanisms are insufficient for the protection of Indigenous People's Cultural and Intellectual Property Rights.

2.4 Accept that the cultural and intellectual property rights of indigenous peoples are vested with those who created them.

2.5 Develop in full co-operation with indigenous peoples an additional cultural and intellectual property rights regime incorporating the following:

* collective (as well as individual) ownership and origin
* retroactive coverage of historical as well as contemporary works
* protection against debasement of culturally significant items
* co-operative rather than competitive framework
* first beneficiaries to be the direct descendants of the traditional guardians of that knowledge
* multi-generational coverage span

Biodiversity and Customary Environmental Management

2.6 Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognise their traditional guardianship.

2.7 Commercialisation of any traditional plants and medicines of Indigenous Peoples, must be managed by the indigenous peoples who have inherited such knowledge.

2.8 A moratorium on any further commercialisation of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection mechanisms.

2.9 Companies, institutions both governmental and private must not undertake experiments or commercialisation of any biogenetic resources without the consent of the appropriate indigenous peoples.

2.10 Prioritise settlement of any outstanding land and natural resources claims of indigenous peoples for the purpose of promoting customary, agricultural and marine production.

2.11 Ensure current scientific environmental research is strengthened by increasing the involvement of indigenous communities and of customary environmental knowledge.

Cultural Objects

2.12 All human remains and burial objects of indigenous peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner.

2.13 Museums and other institutions must provide, to the country and indigenous peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

2.14 Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

3. Recommendations to the United Nations

In respect for the rights of indigenous peoples, the United Nations should:

3.1 Ensure the process of participation of indigenous peoples in the United Nations fora is strengthened so their views are fairly represented.

3.2 Incorporate the MATAATUA Declaration in its entirety in the United Nations Study on Cultural and Intellectual Property of Indigenous Peoples.

3.3 Monitor and take action against any States whose persistent policies and activities damage the cultural and intellectual property rights of indigenous peoples.

3.4 Ensure that indigenous peoples actively contribute to the way in which indigenous cultures are incorporated into the 1995 United Nations International Year of Culture.

3.5 Call for an immediate halt to the ongoing "Human Genome Diversity Project" (HUGO) until its moral, ethical, socio-economic, physical and political implications have been thoroughly discussed, understood and approved by indigenous peoples.

4. Conclusion

4.1 the United Nations, International and National Agencies and States must provide additional funding to indigenous communities in order to implement these recommendations.

UN. 1993. COMMISSION ON HUMAN RIGHTS. Sub-Commission on Prevention of Discrimination and Protection of Minorities. Working Group on Indigenous Populations. 19-30 July 1993. First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples. Whakatane 12-18 June 1993 Aotearoa New Zealand. *E/CN.4/Sub.2/AC.4/1993/CRP.5.26 - July 1993.* ❑

COICA/UNDP Regional Meeting: Intellectual Property Rights and Biodiversity

basic points of agreement

Santa Cruz de la Sierra, Bolivia, 28-30 september 1994

Basic Points of Agreement

1. Emphasis is placed on the significance of the use of intellectual property systems as a new formula for regulating North-South economic relations in pursuit of colonialist interests.

2. For indigenous peoples, the intellectual property system means legitimation of the misappropriation of our peoples' knowledge and resources for commercial purposes.

3. All aspects of the issue of intellectual property (determination of access to national resources, control of the knowledge or peoples' cultural heritage, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For indigenous peoples, accordingly, the ultimate decision on this issue is dependent on self-determination. Positions adopted under a trusteeship regime will be of a short-term nature.

4. Biodiversity and a people's knowledge are concepts inherent in the idea of indigenous territoriality. Issues relating to access to resources have to be viewed from this standpoint.

5. Integral indigenous territoriality, its recognition (or restoration) and its reconstitution are prerequisites for enabling the creative and inventive genius of each indigenous people to flourish and for it to be meaningful to speak of protecting such peoples. The protection, reconstitution and development of indigenous knowledge systems call for additional commitments to the effort to have them reappraised be the outside world.

6. Biodiversity and the culture and intellectual property of a people are concepts implicit in indigenous territoriality. Issues relating to access to resources and others have to be viewed from this standpoint.

7. For indigenous peoples, knowledge and determination of the use of resources are collective and inter-generational. No indigenous population, whether individuals or communities, or the government, can sell or transfer ownership of resources which are the property of the people and which each generation has an obligation to safeguard for the next.

8. Prevailing intellectual property systems reflect a conception and practice that is:
- colonialist, in that the instruments of the developed countries are imposed in order to appropriate the resources of indigenous peoples;
- racist, in that it belittles and minimizes the value of our knowledge systems;
- usurpatory, in that it is essentially a practice of theft.

9. Adapting indigenous systems to the prevailing intellectual property systems (as a world-wide concept and practice) changes the indigenous regulatory systems themselves.

10. Patents and other intellectual property rights to forms of life are unacceptable to indigenous peoples.

11. It is important to prevent conflicts that may arise between communities from the transformation of intellectual property into a means of dividing indigenous unity.

12. There are some formulas that could be used to enhance the value of our products (brand names, labels of origin), but on the understanding that these are only marketing possibilities, not entailing monopolies over the product or over collective knowledge. There are also some proposals for modifying prevailing intellectual property systems, such as the use of certificates of origin to prevent use of our resources without our prior consent.

13. The prevailing intellectual property systems must be prevented from robbing us, through monopoly rights, of resources and knowledge in order to enrich themselves and build up power opposed to our own.

14. Work must be conducted on the design of a protection and recognition system which is in accordance with the defence of our own conception, and mechanisms must be developed in the short and medium term which will prevent appropriation of our resources and knowledge.

15. A system of protection and recognition of our resources and knowledge must be designed which is in conformity with our world view and contains formulas that, in the short and medium term, will prevent appropriation of our resources by the countries of the North and others.

16. There must be appropriate mechanisms for maintaining and ensuring rights of indigenous peoples to deny indiscriminate access to the resources of our communities or peoples and making it possible to contest patents or other exclusive rights to what is essentially indigenous.

17. There is a need to maintain the possibility of denying access to indigenous resources and contesting patents or other exclusive rights to what is essentially indigenous

18. Discussions regarding intellectual property should take place without distracting from priorities such as the struggle for the right to territories and self-determination, bearing in mind that the indigenous population and the land form an indivisible unity.

Short-term Recommendations

1. Identify, analyze and systematically evaluate from the standpoint of the indigenous world view different components of the formal intellectual property systems, including mechanisms, instruments and forums, among which we have:

Intellectual Property Mechanisms

* Patents
* Trademarks
* Authors' rights
* Rights of developers of new plant varieties
* Commercial secrets
* Industrial designs
* Labels of origin

Intellectual Property Instruments

* The Agreement on Trade-Related Intellectual Property Rights (TRIPS) of the General Agreement on Tariffs and Trade (GATT)
* The Convention on Biological Diversity, with special emphasis on the following aspects: environmental impact assessments, a subsidiary scientific body, a technological council, monitoring, national studies and protocols, as well as on rights of farmers and ex situ control of germplasm, which are not covered under the Convention.

Intellectual Property Fora

Define mechanisms for consultation and exchange of information between the indigenous organizational universe and international fora such as:

* The Treaty for Amazonian Cooperation
* The Andean Pact
* The General Agreement on Tariffs and Trade
* The European Patent Convention
* The United Nations Commission on Sustainable Development
* The Union for the Protection of New Varieties of Plants
* The World Intellectual Property Organization (WIPO)
* The International Labour Organization (ILO)
* The United Nations Commission of Human Rights

2. Evaluate the possibilities offered by the international instruments embodying cultural, political, environmental and other rights that could be incorporated into a sui generis legal framework for the protection of indigenous resources and knowledge.
3. Define the content of consultation with such fora.

4. Define the feasibility of using some mechanisms of the prevailing intellectual property systems in relation to :

* Protection of biological/genetic resources
* Marketing of resources

5. Study the feasibility of alternative systems and mechanisms for protecting indigenous interests in their resources and knowledge.

Sui generis systems for protection of intellectual property:

* Inventor's certificates
* Model legislation on folklore
* New standards for depositing material a in germplasm banks
* A commissioner for intellectual property rights
* Tribunals
* Bilateral and multilateral contracts or conventions
* Material Transfer Agreements
* Biological prospecting
* Defensive publication
* Certificates of origin

6. Seek to make alternative systems operational within the short term, by establishing a minimal regulatory framework (for example bilateral contracts).

7. Systematically study, or expand studies already conducted,of the dynamics of indigenous peoples, with an emphasis on:

* The basis of sustainability (territories, culture, economy)
* The use of knowledge and resources (collective ownership systems, community use of resources)
* Community, national, regional and international organizational bases.

This will facilitate the creation of mechanisms within and outside indigenous groups which assigne the same value to indigenous knowledge, arts and crafts as to western science.

8. Establish regional and local indigenous advisory bodies on intellectual property and biodiversity with functions involving legal advice, monitoring, production and dissemination of information and production of materials.

9. Identify national intellectual property organizations, especially in areas of biodiversity.

10. Identify and draw up a timetable for fora for discussion and exchange of information on intellectual property and/or biodiversity. Seek support for sending indigenous delegates to participate in such fora. An effort will be made to obtain information with a view to the eventual establishment of an Information, Training and Dissemination Centre on Indigenous Property and Ethical Guidelines for contract negotiation and model contracts.

Medium-term Strategies

1. Plan, programme, establish timetables and seek financing for the establishment of an indigenous programme for the collective use and protection of biological resources and knowledge. This programme will be developed in phases according to areas of geographical coverage.

2. Plan, draw up timetables for and hold seminars and workshops at the community, national and regional levels on biodiversity and prevailing intellectual property systems and alternatives.

3. Establish a standing consultative mechanism to link community workers and indigenous leaders, as well as an information network.

4. Train indigenous leaders in aspects of intellectual property and biodiversity.

5. Draw up a Legal Protocol for Indigenous Law on community use and knowledge of biological resources.

6. Develop a strategy for dissemination of this Legal Protocol at the national and international levels. ❑

SUVA FIJI — Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights

Preamble

We the participants at the Regional Consultation on Indig-enous Peoples' Knowledge and Intellectual Property rights held in April 1995 in Suva, Fiji, from independent countries and from non-autonomous colonised territories hereby:

* Recognise that the Pacific Region holds a significant proportion of the world's indigenous cultures, languages and biological diversity,
* Support the initiatives of the Mataatua Declaration (1993), the Kari-Oca Declaration (1991), Julayabinul Statement (1993), and the South American and Asian Consultation Meetings,
* Declare the right of indigenous peoples of the Pacific to self-governance and independence and ownership of our lands, territories and resources as the basis for the preservation of indigenous peoples' knowledge,
* Recognise that indigenous peoples of the Pacific exist as unique and distinct peoples irrespective of their political status,
* Acknowledge that the most effective means to fulfil our responsibilities to our descendants is through the customary transmission and enhancement of our knowledge,
* Reaffirm that imperialism is perpetuated through intellectual property rights systems, science and modern technology to control and exploit the lands, territories and resources of indigenous peoples,
* Declare that indigenous peoples are willing to share our knowledge with humanity provided we determine when, where and how it is used. At present the international system does not recognise or respect our past, present and potential contributions,
* Assert our inherent right to define who we are. We do not approve of any other definition,
* Condemn attempts to undervalue indigenous peoples' traditional science and knowledge,
* Condemn those who use our biological diversity for commercial and other purposes without our full knowledge and consent,

Propose and seek support for the following plan of action:

1. Initiate the establishment of a treaty declaring the Pacific Region to be a life forms patent-free zone.

1.1 Include in the treaty protocols governing bioprospecting, human genetic research, in situ conservation by indigenous peoples, ex situ collections and relevant international instruments.

1.2 Issue a statement announcing the treaty and seeking endorsement by the South Pacific Forum and other appropriate regional and international fora.

1.3 Urge Pacific governments to sign and implement the treaty.

1.4 Implement an educational awareness strategy about the treaty's objectives.

2. Call for a moratorium on bioprospecting in the Pacific and urge indigenous peoples not to cooperate in bioprospecting activities until appropriate protection mechanisms are in place.

2.1 Bioprospecting as a term needs to be clearly defined to exclude indigenous peoples' customary harvesting practices.

2.2 Assert that in situ conservation by indigenous peoples is the best method to conserve and protect biological diversity and indigenous knowledge, and encourage its implementation by indigenous communities and all relevant bodies.

2.3 Encourage indigenous peoples to maintain and expand our knowledge of local biological resources.

3. Commit ourselves to raising public awareness of the dangers of expropriation of indigenous knowledge and resources.

3.1 Encourage chiefs, elders and comnity leaders to play a leadership role in the protection of indigenous peoples' knowledge and resources.

4. Recognise the urgent need to identify the extent of expropriation that has already occurred and is continuing in the Pacific.

4.1 Seek repatriation of indigenous peoples' resources already held in external collections, and seek compensation and royalties from commercial developments resulting from these resources.

5. Urge governments who have not signed the General Agreement on Tariffs and Trade (GATT) to refuse to do so, and encourage those governments who have already signed to protest against any provisions which facilitate the expropriation of indigenous peoples' knowledge and resources and the patenting of life forms.

5.1 Incorporate the concerns of indigenous peoples to protect their knowledge and resources into legislation by including 'Prior Informed Consent or No Informed Consent' (PICNIC) procedures and exclude the patenting of life forms.

6. Encourage the South Pacific Forum to amend its rules of procedure to enable accreditation of indigenous peoples and NGOs as observers to future Forum officials meeting.

7. Strengthen indigenous networks. Encourage the United Nations Development Programme (UNDP) and regional donors to continue to support discussions on indigenous peoples' knowledge and intellectual property rights.

8. Strengthen the capacities of indigenous peoples to maintain their oral traditions, and encourage initiatives by indigenous peoples to record their knowledge in a permanent form according to their customary access procedures.

9. Urge universities, churches, governments, non-governmental organizations, and other institutions to reconsider their roles in the expropriation of indigenous peoples' knowledge and resources and to assist in their return to their rightful owners.

10 Call on the governments and corporate bodies responsible for the destruction of Pacific biodiversity to stop their destructive practices and to compensate the affected communities and rehabilitate the affected environment

10.1 Call on France to stop definitively its nuclear testing in the Pacific and repair the damaged biodiversity. ❑

Fourth World Conference on Women

4-5 September

Beijing Declaration of Indigenous Women

CHINA

Document Submitted by:
ASIA INDIGENOUS WOMEN'S NETWORK FOR THE INDIGENOUS WOMEN'S CAUCUS NGO FORUM

The Fourth World Conference on Women, held in Beijing from the 4th to the 15th of September 1995 was one of the biggest UN-conferences ever held. Around 17,000 women and some men participated in the official conference, while an estimated 30,000 women took part in the NGO-Forum held from the 30th of August to the 8th of September in Huairou outside Beijing.

For two weeks politicians, state representatives and grassroots organisations discussed issues of concern to women and negotiated on the final wording of the Declaration on women's rights and the Platform for Action which was to be the outcome of the conference.

A few victories were gained by the women's cause in the final results presented in these official documents, particularly by the clear establishment of women's rights being human rights. On the whole, however, the results of the conference can not be considered satisfactory, and certainly not from an indigenous women's point of view.

As stated in the draft for an NGO Beijing Declaration, put together by some of the NGO-representatives present in Huairou, the roots of many of the problems continuously faced by women of the world are the globalization of the market economies and the fact that the current growth model fails to meet the fundamental material and spiritual needs of the majority of peoples of the world.

The indigenous women who were present on the NGO-forum from the start took the consequence of the lack of clear recognition of the world's current economic and political forces as the main cause of indigenous women's problems in the world of today, and decided to work together on their own alternative declaration. After a week of very succesful co-operation between more then a hundred indigenous women, representing many different organisations from all over the world, the indigenous women presented their alternative *Beijing Declaration of Indigenous Women* to the delegates on the official conference. The declaration, which is printed below, emphasizes the special areas of concern to indigenous women and critisizes the whole framework of the official papers, particularly the Platform for Action, for not acknowledging that the poverty affecting indigenous and other women is «caused by the same powerful nations and interests who have colonised us and are continuing to homogenise, and impose their economic growth development model and monocultures on us».

The indigenous women's work was co-ordinated by Victoria Tauli-Corpuz of the Asia Indigenous Women's Network.

1. The Earth is our mother. From her we get our life, and our ability to live. It is our responsibility to care for our mother and in caring for our mother, we care for ourselves. Women, all females are manifestations of Mother Earth in human form.

2. We, the daughters of Mother Earth, the indigenous women present at the NGO Forum of the UN Fourth World Conference on Women in Beijing, have come together to collectively decide what we can do to bring about a world which we would like our children and our children's children to live in. We acknowledge and build upon earlier declarations which evolved from earlier meetings and conferences, like the 1990 Declaration of the Second International Indigenous Women's Conference, the Kari-Oca Declaration of 1992, and those of various regional conferences done in preparation for this Beijing Conference.

3. This declaration is drafted in recognition of the existence of the UN Declaration of the International Decade of the World's Indigenous Peoples, the Draft Declaration on the Rights of the Indigenous Peoples, the Convention on the Elimination of All Forms of Discrimination Against Women, the Nairobi Forward Looking Strategies for the Advancement of Women, Agenda 21 and the Rio Declaration on Environment and Development, the Cairo Declaration, and

the Copenhagen Social Summit Declaration. While we agree with most of the provisions of ILO Convention 169, we cannot fully endorse a Convention which remains silent on how nation-states use military force to remove indigenous peoples from their territories.

4. We stand in unity behind this '1995 Beijing Declaration of Indigenous Women' which is the fruit of our collective efforts to understand the world and our situation as indigenous women, critique the Draft Platform for Action, and articulate our demands to the international community, the governments, and the NGOs.

5. We, the women of the original peoples of the world have struggled actively to defend our rights to self-determination and to our territories which have been invaded and colonized by powerful nations and interests. We have been and are continuing to suffer from multiple oppression; as indigenous peoples, as citizens of colonized and neo-colonial countries, as women, and as members of the poorer classes of society. In spite of this, we have been and continue to protect, transmit, and develop our indigenous cosmovision, our science and technologies, our arts and culture, and our indigenous socio-political and economic systems, which are in harmony with the natural laws of mother earth. We still retain the ethical and aesthetic values, the knowledge and philosophy, the spirituality, which conserves and nurtures Mother Earth. We are persisting in our struggles for self-determination and for our rights to our territories. This has been shown in our tenacity and capacity to withstand and survive the colonization happening in our lands in the last 500 years.

6. The 'New World Order' which is engineered by those who have abused and raped Mother Earth, colonized, marginalized, and discriminated against us, is being imposed on us viciously. This is recolonization coming under the name of globalization and trade liberalization. The forces behind this are the rich industrialized nation-states, their transnational corporations, financial institutions which they control like the World Bank, the International Monetary Fund and the World Trade Organization (WTO). They will cooperate and compete among themselves to the last frontiers of the world's natural resources located on our lands and waters.

7. The Final Agreement of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and the establishment of the WTO has created new instruments for the appropriation and privatization of our community intellectual rights through the introduction of the trade-related intellectual property rights (TRIPS). This facilitates and legitimizes the piracy of our biological, cultural, and intellectual resources and heritage by transnational corporations. Our indigenous values and practice of sharing knowledge among ourselves, and mutual exchange will become things of the past because we are being forced to play by the rules of the market.

8. Bioprospecting, which is nothing but the alienation of our invaluable intellectual and cultural heritage through scientific collection missions and ethnobotanical research, is another feature of recolonization. After colonizing our lands and appropriating our natural resources, they are now appropriating our human genetic resources, through the Human Genetic Diversity Project. Their bid for the patenting of life forms is the ultimate colonization and commodification of everything we hold sacred. It won't matter any more that we will disappear because we will be 'immortalized' as 'isolates of historic interest' by the Human Genetic Diversity Project.

9. It is an imperative for us, as Indigenous Peoples, to stand in their way, because it means more ethnocide and genocide for us. It will lead to the disappearance of the diverse biological and cultural resources in this world which we have sustained. It will cause the further erosion and destruction of our indigenous knowledge, spirituality, and culture. It will exacerbate the conflicts occurring on our lands and communities and our displacement from our ancestral territories.

Critique of the Beijing Draft Platform for Action

10. The Beijing Draft Platform for Action, unfortunately, is not critical at all of the 'New World Order'. It does present a comprehensive list of issues confronting women and an even longer list of actions which governments, the UN and its agencies, multilateral financing institutions, and NGOs should do. It identifies "the persistent and increasing burden of poverty" as the number one critical concern. It acknowledges that "most of the goals of the Nairobi Forward Looking Strategies .. have not been achieved." It also acknowledged that "in the past decade the number of women living in poverty has increased disproportionately to the number of men.."

11. However, it does not acknowledge that this poverty is caused by the same powerful nations and interests who have colonized us and are continuing to recolonize, homogenize, and impose their economic growth development model and monocultures on us. It does not present a coherent analysis of why is it that the goals of "equality, development, and peace", becomes more elusive to women each day in spite of three UN conferences on women since 1975. While it refers to structural adjustment programmes (SAP), it only talks about mitigating its negative impacts, not questioning the basic framework undergirding SAPs. It even underscores the importance of trade liberalization and access to open, and dynamic markets, which to us, pose the biggest threat to our rights to our territories, resources, intellectual and cultural heritage.

12. The clear bias of the New World Order for big industries, big agri-business corporations, etc., has meant the decimation of traditional livelihood and economic activities of indigenous peoples like hunting, food gathering and harvesting, reindeer herding, subsistence agriculture, fishing, small handicraft businesses, etc. The non-economic activities of indigenous women have been ignored and rendered invisible, although these sustain the existence of indigenous peoples. Our dispossession from our territorial land and water base, upon which our existence and identity depends, must be addressed as a key problem. The Platform is very vague on this.

13. The critical areas of concern it has identified are also critical for indigenous women. While it correctly identifies unequal access to education and health as areas of concern, it does not question the basic Western orientation of the prevailing education and health systems. It does not reflect the fact that these systems have perpetuated the discrimination against indigenous peoples. It also does not acknowledge the role of Western media, education, and religion, in eroding the cultural diversity which exists among indigenous peoples. These Western systems hasten ethnocide. It does not give proper recognition and importance to indigenous health care systems and the role of its practitioners.

14. The violence and sexual trafficking of indigenous women and the increasing numbers of indigenous women becoming labour exports, has been aggravated by the perpetuation of an economic growth development model which is export-oriented, import-dependent, and mired in foreign debt. Military operations conducted on indigenous peoples lands use rape, sexual-slavery, and sexual trafficking of indigenous women, to further subjugate indigenous peoples. The development of tourism to attract foreign capital has also led to the commodification of indigenous women and the dramatic increase in the incidence of HIV/AIDS. This reality is not addressed by the Platform. Domestic violence and the increasing suicide rates among indigenous women, especially those who are in highly industrialized countries are caused by psychological alienation and assimilationist policies characteristic of these countries.

15. While it talks about the effects of persecution and armed conflict, it does not acknowledge that many of these armed conflicts are occurring on indigenous peoples' lands. These armed conflicts are the result of the aggressive actions of transnational corporations and governments to appropriate the remaining resources on indigenous peoples' territories despite the assertion of indigenous peoples to their right to control these resources. It does not recognize that the resolution of armed conflict especially those happening on indigenous peoples lands, lies in the recognition of our rights to self-determination and to our lands and waters. The phrase "internally displaced" in the text is bracketed, when in fact, this is the reality for many indigenous peoples all over the world.

16. Its recommended 'strategic objectives' and actions focus on ensuring women's equal access and full participation in decision making, equal status, equal pay, and in integrating and mainstreaming gender perspectives and analysis. These objectives are hollow and meaningless if the inequality between nations, races, classes, and genders, are not challenged at the same time. Equal pay and equal status in the so-called First World is made possible because of the perpetuation of a development model which is not only unsustainable but causes the increasing violation of the human rights of women, indigenous peoples, and nations elsewhere. The Platform's overemphasis on gender discrimination and gender equality depoliticizes the issues confronting indigenous women.

Indigenous Women's Proposals and Demands

17. Within the context of our understanding of our situation and our critique of the 'New World Order' and of the Beijing Draft Platform for Action, we present the following demands;

Recognize and Respect our Right to Self-determination

18. That all governments and international non governmental and governmental organizations recognize the right of indigenous peoples to self-determination, and enshrine the historical, political, social, cultural, economic, and religious rights of the indigenous peoples in their constitutions and legal systems.

19. That the governments ratify and implement ILO Convention 169 only after thorough consultations with indigenous peoples and that eventually it should be improved to condemn the use of military force to displace indigenous peoples.

20. That the 1994 Final Draft Declaration on the Rights of Indigenous Peoples be adopted and ratified by governments without any revisions and reservations. That the full participation of indigenous peoples in the open-ended working group of the Commission on Human Rights to further elaborate on the draft will be ensured.

21. That the 's' in term indigenous peoples be put in all United Nations documents, declarations, and conventions. That, hereafter, we will not be referred to as ethnic minorities or cultural communities but as indigenous peoples.

Recognize and Respect our Right to our Territories, and Right to Development, Education, Health

22. We demand that the international community and governments recognize and respect our rights to our territories. This includes our right to decide what to do with our lands and territories and to develop in an integrated, sustainable way, according to our own cosmovision.

23. We urge the governments who are opening up our territories to foreign investors especially to mining corporations, to respect these rights. Full disclosure of development projects and investments to be put into our territories should be done. We should be fully involved in making decisions on these matters. Indigenous peoples' lands which have been ravaged by mining corporations, or which have become dumping sites of toxic, radioactive and hazardous wastes, should be rehabilitated by the corporations or the governments which allowed this devastation.

24. That the governments, international organizations and NGOs assume their responsibility to alter their policies and allocate resources for the intercultural and bilingual educational system and the development of indigenous health care systems according to our cultural principles and cosmovision. That books, audio and

video materials, etc. be screened and purged of discriminatory, racist, and sexist, content.

25. That the governments implement realistic policies which will solve the problem of illiteracy among indigenous and peasant women, providing them access to intercultural and bilingual education which respects indigenous cosmologies, promotes non-sexist formative education which puts women and men in touch with the land.

26. That the governments and international community implement health policies which guarantee accessible, appropriate, affordable and quality services for indigenous peoples and which respect and promote the reproductive health of indigenous women. That budget allocations to health and other social services be increased to at least 20per cent of the national budget and that a significant amount of this goes to indigenous peoples communities.

27. That the indigenous health care systems and practices of indigenous peoples be accorded the proper recognition and respect and the roles of indigenous health practitioners and healers be further enhanced.

28. That the dumping of hazardous drugs, chemicals and contraceptives on indigenous peoples' communities be stopped. We demand that coercive family planning services, like mass sterilization of indigenous women, coercive abortion programs, be stopped. That population policies like transmigration be condemned and halted.

29. We demand that uranium mining taking place in our lands and nuclear testing in our territories and waters be stopped. If no uranium mining is done then there will be no nuclear weapons, nuclear reactors, and nuclear accidents.

Stop Human Rights Violations and Violence Against Indigenous Women

30. That the United Nations create the necessary mechanisms to monitor the indigenous peoples situation especially those facing the threat of extinction and human rights violations and to stop these ethnocidal and genocidal practices.

31. Call on all the Media and Communication Systems to realize that Indigenous Women refuse to continue to be treated and considered as exotic, decorative, sexual objects, or study objects, but instead to be recognized as human beings with their own thinking and feeling capabilities and abilities for personal development, spiritually, intellectually and materially.

32. Demand for an investigation of the reported cases of sexual slavery and the rape of indigenous women by the military men happening in areas of armed conflict, such as those within Karen territories in Burma, Chittagong Hill Tracts in Bangladesh, etc. The perpetrators should be persecuted and the survivors be provided justice and rehabilitation services.

33. Demand for an investigation of the forcible mass sterilization and antifertility programs done among indigenous women. Identify which international and national agencies are responsible for these and make them accountable.

34. That all acts of discrimination against Indigenous Women be considered and punished as a crime.

35. That the governments create juridical and social instruments adequate to protect women from domestic and state violence.

36. That indigenous customary laws and justice systems which are supportive of women victims of violence be recognized and reinforced. That indigenous laws, customs, and traditions which are discriminatory to women be eradicated.

37. That all internally displaced indigenous peoples be allowed to return to their own communities and the necessary rehabilitation and support services be provided to them.

Recognize and Respect our Rights to our Intellectual and Cultural Heritage and our Rights to Control the Biological Diversity in our Territories

38. We demand that our inalienable rights to our intellectual and cultural heritage be recognized and respected. We will resist all processes seeking to destroy this heritage and alienate our resources and knowledge from us.

39. We demand that the western concept and practice of intellectual property rights as defined by the TRIPS in GATT, not be applied to indigenous peoples communities and territories. We demand that the World Trade Organization recognise our intellectual and cultural rights and not allow the domain of private intellectual rights and corporate monopolies to violate these.

40. We call for a stop to the patenting of all life forms. This to us, is the ultimate commodification of life which we hold sacred.

41. We demand that the Human Genetic Diversity Project be condemned and stopped. Those responsible for this project should be asked to make an accounting of all the genetic collections they have taken from indigenous peoples and have these returned to the owners of these genes. The applications for patents to these genetic materials should be stopped and no applications, thereafter, should be accepted and processed. Indigenous peoples should be invited to participate in the ongoing discussions in UNESCO on the bioethics of the Human Genome.

42. We demand that governments at the local, regional, and national levels, recognize our intellectual community rights and support us in our defense of these rights, an obligation which they have undertaken as Parties to the Biodiversity Convention.

43. We will continue to freely use our biodiversity for meeting our local needs, while ensuring that the biodiversity base of our local economies will not be eroded. We will revitalize and rejuvenate our biological and cultural heritage and continue to be the guardians and custodians of our knowledge and biodiversity.

Ensure Political Participation of Indigenous Women and enhance their capabilities and access to resources

44. We demand equal political participation in the indigenous and modern structures of socio-political structures and systems at all levels.

45. We will dialogue with non-indigenous women's organizations and formations to implement a realistic plan of solidarity with us.

46. We ask that NGOs that work with Indigenous Women be guided by principles of mutual respect and promote the full participation of Indigenous Women in action and in articulating issues regarding Indigenous Women and Indigenous Peoples.

47. Call on the funding agencies and donor agencies that support and promote women's organizations and programs, to share space and financial resources in order to promote the development of Indigenous Women.

48. We will work towards reinforcing our own organizations, enhancing communications between us, and gain the space that is rightfully ours, as members of specific identities (nations and cultures) within the Decade of Indigenous Peoples and other institutions that represent governmental and non-governmental organizations.

49. We will work towards the holding of an International Conference of Indigenous Women which will be held as part of the celebration of the International Decade of the World's Indigenous Peoples.

50. We express our sincere thanks to the Chinese Organizing Committee and the Chinese people for their efforts in hosting and providing hospitality to us.

Approved and signed on 7 September 1995, by 135 Indigenous Women from 26 countries at the Indigenous Women's tent Huairou, Beijing China.

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Esther Camac	Consejo de Mujeres Indígenas de Costa Rica	Costa Rica
Carmen Tene Sarango	Mujer Ecuarunari - CONAIE	Ecuador
Blanca Chacon	Federación Indígena de Imbaburo FICI	Ecuador
Maria Eugenio Aquilar	Instituto RAIS	El Salvador
Sofia Robles Hdez	Comisión de Mujeres en Servicios del Pueblo Mixe A.C.	Mexico
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Edelma de Stanzy	Movimiento de la Juventud KUNA	Panama
Lucila Cruz Saraza	Asociación de Mujeres del Pueblo Aymara	Peru
Hilaria Supa Huaman		Peru
Tarcila Rivera Zea	Taller Permanente Mujeres Indígenas Andinos y Amazonicas	Peru
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Kabita Chakma	Hill Women's Federation, Chittagong Hill Tracts	Bangladesh
Mra Raza Limm		Bangladesh
Ms. Lalchharliani	Salvation Army Community Health Action Network	India
Ms. Jyotsna Katharpi		India
Ms. Jarjum Ete	APWWS; Arunachal Pradesh Women's Welfare society	India
Valleyrose H. Hungyo	Tangkhul Shanao Long	India
Jarjum Ete	Arunachal Pradesh Women's Welfare Society	India
Chanmayo Jajo	Naga People's Movement for Human Rights	India
Darinas Veronica Bao	Yayasan Flores Sejahtera (SANRES)	Indonesia
Agnes Rolau	Yayasan Flores Sejahtera (SANRES)	Indonesia
Arimbi HP		Indonesia
Bernice See	Innabuyog/AIWN	Philippines
Cynthia Dacanay	Cordillera Women's Education and Resource Center CWERC/AIWN	Philippines
Penelope Domogo	Episcopal Church Women of the Philippines	Philippines
Merlyn O. Sakai		Philippines
Nieves Ngislawan	WID-EDNP	Philippines
Elena B. Dayap		Philippines
Dahlialyn Dait Cawen		Philippines
Leticia Bula-at	Innabuyog/AIWN	Philippines
Magdalena B. Bacagan		Phillipines
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Diane Shen	ATSIC/WILPF/NO Limits for Women	Australia
Raimah Stafford	Port Kennedy Assoc. Inc.	Australia
Del Tyson	Council of Elders	Australia
Charmaine Dodd		Australia
Theresa Ellis	ATSIC-Sydney Regional Council	Australia
Jody Jackson	Bahloo Women's Youth Center	Australia
Bab-a-lue Dagley	Bahloo Women's Youth Shelter	Australia
Clarice Watego	Brisbane Council of Elders	Australia
Vicki Walker	A.C.M.M.	Australia
Angelina Stuart	ATSIC South Australia	Australia
Ann Carlo	Vanuatu National Council of Women	Vanuatu
Vigdis Siri	Sarahkka Sami Women Organization	Norway
Inga Vualak Sara	Sarahkka Sami Women Organization	Norway
Jorrun Elkjok	Sarahkka Sami Women Organization	Norway
Siri Utsi	Sarahkka Sami Women Organization	Sweden
Joan Staples Baum	Tahoma Indian Center	USA
Airiani McCauley	Harmony Women's Fund	USA
Debra Harry		USA
Charlie Toledo	Suscol Council Intertribal NGO	USA
Nora Naranjo		USA
Shelley Macy		USA
M. Jene McCovey		USA
Jonny Bearcub Stiffarm		USA
Sally A. Gonzales		USA
Beatris Burgos	Chicago Abused Women Coalition	USA
Octaviana Trujillo		USA
Sandy Arthur		USA
Terry Bad Hand		USA
Pati Martinson		USA
Julie Moss		USA

Roxanne Struthers		USA
Lisa Mayo	Olo Nadile (Kuna Rappahannock)	USA
Kay Mc Jouren		USA
Janice C. Prieto		USA
Gloria Miquel	Kuna Rappahannock	USA
Gail Small		USA
Ruth Denny		USA
Sammy Toineeta	National Council of Churches	USA
Andrea (Andy) Smith	Women of All Red Nations/CWPE	USA
Monica Campos		USA
Zenobia Embry Nimmer		USA
Cynthia Domez		USA
Banlang Phommasouvanh	Lao Mothers and Girls	USA
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Lisa Tracy	International Committee of Lawiputos Tibet	USA
Ane Reeves	Arts Council of Princeton	USA
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Andrea Walter		USA
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Lori Pourier	Indigenous Women's Network	USA
Charon Asetoy	Native American Community Board	USA
Sofia Martinez	Southwest Organizing Project	USA
Marta Ixcot	International Maya League	USA
Marjorie Beaucage	Aboriginal Film Video Art Alliance	Canada
Dolores Pflanz		Canada
Frances Hall	Indigenous Women's Collective	Canada
Mary Stanislia	Indigenous Women's Collective Manitoba, Inc.	Canada
Yvonne Duncan	Another Woman for Peace	Canada
Martha Spence	Split Lake Cree First Nation	Canada
Cathie Godfriedsen	Okanogan Womyn'z Alliance	Canada
Farren Marchand	Okanogan Womyn'z Alliance	Canada
Mary Sillet	Inuit Women's Association of Canada	Canada
Janis Walker	Native Women's Association of Canada	Canada
Marsha Forrest	Aboriginal Nurses Association of Canada	Canada
Marge Friedel	National Metis Women of Canada	Canada
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Clare Lim	Engender	Singapore
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Gene Hunters

Documentary 1 x 52'. Directed by Ian Taylor - Produced by Luke Holland - ZEF Productions Ltd. for Channel 4 in Association with TVE- 1995

Filmed among isolated forest, desert and mountain tribes in South America and in high-tech laboratories in the USA, *Gene Hunters* tells the controversial story of an ambitious scientific enterprise to collect the DNA of native peoples worldwide, 'before they disappear forever'. A scientific adventure story, the film also poses fundamental questions about human origins and migration. native rights, medical ethics and profit.

We accompany a team of scientists, in their efforts to overcome the suspicions- and to collect the blood- of the isolated Arhuaco and Arsario Indians of northeastern Columbia. The Indians need Western medicines and are unaware of the dual agenda which has brought 'los doctores' into their remote mountain communities. The Colombian geneticists are accompanied by colleagues from the USA- researchers from a major pharmaceutical company. We travel back to California with the American scientists and see them isolating the DNA of Colombian Indians, from samples stored in their laboratory freezer.

Gene Hunters explores the commercial and ethical issues at the heart of the Human Genome Diversity Project. The patenting of human tissue has already brought financial rewards to scientists and doctors. We meet an angry North American 'donor' and his lawyer. In Panama we meet the Guaymi Indians, outraged at the discovery that a member of their community has been the unwitting subject of a US Government patent application. They want nothing more to do with the Project.

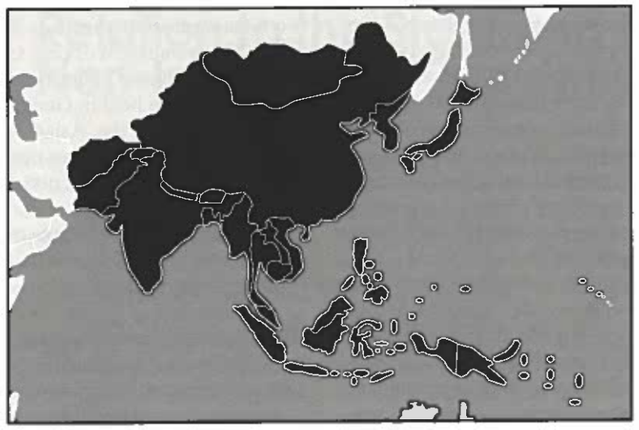
A leading population geneticist at Yale, shows off his collection of 'immortalised' human cells, multiplying indefinitely in their revolving jars. He explains the crucial importance of DNA from isolated native populations, in answering questions about human origins and migration. Another scientist, whose genetic research has already made him a multi- millionaire, dismisses criticism of the Diversity Project.

There are, however, dissenting voices in the US. We hear from a Professor of Medical Ethics who believes that the human price of the Diversity Project 'is just too high' while a spokesman for the National Congress of American Indians, compares the Project with early US experiments on native peoples. *Gene Hunters* is a film about science and commerce in the final decade of the 20th century. It is also about the efforts of traditional indigenous societies to retain control of the only resource that they still possess- their unique DNA.

Further information:
Luke Holland / ZEF Productions - Broad Meadow, 24 Beacon Road - Ditchling,/Hassocks BN6 8UL, England.

conference on INDIGENOUS PEOPLES IN ASIA

October 9th-11th 1995
Chiangmai - Thailand



A Conference on Indigenous Peoples in Asia was held in Chiangmai, Thailand, from 9 - 11 October 1995. The conference was organised jointly by IWGIA, AIPP (Asia Indigenous Peoples' Pact) and IMPECT (Inter Mountain Peoples' Education and Culture in Thailand Association). The aim of the conference was to provide a forum for indigenous peoples from all over Asia to come together, share experiences, and use the opportunity to discuss future perspectives and strategies.

Indigenous peoples from Thailand, Burma, Malaysia, Indonesia, Vietnam, the Philippines, India, Bangladesh, Nepal and Taiwan, participated in the conference, as did a number of government representatives from Thailand and the Philippines. There were around one hundred participants in all. The main themes of the conference were: the concept of indigenous peoples in Asia; indigenous peoples' legal rights in modern Asian states; their relationship with the state and the non-indigenous population; and movements and forms of organisation among Asian indigenous peoples, and strategies for the future.

The conference provided a fine forum for the exchange of experiences among indigenous peoples in the Asian region, and although the problems which Asian indigenous peoples face differ according to their specific contexts, a wide range of common struggles, concerns and hopes for the future were expressed. The participants agreed that regional meetings like this were important for identifying common concerns and for trying to initiate joint action at various different levels. After each thematic section the facilitator summed up the discussions and on the last day three workshops looked at the concept of indigenous, international strategies and future co-ordination. These workshops produced comments and proposals which were approved by the meeting.

The following conclusions consist of the agreements made at the end of the conference with elements of the summing up of each section included as a commentary.

The Concept of Indigenous Peoples in Asia

The conference unanimously accepted the relevance and importance of the concept 'indigenous peoples' in Asia. The presence of the indigenous movement throughout the region draws peoples together as indigenous because of the common problems which they face. The meeting considered that a strict definition of indigenous was unnecessary, because the term constantly has to be adapted to encompass different situations. Furthermore, the general definitions which exist in the United Nations and the World Bank, all provide a general orientation for the meaning of the term which fully embraces the indigenous peoples of Asia.

The meeting considered that as a general orientation, the following elements are useful indications of how the term indigenous applies in Asia.

1. Indigenous peoples have a special attachment to lands and territories.
On the basis of this, indigenous peoples claim ownership and control of their lands and resources. However, throughout Asia, indigenous peoples are threatened with expulsion from their territories, economic interests are plundering their resources and they suffer invasions by outsiders. In the name of development large-scale displacements of the indigenous peoples have occurred. Invasions constitute a colonisation which undermines the prior ownership of indigenous peoples of their ancestral territories.

2. Indigenous peoples have a sense of shared ancestry, and have the right to selfdetermination.
The collective identity of indigenous peoples is found throughout Asia and stretches far into their history. This shared an-

cestry provides the grounds for self-identification of themselves as indigenous and of respect for their identity by other indigenous peoples. Unfortunately throughout the region authorities refuse to recognise indigenous peoples' territories and even their right to define themselves as indigenous.

3. Indigenous peoples have their own languages, cultures, spirituality and knowledge. These features make each indigenous people unique guardians of their heritage and responsible for passing the wisdom of their ancestors to their descendants. The constant robbing and commercialisation of indigenous peoples' heritage by outsiders is common throughout Asia. The conference expressed particular concern at the collection and patenting of genetic material from indigenous peoples.

4. Indigenous peoples have their own political, social andcultural institutions. These include customary law, consensual decision-making processes, community life and collective sharing.
The indigenous peoples of Asia strive to control their own lives and make their own decisions. They claim self-government from within, and do not want political systems imposed from outside. This constitutes the exercise of self-determination which was recognised by government and indigenous representatives at the conference as a fundamental right.

5. Indigenous peoples' lands and territories and cultural institutions are violated by states and global forces through acts of domination.
This factor of indigenous peoples in Asia consists of their being marginalised, dispossessed and colonised peoples, a fate which they share with the other indigenous peoples throughout the world. The colonisation of indigenous peoples in Asia has not only come about through the process of invasion by western powers, but, particularly, during the decolonisation process, where different peoples lost out and became prey to the interests of the newly formed states and international interests.

6. The indigenous peoples of Asia consider that the UN Draft Declaration applies to them and constitutes the basic minimum demands for their survival. The concept of indigenous peoples in Asia should be protected by the draft Declaration.

International Fora

The conference discussed the participation of the indigenous peoples of Asia in international fora and decided that, in spite of the difficulties, attendance at significant meetings was important. The two most immediate meetings are those of the Open-ended Working Group of the United Nations Commission on Human Rights to be held in Geneva in November, 1995 and the Asian Development Bank consultation on operational procedures for indigenous peoples to be held in Manila during the same month. The conference provided the following mandate for Asian representatives attending these meetings.

The UN Open-ended Working Group

1. Indigenous representatives from Asia should constantly remind the governments and other people attending the meeting of the existence of indigenous peoples in Asia.

2. The Open-ended Working Group should be arranged to meet back to back with the Working Group on Indigenous Populations.

3. The restrictions on participation at the Open-ended Working Group should be lifted and indigenous peoples should have full access, freedom to speak and present papers.

4. The representatives should emphasise that the draft Declaration of the Rights of Indigenous Peoples is the minimum acceptable set of international standards for the rights of the indigenous peoples of Asia.

5. The UN Voluntary Fund should be extended to support attendance of indigenous peoples at the Open-ended Working Group.

The Asian Development Bank Consultation

The conference recognised the positive initiative of the ADB in calling for a consultation with the indigenous peoples of Asia.The representatives at the conference agreed to take copies of the draft directives and, where appropriate, make written comments in time for the November meeting. The ADB agreed to circulate these comments to the participants.

The International Decade for Indigenous Peoples

The conference supported the idea of an international summit of indigenous peoples during the International Decade and proposed that it should have the same status and funding as other UN summits.

The Human Rights Centre in Geneva was requested to ensure that information about the decade is distributed more widely among indigenous peoples, organisations and governments. Knowledge about the Decade is still very rudimentary.

Strategies for Co-operation and Strengthening Indigenous Networks in Asia

1. The general role of networks should be to identify indigenous peoples, to look for shared experiences and to help build the capacity of both networks and specific organisations. Consistency and involvement of the regional networks was emphasised as well as the need to allocate times and resources to keep the networks functioning.
2. Indigenous peoples' networks will identify key activities, training needs and ensure communication and dissemination of information with their members.
3. Constructive ways of seeking resources from funding agencies should be sought and governments should create strategy papers for working constructively with indigenous peoples along the line of the Danish government's strategy paper.
4. The conference considered that the globalisation of the indigenous movement and its allies was important. Indigenous peoples, where possible, will seek open and constructive dialogue with non-indigenous peoples and states to gain recognition and implementation of their rights as well as to promote the strugglefor democracy in the states where they live.
5. Future activities and follow-up to the conference will be organised through the indigenous peoples' networks in Asia. ❑

The Juridical Rights of the Indigenous Peoples and the Relation to the State and the Non-Indigenous Population

Introduction

The very name 'Union of Burma' implies that the nation is a federation of many peoples[1]. The indigenous peoples of the Union of Burma - the Shan, Kachin, Mon, Karenni, Karen and Arakan - comprise over 40 per cent of the Union of Burma's population of 42 million people[2]. Before British rule, these indigenous peoples had their own land, religion, culture and administrative systems. The non-indigenous people are the Burmese. During the colonial rule, the British made a clear distinction between the Burmese and the indigenous peoples. The Burmese were ruled directly from British India and the indigenous peoples were ruled indirectly and given full autonomy. The indigenous peoples have lived under the continuous military rule of the Burmese since 1948, when the British granted complete independence to Burma.

Panglong Agreement

Signatories

On 12 February 1947, some leaders of the Chin, Kachin and Shan signed the Panglong Agreement with the Burmese at Panglong village of Shan State in Burma in order to join the interim government of Burma. The basic conditions of the Panglong Agreement were:

1. The indigenous peoples would achieve freedom from the British more speedily through co-operation with the Burmese.
2. After independence, indigenous peoples would have the right to secede from confederation with Burma if and when they choose.
3. Association with Burma would be on a federal basis with equal rights and status, and full internal autonomy for the indigenous peoples.

The signatories of the Kachin and Shan signed the Panglong Agreement without the consent of their peoples. The signatories signed the agreement because of their sincere trust in U Aungsan, the national hero of the Burmese independence movement and father of Aungsan Suugyi, that he would implement the Panglong Agreement.

Non-signatories

The Karen, Mon, Karenni and Arakan did not participate in the Panglong Agreement. These indigenous peoples, notably the Karen, resisted Burmese colonisation in December 1948 and nearly overcame the Burmese. Nonetheless, both signatories and non-signatories continue the armed struggle for the right to self-determination with forces totalling morethan 40,000 men, who have formed the National Democratic Front (NDF) alliance.

The Constitutional Crises

The 1947 Constitution

The first Constitution of the Union of Burma, drafted in 1947, was supposed to provide for a federal system of government based on Panglong Agreement. Instead, the Constitution betrayed the agreement and imposed a rigid unitary form of government placing all central powers in the hands of the Burmese. In addition, the tenth chapter of the Constitution made the condition that indigenous peoples could secede only after ten years. In response, the indigenous peoples met together in Taung Gyi, the capital of Shan State, in 1956 and drafted a new constitution providing for a federal government. Before it could be accepted by Parliament, General Ne Win took power from prime minister U Nu in an army coup.

In February 1960, U Nu promising autonomy to the Mon and Arakan peoples, won the general election and regained power from Ne Win. Other indigenous peoples sought the right of succession and tried to reinstate a federal form of government. In the resulting instability, Ne Win took power from U Nu on 2 March 1962 and abolished the 1947 Constitution.

The 1974 Constitution

After seizing power in 1962, Ne Win created a revolutionary council comprised of the armed forces. This council was disbanded on 2 March 1974 and replaced by the Socialist Republic of the Union of Burma, which remained under army control. A few of the indigenous peoples participated in the republic with restrictions.

A group of Chin intellectuals brought 150 suggestions for the 1974 constitution, including a federal system of government. Fifty of them were arrested by the army and imprisoned until the constitution took effect in 1974. The 1974 constitution did not provide for the rights of indigenous peoples in either central or state administration. Moreover, no provision was made for freedom of speech, press or religion.

The Present Crisis

Following the pro-democracy uprising of 8 August 1988, the State Law and

Order Restoration Council (SLORC) was established in September of that year and held a multi-party democratic election on 27 May 1990 for the restoration of democracy. The National League for Democracy (NLD) won the election with a landslide victory, but the SLORC failed to transfer power to the NLD and declared that they would continue to rule until a government was formed in accordance with a new Constitution. Meanwhile, the elected representatives of the indigenous peoples were forced to take refuge outside the country.

The SLORC called a National Convention in early 1993 to draft a new Constitution. The SLORC selected its own people to draft the Constitution, including only 15 per cent of the representatives chosen in the 1990 election. The Constitution provides that the Burmese Army willretain its dominant role in national politics. There is no consideration of the rights of indigenous peoples. If the Burmese Army were sincere toward indigenous peoples, it would not participate in forming the new government. The Constitution being drafted by the SLORC is merely a whitewash Constitution with a place for Burmese racial supremacy.

Bitter Experiences

Assimilation

The Burmese military regime is pursuing a deliberate and calculated policy of forced assimilation. Most of the indigenous peoples are Christian. During 1964-55, all missionary institutions, colleges, medical health programs, and other social development programs were nationalized, and the Burmese mandated adoption of the Burmese language and culture in government institutions in an effort to destroy the indigenous languages and cultures.

If any member of an indigenous people wants to become an high ranking officer, then he/she must marry either a Burmese or a Buddhist. Promotion of a Burmese army member to a higher rank requires that he rape indigenous women or marry an educated indigenous woman. Absolutely no indigenous persons serve in the top ranks of the Burmese Army. Burmese villagers from the plain areas are shifted to the hill areas of indigenous peoples by force in an attempt to dominate the indigenous peoples.

Persecutions

Indigenous people have been persecuted by the Burmese Army through such means as forced relocation, displacement, arbitrary arrests, forced labour, torture, and forced service as unpaid porters in combat areas regardless of sex and age. In June 1995, the International Labour Organization (ILO) at its annual conference, and the Human Rights Watch/Asia on July 26, 1995, condemned and criticized the SLORC for using forced labour. According to Human Rights Watch/Asia, forced labour involved at least two million people since 1992 and "hundreds have died from beatings, exhaustion, accidents and lack of medical care while working across the country"[3]. For example, forced labour was used to set up the site for the inauguration of the Indo-Burma border trade at Tamu town on 12 April 1995[4].

The military intelligence (MI) of Burma often interrogates and tortures villagers, asking them to identify guerillas and their supporters. During frontline military operations, suspected guerillas and collaborators have been shot dead without court proceedings. Common types of torture include beating, cutting the skin, drowning in a water tank, electric shocks and drug injections.

In April of 1995, Hlamphei village was burned by the Army, leaving the villagers with no shelter. A woman was shot dead, but the case was not registered because of fear of the Army[5]. After more than 10,000 Chins were deported by the Indian government in September and October of 1994, the repatriated refugees were received and imprisoned by the military regime, after which they endured six months of pretrial detentionfollowed by grossly unfair military trials[6].

The totalitarian rule has also violated religious freedom. On Sunday, 29 January 1995, the predominantly Christian villages of Nat Myin Han, Nyong Kaung, etc. were ordered by Major Win Kyi of 50 Infantry Battalion to construct a fence for an army camp. The villagers appealed to the major to postpone it to another day besides Sunday. But their appeal was rejected. Also, Christian villagers from Lashee township were forced under threat of severe punishment to convert to Buddhism by regional commanders such as Major Khin Soe of Battalion 228, Company 1, and Captain Than Myint of 52 Infantry Battalion, Company 4[7].

No Other Choice but Refugees

The movement of refugees from Burma to Thailand began in the 1950s to escape the persecution of the Burmese army. A mass exodus occurred in 1984 and again in 1988, and continues to this day. There are about 80,000 refugees in Thailand today, crowded into only thirteen refugee camps. In January and February 1995, over 10,000 indigenous people fled to Thailand. The Army entered into the refugee camps in Thailand and attacked the refugees. As a result, on 18 February acting Thai Foreign Minister sent for the Burmese Ambassador to protest Burma's violations of Thai sovereignty and harassment of refugees on Thai soil. On 21 February, the Burmese army again attacked the refugee camps, this time with artillery; the Thai Army reported that shells penetrated up to 4 km deep into Thai territory[8].

There are also more than 40,000 Chin and other refugees in India, where they have been forced to seek refuge since the 1960s. The Government of India has decided to deport them. I asked the government of India not to deport these refugees. I also travelled to New Delhi and Geneva in July of this year and requested the intervention of the United Nations High Commissioner for Refugees (UNHCR). If the government of India deports them, there will be extreme hardship for these people in Burma.

A few Chins and Arakans, as well as about 250,000 Muslim refugees (known as Rohingya) who seek recognition as an indigenous race, have fled to Bangladesh since 1991. With the active intervention of the UNHCR and other volunteer groups, half of the refugees have returned to their homeland[9].

Cheated Cease-fire

The Burmese armed forces numbered about 190,000 before the 1988 uprising, but today number about 400,000. Following the visit of Than Shwe and Khin Ngunt to China in October 1989, China supplied vast amounts of military materials to Burma[10].

In April 1995 the Burmese army began to terrorise Karen refugees into returning to Burma by destroying refugee camps. Here, two young children stand by the smouldering remains of where they once lived. Photo: Burmese Relief Center.

The army sought a cease-fire with the indigenous armed groups. Thirteen armed groups signed the cease-fire with the army on condition that the SLORC would speedily restore genuine democracy in Burma. Meanwhile, the SLORC attacked the rest of the armed ethnic groups. As a result of this situation, the cease-fire groups formed the Peace and Democratic Front (PDF) Alliance. The Kachin Independence Organization (KIO), extended its support to the PDF, which demanded that the SLORC restore genuine democracy quickly.

The SLORC's actions proved that the cease-fire was not a genuine attempt to solve the crisis, but rather a tool for wiping out the indigenous peoples. The late Brang Seng, chairman of the KIO, noted in an interview that "...(w)e made every concession we could, but they only called on us to surrender - to abolish our party organization and army -without solving any political problems. What they offered us were jobs and positions, but we wanted to solve political problems by political means"[11].

Conclusion

There are no rights for indigenous people. There is no rule of law; whatever the Burmese Army says becomes law to be obeyed in indigenous lands in Burma. Because the Burmese have this attitude, they endeavour to practice "the policy of a great nation" so that in the course of a few centuries there will be one race: Burma, and one religion: Buddhism[12].

Neither imposition of genuine democracy nor the leadership of 1991 Nobel Peace laureate Aungsan Suugyi will bring the civil war to an end, until and unless the indigenous peoples' socio-political and cultural rights have been respected and recognised by the Burmese, for which they have sacrificed their lives for more than 40 years.

Therefore, the restoration of the rights of the indigenous peoples in Burma will require no less than the intervention of the international community, and especially the United Nations. I appeal to the United Nations to repeat emphatically the UN General Assembly 49th session's call to the SLORC to have a political dialogue with representatives of the indigenous peoples.

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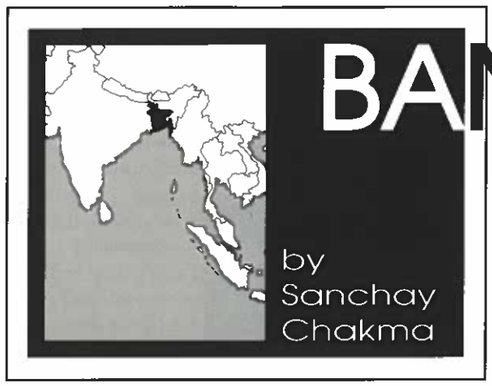
Paper Presented by Zo Tum Hmung at the Conference on Indigenous Peoples in Asia 9th-11th October 1995, Chiangmai, Thailand ❑



BANGLADESH

Indigenous peoples'legal rights and relationship with the State and the non-indigenous population

by Sanchay Chakma

Introduction

For a long time the indigenous peoples of Bangladesh have been facing the severe effects of Government policies, like population transfer, gross violations of human rights, land grabbing, divide and rule policy, ethnic cleansing. The Government of Bangladesh does not recognize us as indigenous peoples in the constitution. We have no constitutional rights as indigenous peoples. The government is very carefully trying to avoid the international recognition of indigenous peoples in Bangladesh. The constitution has recognized the rights of citizens in general. But we have traditional, linguistic, cultural and socio-political distinctiveness from the majority Bengali people. That's why we have rights to a 'separate status' in the constitution as indigenous peoples.

Historical Background

Historically, the Chittagong Hill Tracts was an independently ruled small mountain state in the subcontinent of India. And 'Garo hill' was also outside Bengal. History proves that the Jumma Peoples (ten multi-lingual ethnic groups - Chakma, Marma, Tripura, Murong, Pankho, Lusai, Bawm, Chak, Khumi and Khiang - collectively known as Jumma people) in CHT, the Mandis (Garo), Hajongs, Koches in greater Mymensingh and the Santal in Dinajpur, Rangpur and Thakurgaon have been living there for hundreds of thousands of years. The CHT in particular was a 'Kapas Mahal' in revenue records hundreds of years ago because the chiefs of the CHT paid a tribute in cotton to the Mughals for the privilege of access to the markets of Chittagong. That means, the chiefs of CHT ruled over the area by dint of a reasonable amount of tribute to the Mughals. Recently, Raja Debashis Roy (the Chakma Chief) has written an article entitled 'The Hill People and the Constitution of Bangladesh'. He stated that "The constitutional history of the 'tribal areas' of this subcontinent and especially since British times some of the mountainous regions in the north-west and north-east of the subcontinent were designated as 'excluded areas' or 'tribal areas', to protect the integrity and heritage of the peoples of these regions". A large part of the old Mymensingh district inhabited by the Mandi People was recognized as a 'partially excluded area' by the Government of India Act, 1935.

The CHT was recognized as either a partially or fully excluded area since British times up to the promulgation of the Pakistani constitution of 1962. The 1962 constitution re-designated the CHT as a tribal area. However, in 1964, an arbitrary constitutional amendment excluded the name of CHT from the constitution without any prior consultation with the people of the area despite clear provisions to the contrary. The protestations of the Hill Peoples went unheeded just as they did a few years earlier when they sought to prevent their richest valley lands from being swallowed by the Karnaphuli Hydro-electric Reservoir that was created by the Kaptai Dam.

At first, the British rulers adopted provisions for the indigenous and tribal peoples as a recognition of their 'separate identity'. The '1900 Regulation Act' was one of those provisions by which CHT was recognized as an excluded area. By this act the CHT Jumma Peoples could practice their rights in a special manner. All outsiders were prohibited to enter the CHT without prior permission from the Deputy Commissioner of CHT. But all safe-guards were gradually deleted from the constitution in the period of Pakistan. And the present constitution has opened up the CHT for all. More over, the Government encouraged population transfer along with militarization. As a result, gross violations of human rights, land grabbing, massacres, rape etc. have been taking place in CHT.

Background of the Bangladesh Constitution

The first constitution of Bangladesh, adopted after independence in 1972, has four main pillars: (i) Nationalism, (Bengali Nationalism), (ii) Secularism, (iii) Democracy and (iv) Socialism. In that constitution, the indigenous peoples of Bangladesh who were not linguistically Bengali lost their national identity and constitutional rights. The constitution clearly stated that "By nationalism all citizens of Bangladesh are Bengali". As a protestation, the popular leader of the Indigenous Jumma Peoples of Chittagong Hill Tracts, the late Mr. Manabendra Narayan Larma (the only MP in the national Parliament in 1973-75) strongly criticized the idea of Bengali Nationalism. He demanded that Jumma peoples' national identity be included and also the identity of other indigenous peoples of Bangladesh. But the architect of independence and the father of Bengali nationalism, Mr. Sheikh Mujibur Rahman, ignored the demand. In the then Parliament, Mr. M.N. Larma argued that "because a Bengali can not be a Chakma, so how can a Chakma be a Bengali? If it is, why the Parliament is adopting the Bengali Nationalism in the constitution?"

Since the death of Mr. Sheikh Mujib in a military coup, the constitution has changed many times. The Marshal and Administrator, General Zia-Ur-Rahman has amended one main point of the four pillars, which inserted 'Faith in Almighty Allah' instead of 'Secularism'. It was a great instrument for indigenous and religious minorities but this amendment meant that they became treated as 'Second Class' citizens in the country.

Thus, the indigenous peoples of Bangladesh have been undermined in every sphere of social, cultural and political life. According to the constitution, fundamental rights of the citizen is verbally equal to all. Especially, every citizen shall be legally entitled to equality before law. The constitution stated that "All citizens are equal before law and are entitled to equal protection of law" (Bangladesh Constitution Part III, Article 27). Another article states that "No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution" (Bangladesh Constitution Part III, Article 28/3).

In the sector of employment every citizen shall be accorded equality of opportunity in the service of the Republic. In this way, the constitution treats every right for all. But it is true that every citizen in a state is not equal in terms of ability. It is very difficult to find a 'homogeneous state' in the modern world. Most states are multicultural, multilingual and multi-religious; Bangladesh is no exception. So, reasonable accommodation of different sections of people, communities and language groups is necessary to maintain the fundamental rights and needs of the citizens of the state. That's why statutory rights are necessary for backward sections of people. Separate constitutional rights and special reconciliations for the backward sections of people have to be in the constitution.

Photo: Espen Wæhle

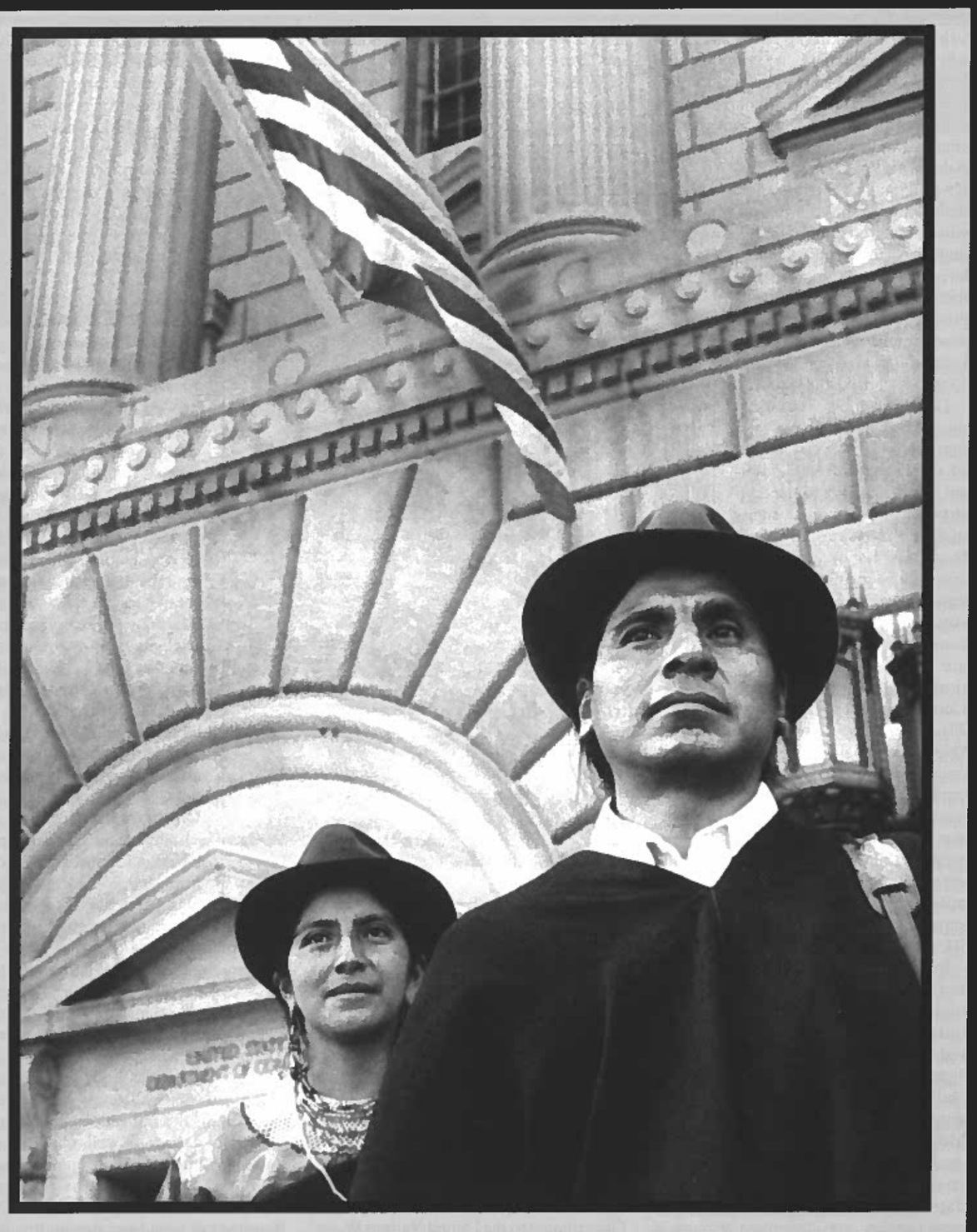
International Experiences

Some countries of the world have recognized the rights of indigenous and tribal people such as, Australia, New Zealand, Canada, Philippines and some other Latin American states. The above mentioned countries either verbally or practically have recognized the rights of indigenous peoples and have also undertaken developmental programmes for them. But most of the Asian countries have been denying there are any indigenous peoples here. The case of Bangladesh is no exception. This year the delegation of the Bangladesh Government to the United Nations Working Group on Indigenous Peoples has clearly stated that "there are in Bangladesh, some ethnic groups, principally in the hill districts of the south-east who are distinct from the ethnic majority. The distinctiveness of latter groups and in terms of culture and life-style does not give them an indigenous status visa-à-vis the rest of the nation, who, allow me to reiterate, are very much indigenous to the land, indeed more indigenous by hundreds of years than the ethnic groups of hill tracts."

The United Nations declared 1993 the year of the World's Indigenous Peoples in recognition of indigenous peoples. By recognizing the struggle for self-determination, the United Nations itself has approved a 'permanent forum' for indigenous peoples. The ILO Conventions 107 and 169 are the important instruments for indigenous peoples, which clearly describe the rights of indigenous peoples. By considering indigenous peoples' cultural relativity with nature and the environment the United Nations has recognized the rights of self-determination. So, we have the rights to develop our traditions, cultures, languages and socio-political institutions.

Conclusion

The debate on indigenous peoples should conclude by recognizing them as indigenous peoples. And also proper steps should be undertaken for their universal development. Those countries which are still ignoring the rights of indigenous peoples are also refusing the reality of human dynamism. The United Nations Charter and Universal Declaration of Human Rightsare the assets of all human beings. We have the right to enjoy these rights as well as our non-indigenous brothers and sisters. And the indigenous people must be part of society as well as a part of a state. Without self-determination, we shall not be able to exist as peoples on earth, so we the indigenous peoples of Bangladesh have been demanding safeguards with a constitutional guarantee. ❑



THE GENE HUNTERS

photos: LUKE HOLLAND

(left) Luis Macas, President of CONAIE (Ecuador) leads a protest at the US Department of Commerce against US Government funding and backing for the controversial Human Genome Diversity Project. Washington D.C., April 1994.

(below) Wayuu Indian woman at Carisal - Northeastern Colombia during April 1994 visit of researchers from Universidad Javeriana's Institute of Genetics.

Colombian researcher from the Institute of Human Genetics at Bogota's Universidad Javeriana takes a blood sample from an Arhuaco Indian at Simonarua in the Sierra Nevada de Santa Marta region of Northeast Colombia.

(left) 600 year old Mulsca Indian mummy in a museum at Pasca - Colombia. Tissue samples taken from the mummy are being used in the study of population genetics and hereditary disease.

(below) Hoffmann La-Roche scientist Dr Gabrielle Zangenberg at the pharmaceutical company's research laboratories in Alameda, California, where DNA from Colombian Indians is being analyzed. The company claims that the research has no commercial objectives.

GREENLAND

The Arctic Point of View

by
FRANK SEJERSEN and
CLAUS ORESKOV

Arctic hunters and fishermen have for a long time felt the pressure of international environmentalist and animal protection organisations which undermine the market for Arctic products and lobby various governments with the purpose of bringing about import bans on these products. The United States has passed a Marine Mammal Protection Act whose main purpose is to prohibit the import of products derived from seal, whale and walrus (see Alfred Jakobsen, "The Marine Mammal Protection", *Indigenous Affairs*, no. 2, 1994). In 1983, the European Union adopted a seal directive which prohibits the import of seal furs to member countries. Additionally, a new directive banning the import of furs from countries where leg hold traps are in use, is to come into effect at the beginning of 1997. The seal directive does not prohibit the import of furs made from adult seals caught by indigenous hunters. The principle behind this is known as aboriginal exemption. Despite the aboriginal exemption, the seal directive has had a devastating effect on the market for Arctic skins and furs. Neither the seals nor the animals affected by the rules governing the use of leg hold traps are threatened by extinction; these are animals whose exploitation by Arctic hunters and fishermen can easily be achieved without the species being at risk. For centuries the hunters have lived in a kind of symbiosis with the animals. In a manner of speaking, the animals in question need the Arctic hunters to be their harvesters, in order that a constant balance between the species and the cycle of nature - of which the hunter is himself an integral part - may be maintained. In our part of the world this practice is known as game preservation.

The international animal protection and environmentalist groups have made a large profit on their campaigns against the hunting and use of whale, seal and other fur bearing animals. As a consequence, the organisations have been able to rechannel their profits into the very same campaigns. Arctic hunters and fishermen, on the other hand, have had neither the money nor the manpower to counter these campaigns effectively. Only rarely have their points of view been heard in the international debate. Knowledge of the living conditions in the Arctic regions is virtually non-existant, a situation which can easily give rise to stereotypes and prejudice.

In the hope of achieving a more nuanced picture of the Arctic hunters and their conditions of life than the one disseminated by the animal protection organisations, we present this interview with a group of Greenlandic hunters. Because of the large differences in the hunting conditions among the various geographic areas of Greenland, we have chosen representatives from North, South and East Greenland respectively for the first interview; while in the second interview a hunter from South Greenland elaborates on the conditions of life in his district.

The interviews took place in Ilulisat in Greenland, at a hunters convention organized by the Home Rule Government's Department of Hunting and Fishing.

We wish to thank Hansi Kreutzmann from *The Organization of Fishermen and Hunters in Greenland* (KNAPK) for his invaluable inspiration during the interview, for his help with interpreting and for suggesting persons to be interviewed.

An interview with 3 hunters:

Jens Danielsen, Qaanaaq (North Greenland)
Angutêrarc Simonsen, Narnortalik (South Greenland)
Tobias Ignatiussen, Tarsiilaq (East Greenland)

Tobias Ignatiussen: I will begin by telling about our childhood and about how conditions were then. My father was an enterprising hunter and my mother a capable hunter's wife. We never lacked anything. My mother made the clothes we needed. At the beginning of the 1970s it started becoming more difficult for hunter families to manage, because of the campaigns directed against Arctic hunting by groups around the world. Incomes plummeted, in small remote settlements people could no longer make a living, and many were forced to move to larger towns. In the towns we suddenly had to be concerned with economic obligations which we had not known of before. It's like two different chapters in our lives. Since our way of life has changed because of the anti-hunting campaigns, I have often felt that it might be worthwhile for the people who run these campaigns to hear our points of view. That is why I am very glad that we now have an opportunity to make our opinions known.

Angutêrarc Simonsen, is that a story you can recognize?
Angutêrarc Simonsen: I am in complete agreement with him, our stories are the same, although there is a lot of difference in our native regions and the hunting conditions there. East Greenland and the dog districts in North Greenland may have more in common as far as hunting methods go. But we live at the base of South Greenland where there is access to the open sea all year round. This of course means that very different circumstances prevail. But I totally agree with what Tobias said before, especially his remark about those affected by the campaigns not having had a chance to speak out. Many millions of people listen to what the campaigns have to say. We should have been willing, at an earlier date, to spend some money in contradicting the anti-hunting groups, then we might not have suffered such drastic setbacks in incomes as we did.

Jens Danielsen, have you also felt the economic changes that occurred in the 70s and have been in force since?
Jens Danielsen: I am in agreement with the first two speakers in that regard. As far as hunting methods go, we in the North are much like the people of East Greenland who used to depart on hunting trips as whole families and return home and trade the skins at higher prices than now. And when the furs were sold once again, the hunters might receive a bonus on top of the original price. That provided security. All of a sudden the prices started falling and it was no longer advantageous to hunt as a family. In many cases it was necessary for the wife to be a wage earner so that the family could fulfill its economic obligations. Otherwise we risked eviction or having the electricity cut off. The way hunter families now live is very different from before. There is more uncertainty, and a lot of the satisfaction we used to get from the work is gone.

What are the chances that the wives can find employment?
Danielsen: The chances are not good, and in many cases they can only get unskilled jobs like domestic help or cleaning.

Many anti-hunting groups claim that the occupation of hunter will have died out in 20 years, what do you say to that?
Ignatiussen: I cannot imagine it. When I go hunting I feel a great freedom, I am my own master and I don't want to lose that freedom.
Simonsen: We have understood that the purpose of the anti-hunting campaigns around the world is to put an end to hunting as an occupation. But let the people running the campaigns be aware that it will not be an easy thing to do. We are speaking of something with very deep roots, and it is the roots that determine whether or not a flower will break off.
Danielsen: Hunting has been handed down to us from our forefathers; it is embedded deep in us. It is a gift to live in a land where our forefathers have lived and passed on many traditions to us. Especially since Home Rule was established in Greenland it has been possible for us to band together and make sure we pass on the legacy we have received. The campaigns directed against us in other countries have been untruthful. They have claimed that we exploit nature excessively and kill baby seals and what not. But I don't think that such lies can win.

Many anti-hunting organisations try to destroy the possibility of selling Arctic fur and skin products. How much do hunter families nowadays rely on a money economy? And what will happen if the market for such products is further reduced?
Ignatiussen: At Thule a lot of the hunting is done from kayaks, and we do not overly exploit the animals like the anti-hunting groups claim. If only we were given a chance to speak out and explain how life is lived up here, to tell them how we do things compared to how they do things. They claim that we mistreat the animals. In other parts of the world they keep the animals captive like slaves, locked up and chained. From our point of view that amounts to cruelty to animals. Up here we keep dogs, and dogs and people cannot live without each other. We all share in the great outdoors, the dogs are not our slaves; people and dogs help each other. The animals which are the basis for our livelihood live freely in large areas where they can move around without constraint. In other words, we are speaking of two completely opposite attitudes to animals.
Simonsen: The purpose of the seminar we are attending now is precisely to consider which possibilities exist on the world market for selling our products. The problem may be that other countries know too little about Greenland, and about the large quantities of meat we have but are unable to sell. Just like other countries we should be able to supply meat to the world, meat that is not so polluted and that is of a fine quality. We would like other people on this earth to have the pleasure of tasting such high grade meat.

It may sound harsh to say it, but we feel that those countries and organisations which lobby so hard against us do not protect the animals but kill people, because it is the people who are the final victims. As I said that may sound harsh,

but we feel that the widespread misconceptions about us and our work have affected us very adversely.

Danielsen: We can manage on our own and make a living from hunting as long as we are not constantly interfered with by the anti-hunting organisations. If they continue to spoil our livelihood they will have to compensate us for our losses. I would appreciate it if you would pass on this thought to them.

Ignatiussen: The English, the Dutch and other nations have for centuries gone whaling off the coast of Greenland. These very same people now forbid us to catch whales because they claim that there are not very many left. That seems to me to be another way of saying that whales as a resource belong to them, since they see fit to decide when whales may or may not be caught.

At the seminar you have spent a lot of time discussing sustainable use of nature - how is that done in practice?

Ignatiussen: As for seals, there are so many seals up here that they are often a nuisance to the fish stocks and the fishermen. We simply have got to limit the seal population in order not to destroy the fishing industry. Even if sealing were to be increased considerably, it would still be sustainable.

What about the hunting of beluga and narwhal at Thule?

Danielsen: They are protected by municipal ordinances. Like always, at Thule whales may be hunted only from kayaks.

An interview with Angutêrarc Simonsen, Nanortalik.

Before the interview, Angutêrarc Simonsen pointed out that everything he is going to say reflects his own views and that there is no specific political attitude behind his words.

What is a hunter's day like, and can you give an impression of how the rhythm of the year affects people of your occupation?

Simonsen: That is really an amusing question, for I must tell you that the weather is our master - the weather determines our circumstances. Let me start with spring. In May and June we usually go out to the farthermost islands called Kitsigssut off Narnortalik. This activity is called *kipparneq*, going west to these islands to catch hooded seal. The purpose of this hunt is to gather provisions for the winter. Formerly people stayed on the islands for the whole two months; in those days it was necessary to have a general store out there. Nowadays most people have motor boats and it is possible to go to the mainland and shop every day.

How do you live on the islands?

Simonsen: Formerly people lived in earth huts. When they were ready to leave, they removed the roof. This was a way to preserve the hut because it prevented the wind and the weather from causing the roof - and therefore the hut - to collapse. Today we live in wooden huts built by the hunters. The size of the catch is to a large degree determined by the amount of field ice: if there isn't a lot of field ice then the number of hooded seal goes down. It has been 30 years since I started hunting out there, and in those days there were far fewer hooded seals than there are today. The seal population has increased considerably. The reason for the smaller number of seals years ago was due to the Norwegian and Canadian hunt, which kept down the population. The fact that their number is greater today is both good and bad. The current overabundance hurts the other animal stocks. Personally I am going to continue gathering provisions on Kitsigssut in the spring as long as I live, and I am convinced that future generations will carry on this tradition.

What kind of provisions do you produce on the islands?

Simonsen: Sometimes I hunt on the field ice, at other times I stand on land and shoot the hooded seal.

As soon as the prey has been caught we start treating it, because we get the best result from freshly caught seal. The blubber is carefully cleaned of blood and cut into long thin strips, which are laid out on the cliffs to dry. During this stage it is important constantly to turn over the strips. They should not dry out too much because that damages the taste; on the other hand they should not dry too little because they have to last for a long time and besides that would also ruin the taste. Later on the strips are preserved in bags made of sealskin, and the end product is called *pooruseq*.

The meat is cleaned of blood and dried like the blubber. The blood is dried as well and used as a sort of caramel. These products are very sought after, not only by families who have moved away from Narnortalik, but also by others living along the coast. For this reason, when they have produced more than they need, the hunter families can sell these products both in Greenland and to relations living in Denmark.

Usually when a seal is cut open, it is cut along the whole underside, but another method is used to produce a*pooruseq*. You flense the seal from the flipper to the anus in order to remove all the meat and blubber. Then the head is pulled out so only the skin is left. After that the blubber connected to the skin is removed and the skin is left to lie for a few days. It is then ready to be sewn back together again. The sewing has to be very accurate and as tight as on a football. Both the inside and the outside is sewn, just like you do when you make kayaks and clothes. After the sewing process the skin is inflated and left for another couple of days before it is filled with the dried blubber.

How many hooded seal do you catch?

Simonsen: That is very much up to the weather. If the air is humid, for example, it will be difficult to dry blubber and meat. The weather is the joker insofar as the north wind brings many seals, they come south with the wind. But the catch will be a poor when the wind blows from the south. We have a saying that the hooded seal does not like to go against the wind. In the right weather you can catch up to 20 or 30 hooded seals, and at other times only 2 or 3. We could catch a lot more than we do, but the drying process is very time consuming and puts a limit on how many we actually catch. Although it is so time consuming, it is the only way we have of utilizing the whole seal: blubber, meat and blood, without anything being wasted.

The hunt is carried out on a sustainable basis. If we were to help ourselves to the seal population without restraint, there would be no seals left for the coming generations!

When we return from Kitsigssut, we immediately store our provisions. Formerly the provisions were stored in meat depots where they could keep, but now we have deep freezers. It is also very important to send some provisions to friends and relatives.

Do you give food as gifts?

Simonsen: In Greenland it is customary to give meat free of charge to friends and acquaintances. But in order to maintain a cash income we have to sell part of the surplus meat.

After the end of the seal hunt on Kitsigssut, the trout season begins. At the trout fishing locations the fish is salted or smoked, or it is sold fresh in town. Municipal ordinances prohibit trout fishing in the rivers, so only when the trout have migrated to the sea do we start the net fishing.

When I was young there were lots of fish and we fished for codfish and catfish as well. Today these fish are so rare that we only catch them on occasion. The only fish found in abundance in South Greenland is fjordcod, but it cannot be sold right after spawning because the meat is of a poorer quality then. So you see what kind of limitations we run into!

Do you fish with lines?

Simonsen: Today we use dip nets, it doesn't pay to fish for fjordcod with lines. Capelin is caught in May, June and July. The capelin is more abundant, we think that is because of the decline of the cod. Although the seals eat a lot of capelin, it has become more common. Unfortunately, all other species of fish have declined. (Hansi Kreutzmann: I would like to add that up north at Uummannaq and Upernavik, a lot of codfish as well as catfish have appeared in the last few years. We find that strange, because these species have disappeared from the Bay of Disco and to the south.)

Are the fluctuations in the fish stocks a subject of discussion among the hunters and fishermen?

Simonsen (with a big laugh): It most certainly is, we have nothing else to talk about, and if you could hear us you would soon be fed up. As far as land animals go, we also hunt grouse and hare, but these provisions are mostly intended for the religious festivals. Before the festivals we sometimes go hunting for days to have enough meat on the table.

Which festivals are you referring to?

Simonsen: Especially Christmas. Easter often falls at a time of year when it is illegal to hunt grouse and hare.

What about confirmations and birthdays?

Simonsen: We gather provisions for these occasions and freeze them; we try to utilize as much as possible of the game animals.

Do you hunt fox?

Simonsen: We have fox, but in limited numbers. Earlier, in my childhood, people went fox hunting before the festivals to make extra money, but fox hunting is no longer done.

Do you have other sources of income than selling provisions?

Simonsen: Let me put it this way: the sea is our bank and the weather plays another big role. We make a profit by selling directly to the customer, and by selling fjordcod to the Royal Greenland Company.

Can you earn enough from selling directly to the costumer?

Simonsen: We try hard to make as much money as possible because we have rent and electricity to pay, but sometimes it is difficult enough even to earn as little money as we need.

Do you or your wife have a wage earning job in addition to the hunting?

Simonsen: For 30 years I have made a living from hunting and fishing. In all that time I have never had a job on land. Right now I miss my work so much that I already long to go home. I long to be able to go out to sea again.

My wife is a hunter's wife, we have no children to raise, if we did our situation would be a lot worse.

Fortunately, my wife was brought up to be a hunter's wife. I am very happy about that, for she is extremely good at processing my catch. In that respect I am very lucky. Had she not been brought up that way we might have been divorced long ago (laughing). I could not survive without my wife's contribution.

Do you sell sealskin?

Simonsen: Yes, my wife is skillful at treating the skins, but like I said, everything we catch we use. Nothing goes to waste.

The hunting and fishing occupation seems to us to be a very arduous livelihood. What are the values you place the highest? What makes you persevere in your occupation?

Simonsen: Probably that I was born to be a hunter, just like my wife was born to be a hunter's wife. I will tell you a story. When I was young we had to pass a test to be admitted to a continuation school. They used to make up these tests to see whether young people were suited to go there or not. My father was a catechist, but I was set on becoming a hunter so I deliberately made errors on the test to avoid going to the school. Life at sea is a freedom in and of itself which I value highly. Being a hunter is what is most important to me. I am not the only one with this attitude, many other people feel the same way.

Could you tell us about polar bears?

Simonsen: In South Greenland, where there is no winter ice, we have no tradition for polarbear hunting like the people at Thule and in East Greenland have.

I happen to have shot 4 polar bears in South Greenland, but it is a stroke of luck to meet them so far south. During the winter of 1984-85 I lived at Scoresby Sound and there I went along on a poiar bear hunt; that's how I got a bear over there too. All in all, I have brought down 5 bears.

When I went on the real bear hunt at Scoresby Sound, we had 3 sledges and we stayed out for 1½ months. It was no pleasure when the weather was against us. But when the weather and nature were at their finest, it was simply an experience for the soul.

What are the future prospects for the Arctic hunting occupation?

Simonsen: If the hunter culture were to die out, then Greenland would go down with it too. (Literally: then Greenland would become lopsided.)

Before we finish, I would like to add this: I sincerely hope that you can convince Europeans to eat seal meat. That would assure us a larger income. What I have talked about in this interview are real life experiences which I have lived through myself. This way of life is a reality for many other hunters as well. I would also like to thank you for doing this interview. ❑

GUATEMALA "Ladino" elections in a country of indigenous peoples

by Estheiman Amaya Solano

On 12 November 1995, Guatemala elected new mayors and members of parliament, and postponed the presidential elections until next January, since none of the candidates obtained the requisite absolute majority. The results of those elections reflect a striking reality in this Central American country: «ladino» (non indigenous) authorities are elected to govern a 70 per cent indigenous population. However, this time there are new elements which are worth analysing in the light of the election results.

The winners

The outright «winner» is still abstention. Of the over three and a half million citizens registered to vote, only 1.7 million, or 46%, participated, despite the various campaigns carried out to convince the population to vote.

The President of the Republic himself and the ex-Procurator for Human Rights, Ramón de León Carpio, who is still fairly popular as he nears the end of his term in office, led the Presidential campaign. The Nobel Peace Prizewinner, Rigoberta Menchú Tum, obtained support for a million-dollar opposition media campaign which her eponymous foundation carried out.

Similar initiatives were taken by the guerrilla group, the Guatemalan National Revolutionary Unit (URNG), which held rallies and occupied buildings; the Chamber of Commercial, Industrial and Financial Associations (CACIF), which includes the most powerful financial groups in the country; the Catholic Church; and the United Nations Children's Fund (UNICEF), among others.

All this effort was in vain, however, since the number of voters did not even exceed the results of the past two elections held under Jorge Serrano Elías and Vinicio Cerezo.

The left gains ground

The New Guatemalan Democratic Front (FDNG), which opinion polls had reckoned to be trailing behind, surprised analysts by obtaining around 10 per cent of the vote, a significant victory which ranks the party as the fourth most important political force in the country, after a campaign of barely four months. The FDNG includes well-known Guatemalan left-wing leaders, such as the activist, Nineth Montenegro, the trade unionist, Byron Morales, and the indigenous leader, Rosalina Tuyuc. This party also includes various indigenous organisations under the political wing, Nukuj Ajpop, which means «bid for power». This party has the most indigenous members of parliament of any other in the Congress of the Republic, with four out of a total of eight indigenous members.

For the first time since the current democratic initiative began, the left has appealed to voters and put forward candidates for popular representation posts.

Rigoberta Menchú voted for the first time

Although she became old enough to vote 18 years ago, the Nobel Peace Prize winner, Rigoberta Menchú, first exercised her right to vote last November 12 in Chiantla, in the western district of Huehuetenango.

This event became a symbolic act, since, like Rigoberta, thousands of indigenous peoples who had never done so before broke their silence and participated in the elections for the new authorities. Rigoberta's vote is yet another event symbolising the new winds of democratic change which are sweeping through Guatemala today.

Seven Mayas in the Congress of the Republic

This time, the indigenous vote was significant. It is estimated that their electoral participation increased by around twenty per cent, compared to previous elections. In these elections, indigenous women's participation was, without a doubt, a decisive factor.

However, the results reveal that the political system is not conducive to true ethnic representativity in Guatemala.

The new congress will be composed of three Kaqchikeles, three K'iche's and two Q'eqchies, who represent four

mainly Maya districts and three of the four main linguistic communities in Guatemala - i.e. 45% of the total population.

Name	Language	Department	Party
Rosalina Tuyuc	Kaqchiquel	Lista Nacional	FDNG
Adrián Mejía Ixcoy	K'iche	Quich	FDNG
Roberto Pitán Pacay	Q'eqchi'	Alta Verapaz	FDNG
Macario González	K'iche	Totonocapán	PAN
Ricardo Choy	Kaqchikel	Chimaltenango	PAN
Haroldo Erick Quej	Q'eqchi'	Alta Verapaz	FRG
Aura Marina Otzoy	Kaqchikel	Chimaltenango	FRG
Manuela Alvarado	K'iche	Cantel	FDNG

José Angel Zapeta, leader of the K'amal B'e Political Community, one of the organisations promoting indigenous participation, states that despite the few indigenous members, one can talk of a minority Maya «bench» in the Congress of the Republic. However, to gain formal recognition as such, it will at the very least be necessary to negotiate and reach a consensus on the matter.

Guatemala is one of the few Latin American countries with a majority indigenous population. Like Bolivia, Peru and Ecuador, the Guatemalan indigenous people, who are descended from the Maya, have, throughout history been treated as third-class citizens.

Increased participation of women, indigenous people and civil society organisations

The number of women elected to the Congress increased considerably in the recent elections: they obtained the greatest share of power with nine elected members of parliament, the highest figure recorded in this sphere of public power.

Civil society organisations also won in 21 of the three hundred municipalities which elected mayors. These organisations can only aspire to win the highest post at municipal level, since, although they have attempted to modify the law which prevents them from competing in the elections for the Congress of the Republic, the political parties have made it their business to block this initiative, since they see them as competitors who might eventually usurp them from the political arena.

During these elections, the civil society organisations will govern, among others, two key municipalities: those of Quetzaltenango and Antigua Guatemala, where the organisation, Cambio 2000, won the election.

Indigenous groups won in around 100 municipalities, representing political parties and civil society organisations, which shows that they are a significant force at municipal level, despite their political differences.

An indigenous people will govern the second most important city in the country

Another significant event in these elections was the triumph of the pro-indigenous civil society organisation, Xel-Jú, which won the municipal government of Quetzaltenango, the second most important city in the country, defeating the political parties for the first time in the history of Guatemala, after a quarter of a century of civil struggle.

Rigoberto Quem Chay's victory makes him the first indigenous mayor in the second most important city in the country, which has traditionally been governed by ladinos, despite the fact that the majority of its inhabitants are K'iche Mayas.

This victory becomes all the more significant if it is analysed in the context of the International Decade of Indigenous Peoples, declared by the United Nations (UN) in 1994 under the Agreement on the Identity and Rights of the Indigenous Peoples, signed between the guerrilla and the government, and given the efforts which the Maya people have made to take up a new and active role in the different spheres of national life.

Maya Participation in Political History.

The 1944 revolution marked the beginning of Maya political participation, according to a publication coordinated by the Centre for Maya Documentation and Research (CEDIM). The document indicates that, from that date until 1975, the escalation of the agrarian crisis had a serious impact on the local indigenous communities and on the «sociological and political awakening» which was spreading widely after the Revolution.

This was evident in organisations such as Catholic Action, cooperatives, peasant leagues, trade unions and political parties. In 1995, indigenous groups and trade unionists from the Cantel factory joined the Revolutionary party in opposition to the Liberation government.

When the DC began proselytising in 1956, in the western high plateau region, numerous Catholic Action leaders founded branches in Quetzaltenango, Totonicapn, Quich, Solol, Huehuetenango and other areas.

Maya groups won municipal mayorships for the opposition parties. In the 1974 elections, Pedro Verona Cumes, DC, of Chimaltenango and Fernando Tezahuic Tohon, PR, of Solol boyh indigenous were elected to parliament.

Tezahuic resigned from the PR and helped organise an indigenous political party under the auspices of the indigenous organisation, PATINAMIT, with a view to participating in the 1978 elections.

The Press and the Congress attacked the project, calling it racist and accusing it of inciting class struggle. The organisation's name was changed to National Integration Front (FIN), in order to unite indigenous people and non-indians. It was registered as a Committee in support of a political party in April 1977.

The party's candidates were military men: Romero Lucas, Enrique Peralta Azurdia and Ricardo Peralta Méndez. In order to secure their participation, the FIN allied itself with Lucas, who promised to recognise it as a political party in return for its electoral support.

Lucas became president, but not a single indigenous people was elected to parliament, and his government became notorious for its cruel oppression of the people.

These circumstances undermined the credibility of the indigenous political project, and, according to the document: «it wouldn't be stretching the imagination to conjecture that this failure provided one more incentive to search for other - non-electoral - alternatives to achieve the participation of the Maya people in the exercise of national political power.»

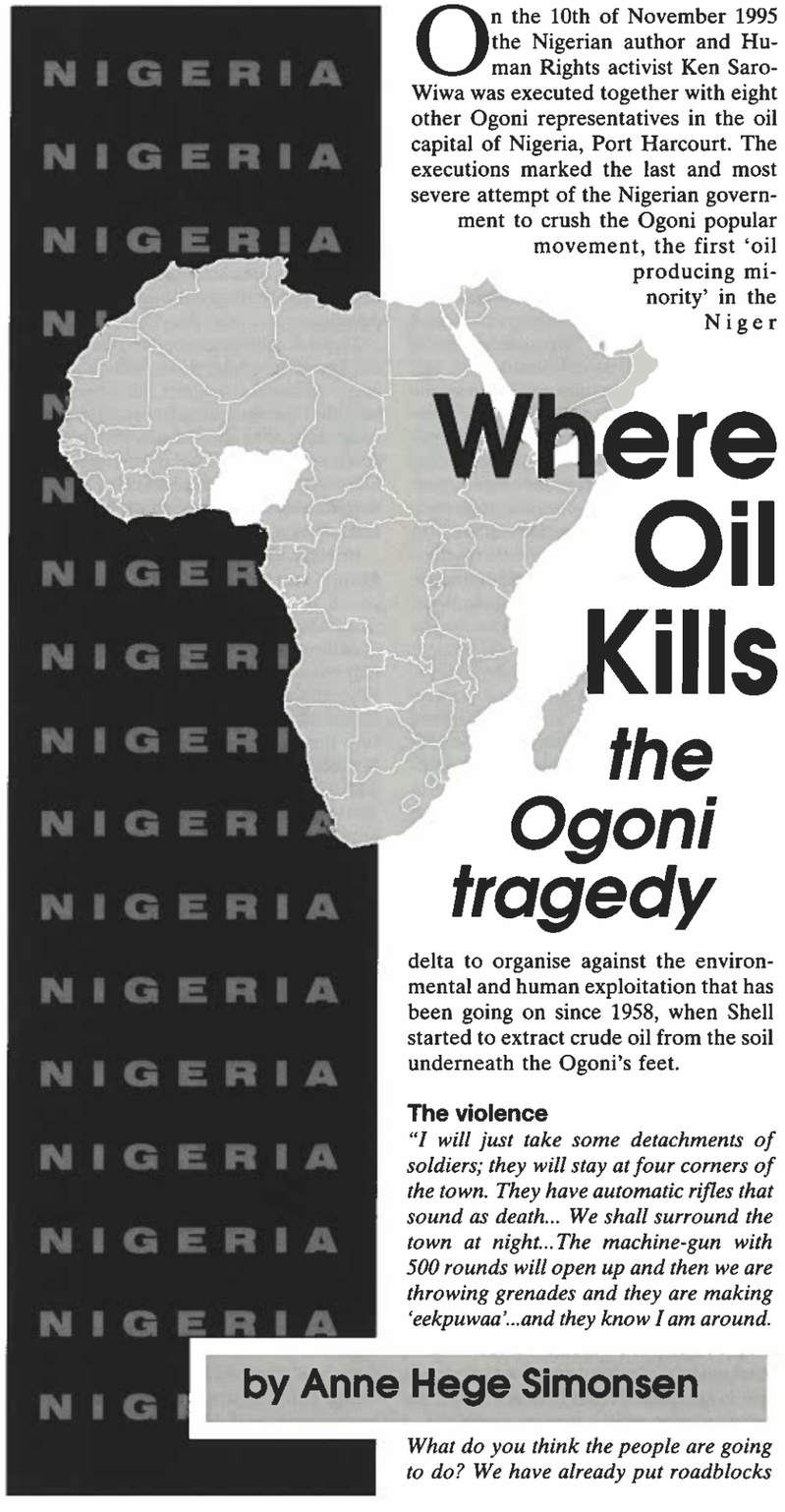
In 1982, the head of state, Efraín Ríos Montt, created the State Council, composed of 30 members, of which a third were Mayas.

Although it is true that indigenous participation in the State Council was part of the counterinsurgency strategy, which Rios Montt hastened to enforce, it is also true that this experience served to trigger political awareness among the Maya people. The latter had never enjoyed such high and significant representation in the Congress of the Republic.

When the democratisation process, which was enshrined in the Constitution, began in 1986, the Maya organisations became active again after the cruel period of oppression they had suffered during the armed conflict.

Some distinguish between two Maya factions: the politico-cultural and the development organisations. The former consist of indigenous and non-indigenous groups, and sectors affected by the violence; while the second was composed of non-governmental organisations and Maya intellectual movements, whose tactic was silent resistance and preparation for action when the repression diminished.

Other recent events are contributing to lay down the foundations for an increasingly strong future Maya political movement: the awarding of the Nobel Peace Prize in 1992 to Rigoberta Menchú; the widespread controversy surrounding the «Discovery of America»; the Decade for Indigenous Peoples; the national debate on the ratification of ILO Convention 169, and the emergence of Maya communcation media, among other things. ❑



Where Oil Kills *the Ogoni tragedy*

by Anne Hege Simonsen

On the 10th of November 1995 the Nigerian author and Human Rights activist Ken Saro-Wiwa was executed together with eight other Ogoni representatives in the oil capital of Nigeria, Port Harcourt. The executions marked the last and most severe attempt of the Nigerian government to crush the Ogoni popular movement, the first 'oil producing minority' in the Niger delta to organise against the environmental and human exploitation that has been going on since 1958, when Shell started to extract crude oil from the soil underneath the Ogoni's feet.

The violence

"I will just take some detachments of soldiers; they will stay at four corners of the town. They have automatic rifles that sound as death... We shall surround the town at night...The machine-gun with 500 rounds will open up and then we are throwing grenades and they are making 'eekpuwaa'...and they know I am around. What do you think the people are going to do? We have already put roadblocks on the main road, we do not want anybody to start running... so the option we have made was that we should drive all these people into the bush with nothing except the pants and wrappers they are using at night."

This is how Lieutenant Colonel Paul Okuntimo expressed himself at a press conference last spring concerning the Nigerian army's activities in Ogoni. He is referring to how the army literally chased the Ogoni people from their villages and into the bush after the arrest of Ken Saro-Wiwa and several other Ogoni activists in May 1994. The army's killing, raping and harassing of the Ogoni population was at its most severe in the summer and fall of 1994, something that has been thoroughly documented by human rights organisations such as Human Rights Watch/ Africa and Unrepresented Nations and Peoples Organization (UNPO).

When IWGIA appeared at the scene, in July 1995, the situation was somewhat calmer. Okuntimo was no longer in charge of the task force, presumably because he was a little too outspoken, even for the taste of the government representatives. But the press conference was one of many videotapes that MOSOP representatives (Movement for the Survival of the Ogoni People) had gathered to document the violence they have been subjected to for the last three years.

We are watching in a small bar in Bori, the capital of Ogoni. People are drinking palm wine and beer and making jokes about the military.

-We are not afraid anymore, the owner of the bar says. We've been arrested so many times. We are no longer afraid to die.

Another videocassette is put into the machine. This time it is a recording of the celebration of Ogoni day on the 4th of January 1994, a non-violent demonstration of Ogoni unity where people were encouraged to dance their anger and joy.

-That was the day I was arrested, explains a man in his forties. -You can see it's me with the cap down there in the corner.

The man goes on to explain how he was held in prison for three weeks.

-They beat me and threatened to shoot me or flog me to death. I remember they flogged five other detainees in the presence of some of the women that were also arrested. The reason why they took me was that I used to be a policeman. I quit in 1979, but they said I was using my connections in the police to help MOSOP.

Everybody has a story to tell about arrests, beatings and killings. A young woman tells how she was flogged with a horsewhip together with an old lady when they tried to visit relatives imprisoned in the Bori military camp. The same young lady gave birth prematurely after having been forced to crawl in a ditch filled with cold, slimy water to get passed a military check point. But she considers herself lucky. She has not been raped.

-I know a young girl of fifteen. She is an orphan and in charge of two younger siblings. One day, the whole village was chased out into the bush by the soldiers, but the smaller children did not have anything to eat so she went back into the village to look for food. She was discovered by the soldiers and raped by four men. I also know a woman who had her rectum wall torn open after a gang rape. She got a terrible infection, but she survived. I have been trying to gather some of the stories of these women to document the violence, but it is not easy. Rape is so connected with shame and the women prefer to try to forget or they do not want to face the social consequences, particularly if they are not married.

The conflict

The video is finished and the television switches itself on. There is a commercial in the form of a song, a commercial I have also heard on the radio. A man is singing in slightly broken English, accompanied by gay tunes: "No break pipelines, no burn bushes, no farmin' on 'de pipeline.." The commercial goes on to inform the viewer that if any such crime is committed to his or her knowledge the police should be alerted.

A trip into Ogoni shows the pathetic reality behind this message. The question is not that one should not farm on the pipelines, the question is how to avoid them. Shell has been extracting crude oil from Ogoni soil since 1958 and the pipelines have been laid in bundles through peoples villages and in the midst of their fields. The oil company has not even bothered to protect their pipelines by burying them, some places they are balancing more than a metre above the ground. Shell had to withdraw from Ogoni in 1993 and so there are presently no more gas-flares illuminating the dark African night. There is also considerably less noise these days, but abandoned oil wells are still leaking explosive gas. Recent and not so recent oil-spillages have left their mark on the environment. You can trace an oil-spillage kilometres from the source. The oil that has leaked out into the streams leaves a grey and black trace of dead trees. In the village of Yorla they are still suffering the consequences of an oil-spillage in 1972. The soil looks like burned asphalt and nothing grows. The population, living in one of Nigeria's most fertile fishing and farming communities, has to *buy* water. The village has gone to court to try and get compensation, but their claims are 'outdated'.

This is the core of the Ogoni conflict. For almost 40 years Ogoni was considered merely a production site. Shell has extracted 30 billion dollars worth of crude oil from the area; when they were forced to leave in 1993, the production was some 28,000 barrels a day. Still, there is virtually no electricity in Ogoni and people do not have access to pipe-born water. The medical and educational situation is deplorable.

The movement

In 1990, the Ogoni formed MOSOP, a non-violent popular movement of which the late Ken Saro-Wiwa was to become the spokesman and leader. MOSOP aimed at getting compensation for the destruction of the environment and a reasonable share of further oil-production in the area. Saro-Wiwa also advocated a policy of minority rights that he called ERECTISM, a policy which included ethnic autonomy, resource and environmental control. The Ogoni's final goal was a separate state within the Nigerian federation, but the Nigerian government started choking long before any of this was to become a reality. Oil stands for between 80 and 90 per cent of Nigeria's export income and the industry is organised through joint-venture agreements with the international oil companies. Oil is virtually 'to be or not to be' for the Nigerian government that, according to Africa Confidential, is facing a foreign debt of 38 billion dollars and a debt to the oil companies of some 200 millions (the debt was reduced from some 600 millions in 1995). Shell is the biggest oil company operating in Nigeria, but the good quality of Nigerian oil has also attracted companies like Mobile, Elf, Agip, BP, Chevron, etc.

The Ogoni are not the only 'oil-producing' minority in Nigeria, but they were the first to come through with a well-organised popular movement. One of the reasons for the violent onslaught on MOSOP is the military government's fear of the movement functioning as a catalyst among the ethnic minorities in the Niger delta.

Another factor is the unstable political climate in Nigeria. General Sani Abacha gained power in November 1993 after having overthrown Ernest Shonekan who replaced general Ibrahim Babangida after Babangida annulled the democratic elections on the 12th of June, 1993. The winner of the election, Bashoru Moshood Abiola, is still in prison, suffering from bad health. Babangida presumably annulled the election because he was afraid of turning over power to a 'southerner' after 30 years of 'northern' rule. The result is a strengthening of the traditional conflict between the three major ethnic groups in Nigeria, the Yoruba (West), the Igbo (East) and the Hausa-fulani (North), but in particular between the North and the South. Abacha's regime is furthermore weakened even in his own region, because Abiola constituted a rare compromise, his being both a Southerner and a Muslim (the North is basically Muslim as compared to the Christian and animist South). In Abacha's scheme there seem to be no room for demanding minorities, or political opponents, and Ken Saro-Wiwa's fate was that he represented both.

The trial

On the 4th of May 1994, Ken Saro-Wiwa was going on campaign in Ogoni. The issue at stake was the Constitutional Conference that was coming up and Lieutenant Colonel Okuntimo had recently reinforced his task force with 400 men. The same day, four prominent Ogoni politicians were also going to speak at a different meeting. These four had formerly been engaged in forming MOSOP,

More than 23 villages have been destroyed since 1992. Photo: Anne Hege Simonsen.

but had diverted from the organization's present policy and people accused them of being government collaborators. During their meeting, they were lynched by a mob. The same day Saro-Wiwa and four other MOSOP leaders were arrested. They were not present at the scene, but the charge was that they instigated the killings.

The normal proceedings in a murder case in Nigeria is trial by a civil court. In this case the local authorities put up a military tribunal, allegedly to make the court proceedings more effective. But the trial did not start until February 1995. In the meantime Saro-Wiwa was held in custody, chained for long periods of time and though suffering from a heart condition, he did not receive any medical treatment. The soldiers were rioting in Ogoni, raping and killing and arresting numbers of people.

The trial has been described as a farce of fabricated evidence and bribery of witnesses by both Nigerian and international observers. In July 1995, the defending lawyers withdrew from the case, not wanting to legitimate the proceedings. Instead they tried to get the trial investigated by the High Court, opting for a reopening of the case in a civil court. The initial attempt was finally accepted on the 17th of October, which under normal conditions would have meant that the Tribunal would have had to await the High Court's decision. But the Tribunal went ahead with the proceedings and on the 31st of October, Ken Saro-Wiwa and eight others were sentenced to death by hanging. The sentence was effectuated on the 10th of November.

The aftermath

The killing of Ken Saro-Wiwa was Abacha's last attempt to cast a final blow on the Ogoni movement. He was the leader, a charismatic and internationally well renowned author and he was MOSOP's main source of funding. After the killings, the army was reinforced with 7,000 men to prevent rioting in Port Harcourt. Ogonis are not allowed to dress in black, nor to grieve the executed men in church. Demonstrators in Lagos have been arrested. But Ken Saro-Wiwa was right when he said that "Dead I become a martyr and even more dangerous to Shell and Nigeria's oppressive rulers". He is now not only a symbol of the Ogoni struggle but of the entire human rights question in Nigeria, and the hangings have made the world focus on Nigeria, even though economic sanctions still seems hard to agree on in the industrialised countries. But the challenge now is not to forget the living. The Ogonis are mourning not only Saro-Wiwa but some 2,000 other human lives lost in the last three years. Villages have been destroyed and around 100,000 people are left homeless as a result of a small minority of 500,000 people trying to challenge the mighty coalition of Shell and the Nigerian military government. ❑

Letter from Ken Saro-Wiwa to IWGIA representative Anne

On his medical situation:
Generally, my health is poor, having been denied medical attention for so long. Even when my military captors were forced to allow me some medical attention, the military doctor, Dr Agada was very hostile and betrayed openly his loyalty to his military orders in preference to his loyalty to his patient. The conditions in which we are held are awful. And even the military doctors have accepted that I am suffering from deep mental stress and depression as a result of the chaining and beating which I had to endure.

On the trial:
Definitely, the orders to the Tribunal are to convict me. The rulings of the Tribunal so far, its acceptance that the hiding of evidence by the prosecution is 'reasonable' and not criminal, the bribery of witnesses to testify against me, etc., etc., could only point to one fact: this is a hangman's court.

Fortunately, the Ogoni struggle no longer depends on me as an individual. Alive (free or in jail), I am a symbol of resistance. Dead, I become a martyr, and thereby even more dangerous to Shell and Nigerian oppressive rulers. The oppressor has now to choose the cause of peace for which I stand or bear the possibility that other leaders may arise who will not have my age, experience or ..(unreadable word) my peaceful methods. I sincerely hope that the struggle will remain non-violent because that gives us strength over our oppressors, although it is more expensive of Ogoni lives than an armed struggle

On his own role
As a private person, I have given my life, my possessions (both material and intellectual) to this struggle. And I have been well rewarded by the satisfaction of giving voice to the voiceless. The personal cost has been tremendous but I am not complaining. As a symbol, by fate has been to engineer people to the ways of peace, of dialogue and of the use of the intellect as primary in the demand for political, economic and environmental rights, even by the most powerless in society.

On how the Ogoni differ from other oil-producing minorities in the Niger delta:
The Ogoni are not just 'minorities' they are slaves and that makes their condition incomparable with any other 'minorities'. They have been enslaved ever since the British arrived in Ogoni in 1901. Their exploitation under the domestic colonialist has even been more brutal and genocidal. The density of population in Ogoni, the intense devastation of the land, the numerical inferiority of the Ogoni, the absence of educated people, these together make Ogoni unique. However, it has to be said that other oil-producing minorities suffer a similar fate, only the degree is different. But then, exploitation is exploitation. No one should tolerate even a minor dose of it.

On the political situation in Nigeria
Having seen the civil war of 1967-70 at very close quarters, I would hate to see another civil war in Nigeria. Indeed, the country would not survive it, and the human sufferings caused would be unbearable. Everything must therefore be done to avert it. The Ogoni would suffer a lot since they are unarmed and defenceless, and the struggle would be for the control of the rich oil deposits of the delta.

The Ogoni have no option but to struggle for autonomy within the Nigerian federation. That is what will guarantee them dignity, progress and sustained development. I believe, and have written a lot about the issue, that the way forward for Nigeria is EREC-TISM - ethnic autonomy, resource and environmental control. This is what would ensure the success of democracy and promote federalism which is what Nigeria, and indeed, multi-ethnic black Africa requires. Not only must minorities be separated from majorities, minorities must be separated from minorities, majorities from majorities. Each must be allowed to develop according to its genius, of its own pace using its resources. Then there ought to be co-operation at the centre - in a collegiate Presidency, minding only minimal common concerns. Otherwise, we will continue to have oppressive military dictatorships or tyrannical civilian rule supported by military bandits. ❑

Answers from Shell to Anne Hege Simonsen

According to my information Shell stopped drilling in Ogoni land in April 1993. How much money have you lost on this? When and under what circumstances do you consider it possible to resume your activities in Ogoni? How valuable do you consider the unexploited gas reserves in Ogoni to be?

The Shell Petroleum Development Company of Nigeria (SPDC) withdrew all its staff from Ogoni land in January 1993 in the face of increasing intimidation and attacks from communities that included physical beatings, theft and destruction of personal belongings and equipment. Production ceased in mid-1993 as flow-stations tripped and staff were not able to return to make installations safe. These installations have been vandalised and will cost more than USD 50 million to repair.

We will not return unless we can work in harmony alongside the communities. There is no question of our staff carrying out their work under military protection.

The five major oil fields in Ogoni land date from the 1960s and 1970s and at the time we withdrew had a production potential of 28,000 barrels per day. So far, 634 million barrels of oil have been extracted from the Ogoni fields.

Oil spillages speak for themselves. Photo: Anne Hege Simonsen.

Every oil deposit is useful in the final analysis but Nigeria has been able, and will continue, to meet its OPEC quota without the production from the Ogoni area. We are keen to return to Ogoni land with the cooperation and support of the communities to our mutual benefit and are working towards that end.

Being protected by the Nigerian army Shell has been accused of playing a vital part in the human rights abuses committed against the Ogoni people since 1992. What are your comments on these accusations?

SPDC has never worked under the protection of the Nigerian army. There is no question of staff working under military protection and we made this clear during the oil workers' strike of last year when SPDC's managing director Mr Brian Anderson was quoted in the Financial Times of London as saying:"We have rejected the government's offer of military protection in order to maintain full production...We do not believe that calling in troops is the answer and could lead to more serious trouble."

We reject violence as a means of settling disputes and have frequently and publicly expressed concern about the use of force by communities and the military in disputes. We support the statement of human rights in Nigeria's constitution and are concerned that all citizens possess such rights.

According to my information Shell is not willing to take any responsibility concerning the environmental damages caused by the oil production in Ogoni land since 1958. If this is true, is it not a violation of international standards of the protection of the environment? What is the agreement between Shell and the Nigerian government on this issue?

Where environmental problems stem from our oil operations as a responsible Nigerian company, SPDC is committed to dealing with them. In event of oil spills we clean them up and pay compensation to people whose land has been affected and this is as true of Ogoni land as it is of other areas of our operations. Since staff were withdrawn from the area at the beginning of 1993, it has become more difficult detecting and cleaning up oil spills, largely caused by sabotage by persons in the communities. We have to rely on information coming in from communities and contractors within the area to complete the clean-up which we are not able to personally check for effectiveness. Since 1985 to the beginning of 1993 some 69 per cent of oil spills in the Ogoni area have been caused deliberately by persons in the communities.

Defining country-wide environmental standards in the oil industry is a government responsibility. In 1992 the government put in place environmental legislation with 104 different individual standards which largely have been taken from US legislation and thus represent internationally accepted industry practice. SPDC already meets most of these standards and will have complied with all but 10 per cent by May 1996. It will seek an extension on the remaining standards which require long term investment. ❑

NEW DOCUMENT

New document of IWGIA (No.77)

THE EXPLOSION OF COMMUNITIES IN CHIAPAS

By
June Nash,
George A. Collier,
Kathleen Sullivan,
Christine Marie Kovic,
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María Eugenia Santana E.,
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US$ 15

SHORT NEWS SHORT NEWS

In September East Timor was once again rocked by violent disturbances. The current wave of riots and public protests by East Timorese youths against the consequences of the illegal Indonesian occupation of the territory is the most intense and widespread so far. Youths protest against Islamisation, immigration and economic exploitation by Indonesian occupiers. The latest violence was sparked by insulting comments from an Indonesian prison official against the Catholic faith, espoused by the great majority of East Timorese.

The military authorities have acted violently against the demonstrators. Over 400 arrests (Radio Netherlands, 12 September) and at least 4 deaths (Reuters, 11 September) have occurred. Indonesian military authorities deny these reports, as well as the accusations that brutal torture is being applied to the detainees, claiming that the situation is back to normal.

Reports from Dili indicate that arbitrary arrests continue, and new forms of torture are being utilised in questioning, such as inflicting cuts with razor blades and pouring salt into the wounds.

Local military leaders, as well as the Indonesian Politics and Security Affairs Minister stated that harsh measures will be taken against the protesters. Such manifestations of popular discontent against the unacceptable conditions are usually met by strong military repression and violence, without any genuine attempt to address the root causes of the problem, that is, the heavy handed illegal Indonesian occupation and its harsh colonialist nature.

In addition to the brutality of the Indonesian occupation army since the 1975 invasion, and the repression and ongoing violation of human rights, a recent source of grievance for the East Timorese has been the strong colonisation of the territory by Indonesian transmigrants, mostly Moslem small traders and farmers. With the support of the authorities, these newcomers increasingly displace the local population from economic activity and from their land, while actively trying to impose their faith. As a result, East Timorese are becoming economically marginalised in their own land. Now, even their basic religious beliefs are coming under attack, as illustrated by the prison official's remarks.

The Indonesian military has increased its attacks on the Catholic Church, seen as an enemy, since it is the strongest bastion of protection of the East Timorese people against Indonesian oppression. As part of its strategy against this 'enemy' the Indonesian military currently supports a strong islamisation effort. This has outraged the East Timorese, creating a new battle front. A deep religious conflict is thus being fostered as a new conflict dimension in the territory. The latest violence illustrates its strength.

In a Radio Australia interview on 11 September, East Timorese spiritual leader and Nobel Peace Prize candidate, Bishop Ximenes Belo, has strongly condemned the oppression, injustice, corruption, and disrespect for human dignity which characterises the present situation under Indonesian rule. Bishop Belo also deplores the dishonesty and hypocrisy of Indonesian authorities, whose repeated past promises to improve the situation have proven to be empty. As a result, the Bishop concludes, the Indonesian government has lost its credibility with many East Timorese people.

Asked for views about of the present situation, the Bishop calls for radical changes of policy in East Timor. The authorities need to acknowledge their own failures, rather than merely put the protestors at fault, he added.

In a message of support for the East Timorese youth revolt, jailed Resistance leader Xanana Gusmao wrote on 11 September that there can be no peaceful coexistence with the occupiers of East Timor while they carry out a physical, ethnic and cultural genocide of the people. Xanana Gusmao said that these last 20 years of colonialist repression have led the territory to be flooded with people belonging to the lowest social stratum of Indonesia. Such people comprise the most uncultured and poor of Indonesia, a country seemingly unable to survive on the basis of its own development, so that it needs to usurp the land and resources of its neighbours. Xanana Gusmao added that "the colonialists shamelessly insult our Faith and our Beliefs, pretending thus to destroy the spiritual foundations of the East Timorese people".

Speaking in Sydney, Australia, CNRM Special Representative, José Ramos Horta called upon Australian Prime Minister Keating to use his coming visit to Jakarta, to forcefully raise the East Timor issue with Indonesian President Suharto, as was done by US Ambassador to the UN, Madeline Allbright, during her recent Jakarta visit. Horta said that "the unacceptable current situation can simply not be allowed to continue. This situation is very detrimental not only to the East Timorese, but also to Australian and Indonesian interests. All sides, including Indonesia, would derive much benefit from a radical change of policy, seeking a genuine and internationally acceptable solution of the East Timor issue without further delay. Such a solution requires entering into talks with the East Timorese Resistance".

Horta added that as a responsible neighbour, Australia should use its influence in Jakarta to help induce a change of policy. Only then will it be possible to remove the most serious stumbling block to the desired close neighbourly relations between Australia and Indonesia. "Unless East Timorese rights and aspirations are respected, the hoped for peace in the region will be hard to attain, much to the detriment of all regional peoples", Horta concluded.

For further comment contact:
José Ramos Horta +61 2 600 7828

Source: National Council of Maubere Resistance

REPORTS ON HUMAN RIGHTS VIOLATIONS

ETCHRIET has received the following information on a variety of recent human rights violations suffered by East Timorese.

1. Disappearance of Afonso Pinto, and East Timorese collaborator with the Indonesian military, and candidate for the post of Regent of Viqueque.

Afonso Pinto took part in the Indonesian-sponsored 'reconciliation' meeting in Chepstow England last year, where he expressed disappointment with the process of integration of East Timor into Indonesia.

He was last seen getting out of a helicopter with an Indonesian military officer with whom he had worked in anti East Timorese guerrilla operations, after being allowed to briefly visit his wife to say goodbye before supposedly leaving on an 'assignment'. He has since disappeared.

2. There has been no Indonesian statement regarding disappeared Clandestine Resistance Leader Pedro Nunes (Sabalae) and his assistant Remigio Levi da Costa, who was captured on 29 June by the Indonesian Army, according to East Timorese Resistance sources.

Latest Resistance reports say that Sabalae was taken to Jakarta, most probably to the Army Intelligence (BIA) detention centre in Tebet Selatan where he was intensely interrogated under torture. According to these sources, he was then taken to Bali, where he is most probably being held at the Military Police detention centre. It is further reported that he has refused to talk, and was even promised that his capture would be publicly acknowledged if he did so. Resistance sources feel that there is a strong possibility that the two men may have meanwhile been murdered by the Indonesian military.

3. Resistance Leader Xanana Gusmao: East Timorese sources inform that Commander Xanana Gusmao has been placed in total isolation at his Cipinang Prison cell in Jakarta. He is kept locked in throughout the day.

In the past Xanana, while forbidden to receive outside visitors, was allowed to meet fellow inmates. Even this has now been prohibited. The only human being he is allowed to see is the guard bringing his food, who locks up and leaves immediately after carrying out his task.

Xanana Gusmao was repeatedly interrogated by military intelligence officers throughout August, after copy of his correspondence regarding an East Timorese women's petition to the Beijing Women's Conference was intercepted in East Timor. A five months prison sentence remission, automatically granted on the occasion of Indonesia's 50th independence anniversary, was cancelled.

4. It is alleged by Resistance sources that last month's burning down of a market in the East Timorese locality of Ermera, was a deliberate action of the Indonesian Miliary to allow a pretext to arrest youths suspected of anti Indonesian sentiments.

As a consequence, members of an East Timorese clandestine opposition group called 'Fitun Naroman' were detained. First a youth named Joao das Neves was arrested and severely mistreated to reveal names of the group leadership. These were said to be Osvaldo the group's head and Germenino its secretary. These two young men were also arrested and severely mistreated until they provided the list of the approximately 200 members of the group. Many members were then arrested but subsequently released. Osvaldo, Germenino and Joao das Neves remain in detention.

5. According to eye witness reports, two East Timorese youths were summarily executed by Indonesian Army members in Wailakama village on July 27. These were Marcelino da Silva Belo, a Catholic village youth group leader, and student Augusto Freitas Belo. The Army accused the youths of being Resistance supporters. The victims' families were not allowed to keep the corpses, which were taken to Baucau before being returned to the village a day later. No confirmation of the murder was issued by the Indonesian Army.

6. Latest reports from the town of Viqueque refer to serious disturbances. In retaliation for the murder of two Timorese civilians by Indonesian troops on 24 August, local youths have just burned four mosques and 20 market stalls owned by Indonesian transmigrants. An unspecified (large) number of arrests of East Timorese suspects has followed.

7. Two East Timorese, Marito Reis and Albino Lourdes, released from Cipinang prison Jakarta on 17 August after serving a 12 year sentence for political reasons, are stranded in Jakarta. The funding they are supposed to receive from

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the Justice Department for their return home to East Timor has not been forthcoming.

The two former prisoners are forced to rely on the support they receive from East Timorese, NGOs and Church organisations in Jakarta. They are in need of medical attention, but are not eligible to receive assistance from the International Committee of the Red Cross, as they are no longer political prisoners.

8. East Timorese sensitivities have been dealt a further blow by the formal raising of the Indonesian national flag on the top of Mount Ramelau on August 17. Mount Ramelau, the highest peak in East Timor, is a place of profound symbolic significance to the East Timorese.

9. Indonesian moves to exacerbate internal conflict among East Timorese continue intensifying. Youths are being recruited for paramilitary training, aimed to gradually localise security operations against the East Timorese nationalist Resistance. Rather than have mostly Indonesian troops fighting East Timorese, the new Jakarta strategy is to increase the number of East Timorese fighting against fellow East Timorese.

Pro- integrationists Tomas Goncalves, in Ermera, and Joao Tavares, in Atabac, have been ordered by the military to train East Timorese civilians to assist 20 battalions carrying out an offensive against the guerillas in the mountains next October. Meanwhile Governor Abilio Osorio has been quoted in the media as warning public servants unwilling to take part in military training that they could be dismissed.

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SURINAME

Forest Conflicts Reach Flashpoint

Marcus Colchester
Third World Network
FEATURES

Suriname's indigenous people are protesting at being denied access to their forests which fall within logging and mining concession areas given to foreign companies by the government.

Conflict in Suriname between local inhabitants of the forest and foreign logging and mining companies has reached a flashpoint.

Armed police guarding a Canadian goldmine have been shooting at village's trying to gain access to their forests, which now fall within the company concession.

In response to the takeover of their lands, the Amazonian Indians and Maroon communities of the forested interior have declared regional autonomy and called on the government to freeze the handout of concessions until their land rights are respected.

Suriname has a population of only 400,000 people, 90 per cent of whom live in the capital and coastal centres. The rainforests of the interior, covering an area the size of England and Wales, are home to four indigenous peoples and six tribes of Maroons - descendants of escaped slaves who recreated forest societies in the interior in the 17th and 18th centuries.

Denied land rights and marginalised by development, these peoples have already been caught up in a vicious six-year civil war which devastated the country and brought its bauxite and aid-dependent economy to near ruin. A tenuous peace with the tribal insurgencies, brokered by the Organisation of American States, was established in 1992, in return for unkept promises to secure land rights and community development. However, instead the Government has embarked on a risky policy of handing out the country's rich natural resources to foreign companies.

Under these arrangements the Canadian company Golden Star Resources has gained access to rich auriferous reefs in the interior of Suriname. The same company has recently been in the headlines for causing a massive cyanide spill in neighbouring Guyana, when over four million cubic metres of toxic slurry cascaded into the country's main river.

In Suriname, the company's first operations at Gros Rosebel have already led to the forced eviction of thousands of Maroons living within the concession after being threatened by the Minister for Justice and Police with air strikes in June this year.

On 28 August another forced expulsion took place and, according to Surinamese human rights workers, armed police and security guards are now patroling the area shooting indiscriminately at community members trying to get access to their forests.

The Government is also in the process of handing out three one-million hectare concessions to Malaysian and Indonesian loggers. One contract for over one million hectares negotiated with the Malaysian conglomerate Berjaya Sdn. Bhd. overlaps the lands of severalMaroon and indigenous peoples and is about to be

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submitted to the National Assembly. The affected communities are indignant that they have not been consulted.

In response to this growing pressure on their lands, indigenous and Maroon leaders held a 'Gran Krutu' (Great Gathering) on 19-21 August at the Maroon village of Asindopo. The meeting ended with the release to the press of a declaration by the leaders that they had set up a 'Supreme Authority of the Interior' which asserted the right to agree to or refuse development in the hinterland.

The 'Gran Krutu' demanded that the government not grant any further mining and logging concessions on their territories and declared:

'We who have lived for so many centuries in Suriname, we speak now because we feel that the time has come to exercise our right to self-determination, as our ancestors did before us.

'We want other peoples to know that we are here! We want them to know that we have our own homes, our own chiefs, our own government, our own songs, our own dances, our own history, in short our own culture, our own customs, our own life, our own land, in particular our own forests, where we must be able to live the way we think right!'

The numerous resolutions passed at the meeting also included the assertion that:

'We have the exclusive right to effectively use the natural resources on and in our territories as applicable to our own development. We have the right to determine when and how these resources will be used for the purpose of our development.

'The natural resources can only be exploited by persons or organisations outside our communities if they have the express and written permission of our authorities, and that such things as the form and amount of fair compensation for our community are laid down in agreements.' ❑

COLOMBIA

Urgent appeal to national and international public opinion in support of the U'wa people

by ONIC
Colombian National
Indigenous Organisation
Bogota, 9th of november, 1995

The U'wa or Tunebo indigenous people, one of the most traditional and least known in Colombia, inhabit the northeast of the country. Today, they are facing an extremely serious conflict which is threatening their survival. The reason for this is that the Colombian Government has authorised exploratory drillings for oil on U'wa territory by the company, Occidental de Colombia Inc. (OXY), a subsidiary of the US company, Occidental Petroleum Corporation.

U'wa territory covers a third of the Samoré Block area, which the Colombian Oil Company (ECOPETROL) handed over to OXY for exploration. The indigenous people living there do not have legal titles to a large section of their territory.

In Colombia, oil drilling activities caused irreparable damage to the Kofán, Sionas (Putumayo), Sikuani, Macaguán and Cuiva (Arauca) indigenous peoples, who lost 80 per cent of their territory, not to mention the harm done to their culture and social fabric and to the environment. The U'wa are well aware of this, and, consequently, they are prepared to defend their territory at all costs, as they consider that all of it is sacred.

In adminstrative terms, an attempt was made to ensure compliance with the consultation which is compulsory under ILO Convention 169 (approved in Colombia under Law 21 in 1991) before the Licence was issued to OXY, but the Ministry for the Environment granted that authorisation (10 II 95) after holding a single meeting with U'wa delegates.

As a result, the indigenous people, supported by the Ombudsman, lodged an injunction to suspend the application of the Environmental Licence.

The Bogota High Court granted the trusteeship (12 XI 95) to the U'wa people, but at a second hearing, it was rejected by the Supreme Court of Justice (19 X 95). Their last hope now is a review by the Constitutional Court. The U'wa lodged an appeal with the State Council that the Licence be annulled. The State Council allowed the appeal (14 XI 95), but has still not taken a definitive decision.

Consequently, we are launching an appeal urging people from all over the world to write to the Colombian judges asking that they rule in favour of the survival of the U'wa indigenous people.

Please address correspondence to:

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Consejo de Estado	Presidente
Edificio Seguros Aurora	Corte Constitucional
Carrera 7a. #74-21 piso 8	Calle 72 #7-38
Bogotá, Colombia	Bogotá, Colombia

Please send a copy to ONIC, Calle 13 #4-38, fax: 284 34 65, Bogotá. ❑

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ISSN 1024-3283
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