

THE INDIGENOUS WORLD 1995-96



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IWGIA

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IWGIA
INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

**THE INDIGENOUS
WORLD
1995-96**

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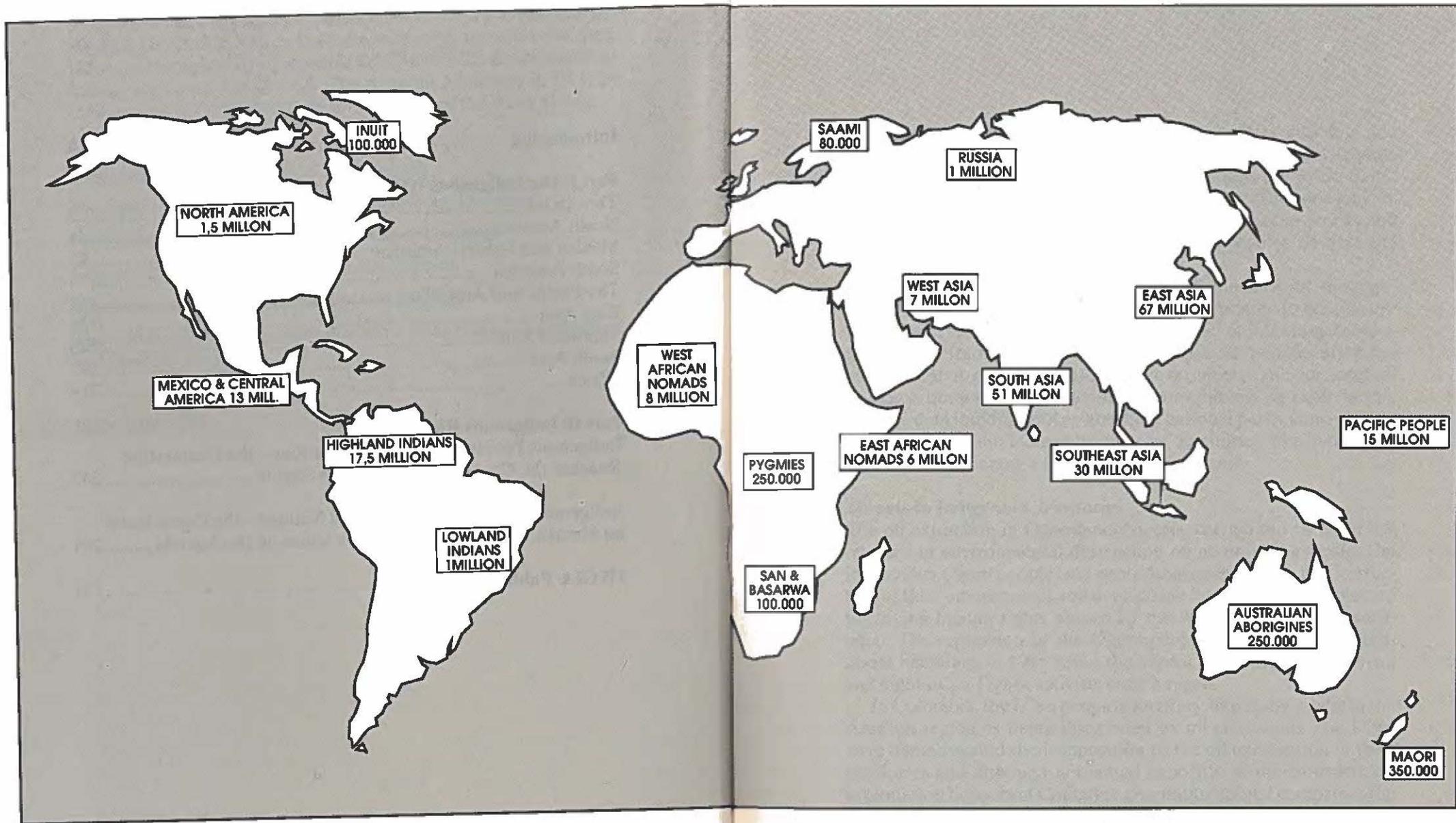
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INTRODUCTION

1995 and 1996 have shown that indigenous peoples' situation and problems are receiving increasing attention on the global agenda. This is reflected in the work of the United Nations, the World Bank, the Asian Development Bank and various bilateral donor agencies. However, there is often a considerable gap between words and good intentions and action, and indigenous peoples all over the world still experience immense suffering.

As is reflected in this edition of *The Indigenous World*, the problems of indigenous peoples are often directly related to the dynamics and interventions of large scale capital and multinational corporations. The traditional territories of indigenous peoples often has high potential economic value for governments and for international corporations, and activities such as mining, oil exploitation, logging, dam building and establishing national parks, constitute an enormous threat to indigenous peoples' territories. *The Indigenous World* provides many examples of these threats.

Threats to Indigenous Territories

The oil extraction in Ogoniland, Nigeria, carried out by Shell has resulted in environmental destruction on an enormous scale. The indigenous *Ogoni* peoples are protesting against this mass destruction of their environment and in response they have been subject to horrifying human rights abuses by the Nigerian military government. The repression of the Ogoni peoples reached the international headlines in 1995 when the Ogoni leader, Ken Saro-Wiwa and eight other Ogoni activists were hanged.

In Colombia, the *U'wa* people's territory, like many others in the Amazon region, is being threatened by oil companies. The *U'wa* have demonstrated their opposition to the oil exploration in their territories and although not stated explicitly in the contracts, oil exploitation licences in Colombia give multinational companies the right to decide the fate of indigenous lands.

In Peru, the government has launched an aggressive promotion of the hydrocarbon industry and authorised greater facilities for the development of oil activities including exploitation on indigenous lands without respecting indigenous rights and without prior consultation as laid down in ILO Convention 169. This has resulted in grave consequences for the indigenous peoples in terms of environmental destruction among other problems.

In West Papua, the PT Freeport Indonesia Company is operating the world's largest gold mine and the second largest open-pit copper mine. Their operations have resulted in environmental destruction and human rights abuses of the indigenous peoples of the area, and conflicts and killings were reported on a large scale in 1995.

In Labrador, Canada, extensive mineral exploitation is taking place and more than 40 companies have active drilling programmes in the territories of the *Innu* and *Inuit* without their prior consultation or consent.

In the Philippines, the government continues to allow 'flagship' development projects and investments in indigenous peoples' areas. In Northern Luzon two dams are to be constructed despite resistance from indigenous groups which are not reassured by the government's promise that no one will be forcefully relocated.

In Namibia, the government is planning to construct a huge dam in the northern part of the country where the *Himba* people live. The government sees the dam as a solution to Namibia's future energy needs and it is the biggest industrial project in Namibia since independence. However, consultation with the *Himba* people has been negligible and those *Himba* who risk losing their lands are left to try to resist the project alone.

In Kalimantan, Indonesia, industrial tree planting is taking place on a large scale in the indigenous *Dayak* areas. In 1995 and 1996 serious conflicts were reported between industrial tree development projects and the *Dayak* people. The *Dayaks* want their ancestral lands to be returned and on several occasions have burnt down company property.

In Sabah, Malaysia, many indigenous communities have lost their lands due to logging when almost fifty per cent of Sabah's total forest area was gazetted as Forest and Park Reserves. Most forest reserves are for logging and the indigenous communities were not informed that their customary lands were included in these reserves. Likewise, many indigenous peoples have lost lands to industrial tree plantation companies.

In Tanzania, the *Maasai* are facing problems of losing their traditional lands which constitute a threat to their lifestyle. They have been evicted from the Mkomazi Game Reserve as the government and the wildlife lobby claim their presence is a threat to the game.

Until mid-1995, the *Van Gujjars* of Uttar Pradesh, India, had faced the threat of eviction from their ancestral forest lands. However, they have successfully organised themselves and drawn up a Community Forest Management of Protected Areas Plan. If implemented, this will create the first Peoples' National Park in India.

Human Rights Violations

Severe human rights abuses against indigenous peoples continue to take place in many parts of the world. The situation is extremely serious in several parts of Asia where many governments refuse to recognise their indigenous populations and where severe repression takes place under the pretext that national unity is being threatened by the indigenous demand of self-determination.

In many parts of Nagaland the Disturbed Area Act is in force and thus under military control with all fundamental civil rights suspended. The Indian Armed Forces in Naga areas have harassed, tortured and killed people, and in some instances whole villages have been razed to the ground.

In East Timor, the Indonesian repression continues. In September 1995 riots and demonstrations broke out during which police are said to have fired indiscriminately into crowds, to have broken into homes and generally terrified the people. Many Timorese were detained and there have been reports of torture.

Tibet remains under Chinese occupation and the political persecution and surveillance reached new heights in 1995-6. Human rights monitors report more than 700 political prisoners, the highest figure since the end of the Cultural Revolution in the 1970s. Torture continues to be used during interrogation and imprisonment, and four young political prisoners died in 1995 as a result of torture.

In the Chittagong Hill Tracts, Bangladesh, the influence of the armed forces is pervasive and detailed reports of human rights abuses by security forces continue to be received. There are reports of extrajudicial killings by the security forces and the violence and harassment against the indigenous peoples, in particular students, has escalated.

In Burma violations of human rights are increasing daily in *Karenni* areas. Every month hundreds of villagers are sent to the

front line, and often they are used as human shields for the advance troops. Hundreds of villages have been relocated.

Increased Recognition

Though the problems are still immense, the indigenous movement is becoming stronger and the situation of indigenous peoples, in some countries at least, has improved. This is the case, broadly speaking, in some countries in the Arctic area, South and Central America and Australia.

In Canada, work continues to establish the new territory of Nunavut in 1999, in which the Inuit will make up about 90 per cent of the population.

In Australia the past year has been one of indigenous agenda setting. Three major reports were published in 1995 by indigenous-controlled bodies with official status as advisers to the national government. These reports are a response to the Prime Minister's commitment to an 'indigenous social justice package'. The recommendations are progressive, and the process has been a unique example of thorough national policy development by indigenous people. However, though the new government has members who are sympathetic to indigenous issues, the fundamental recognition of self-determination has not penetrated Australian social and political circles.

In Guatemala, the indigenous peoples have won four major victories: the Agreement on the Identity and Rights of the Indigenous Peoples; the first *Ki'che* electoral victory in 500 years in the country's second largest city; the election of several indigenous leaders to the Congress of the Republic, and the ratification of ILO Convention 169 by the Guatemalan Congress. These are important landmarks in the history of Guatemala where for the first time the peace negotiations between the guerillas and the army allow the indigenous *Mayan* people to make proposals and participate as a group. The number of *Mayan* organisations continues to increase.

In Peru and Bolivia indigenous peoples have likewise succeeded in winning some important local elections and in obtaining the position as mayor.

Also the recent developments in South Africa give hope for optimism for indigenous peoples in the African context. The new Constitution can be interpreted as progressive on indigenous issues. For instance, it provides for the right to cultural freedom and the right of traditional leaders to safeguard cultures.

Developments at the United Nations

The determined work of indigenous peoples in the United Nations' Commission on Human Rights and its Subcommission and Working Group on Indigenous Peoples continued during the past year. There are two main issues on the agenda, namely the draft Declaration on the Rights of Indigenous Peoples and the establishment of a permanent forum for indigenous peoples.

In the previous year work had intensified greatly with the formation of the intercessional working group to deal with the draft Declaration, which held its first meeting in November 1995. The draft Declaration was discussed and commented on by governments and indigenous peoples, and the indigenous representatives were unanimous in keeping the draft Declaration in its present wording. At the 52nd meeting of the Commission on Human Rights, the Greenland Home Rule, together with other supportive governments, achieved a consensus in the Commission to create a new and separate agenda item on indigenous issues. In the speeches given under this item, many indigenous peoples and governments mentioned the possible establishment of a permanent forum. One of the big challenges for indigenous peoples in the coming year seems to be the discussion among themselves about their wishes and aspirations for the structure, scope and mandate of such a forum.

Indigenous Women

Indigenous peoples made an active contribution to global policy discussions on gender issues over the past year. This took place most notably during the UN World Conference for Women in Beijing, 1995. The indigenous women had organised themselves in the Indigenous Women's Network with the participation of women from all parts of the world and representing more than fifty different organisations. During the seven days of work they produced the Beijing Declaration of Indigenous Women in which they emphasised their special areas of concern and criticised the framework of the conference. They stated that the poverty that most indigenous women suffer is caused by the overall and powerful economic and political forces of the world and they demanded a clearer acknowledgement of this by the United Nations. The Beijing work was a promising start to a new and more intensified cooperation between indigenous women from different continents, and one of the hopes for the near future is that the women's networks will be given the

opportunity to strengthen themselves and develop strategies further for alleviating the common problems faced by the indigenous women of the world.

IWGIA's Work During the Past Year

During 1995 and 1996, IWGIA has continued its efforts to expand its network and cooperation with indigenous organisations globally.

IWGIA has continued and increased its already well-consolidated support work in South and Central America. In these regions IWGIA supports a number of projects carried out by indigenous organisations. One of these is a large demarcation and land titling project in Peru which has generated a lot of valuable experience. Other types of projects which IWGIA supports are, for example, institution and organisation building, media and communication.

1995 was also the year IWGIA had targeted for expanding its contact network in Asia. A major event was the conference on indigenous peoples in Asia which IWGIA organised in Thailand in cooperation with the Asia Indigenous Peoples Pact (AIPP) and the Inter-Mountain Peoples Education and Culture in Thailand Association (IMPECT). The aim of the conference was to provide a forum for indigenous organisations from all over Asia to come together, share experiences and discuss future perspectives and strategies. This conference fostered many new contacts, and IWGIA is now cooperating with a number of indigenous organisations in Asia.

IWGIA is very pleased that many of the Asian indigenous people attending the conference have contributed to this issue of *The Indigenous World*. As a follow up to the Thailand conference, AIPP and NEFEN (the Nepal Federation of Nationalities) organised a large conference in Nepal in April 1996. However, the conference had to be cancelled due to intimidation by the Indian and Nepali governments. This was an unfortunate event which shows that indigenous issues are highly explosive in the Asian context.

IWGIA is gradually expanding its network in Africa and in 1996 the Ogoni tragedy brought Africa firmly onto the agenda. The brutal execution of the well-known Ogoni leader, Ken Saro-Wiwa, and eight other Ogoni activists led to worldwide condemnation of the Nigerian military dictatorship. However, concrete action is needed and IWGIA has joined the efforts to assist the Ogoni in their continued struggle. Furthermore, IWGIA provides project

support to indigenous organisations in Southern and Eastern Africa in areas such as organisation building and human rights work.

During the past year IWGIA has also continued its involvement in the UN and the focus for its efforts has been to work for the adoption of the draft Declaration on the Rights of Indigenous Peoples and the establishment of a permanent forum for indigenous peoples. Part II of *The Indigenous World* presents two comprehensive articles on these issues.

In *The Indigenous World* IWGIA has again this year tried to present an overall picture of the latest developments for indigenous peoples all over the world. However, we are well aware that this is an enormous task and that there are areas which we have not been able to include.

This year IWGIA has tried to invite as many indigenous representatives as possible to contribute to *The Indigenous World* - a development which we believe is important and which we would like to continue in years to come.

We hope that the comprehensive information provided in *The Indigenous World* on the global indigenous situation, both the set backs and the steps forward, will provide a useful tool for the indigenous cause. We hope that indigenous peoples themselves can use the document in their own struggles on the local, national and international levels. And we hope that other NGOs, researchers, etc. can use the material in their work to support the fight of indigenous peoples.

Facts are always subject to interpretation. There is more than one truth and the focus selected depends on the perceptions and interpretations of the various authors. The view points put forward here might be applauded by some and disputed by others but in all cases they put forward extremely important issues for discussion and action.

Contributors

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- *Jumma Peoples Network (JUPNET)*, an organisation established and administered by indigenous Jummas based in various countries of Europe and elsewhere. JUPNET seeks to promote the rights of the indigenous Jummas by dialogue, negotiation and other peaceful means (*Chittagong Hill Tracts*).

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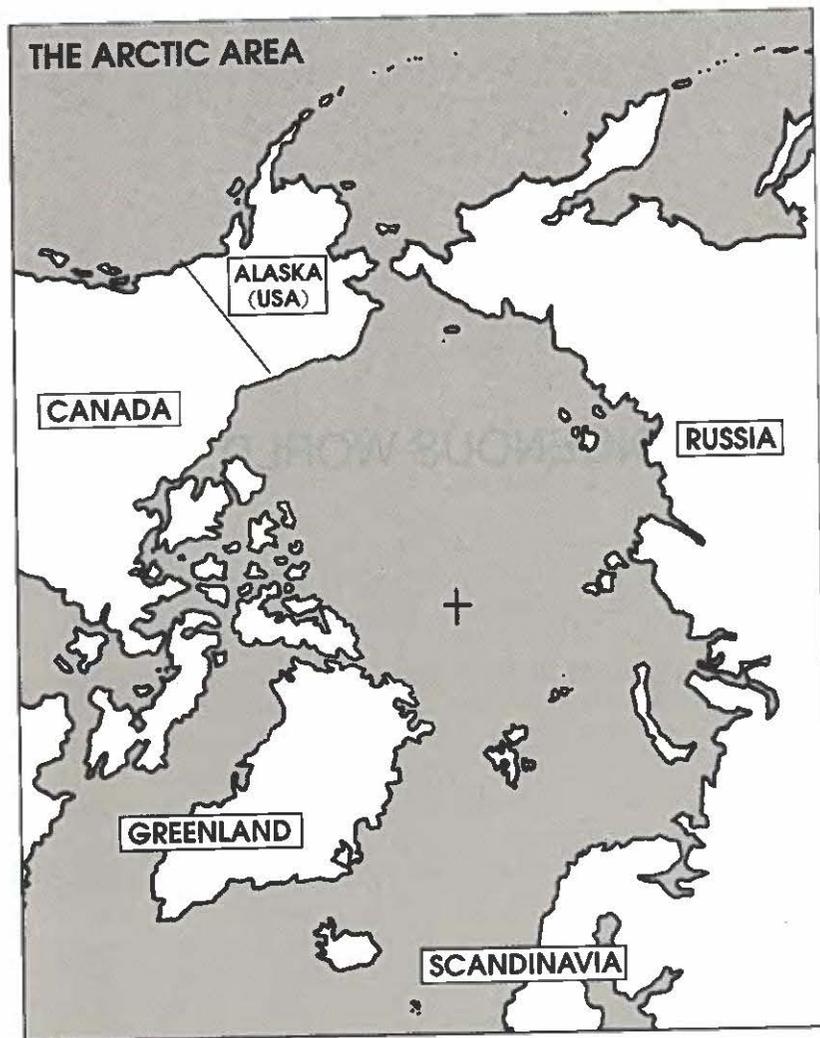
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PART I

THE INDIGENOUS WORLD



THE ARCTIC

The 7th general meeting of the Inuit Circumpolar Conference (ICC), which is convened every three years, was held in Nome, Alaska, where *Inuit* delegates from Russia, Alaska (USA), Canada and Greenland met for five days in July 1995. The ICC is an indigenous NGO with consultative status under ECOSOC. It was founded in 1977 with the participation of Inuit from Greenland, Canada and Alaska. During the last meeting the Inuit from Russia finally became full members. Besides the ordinary delegates (18 from each of the four regions) there was a large number of artists from the Arctic regions as well as VIPs and observers.

Among the issues discussed (see IWGIA Newsletter 3/1995) were sovereignty, subsistence, social and health conditions, environmental degradation, international relations, among others. A number of resolutions were suggested and adopted, among these a resolution in support of the creation of the Arctic Council and the inherent right of the Inuit to harvest bowhead whales. The ICC also confirmed its support for the UN Draft Universal Declaration on the Rights of Indigenous Peoples and the establishment of a UN Permanent Forum.

At the ICC general assembly in 1992 Eileen McLean (Alaska) was elected president, but due to other responsibilities she soon gave up her position which was taken over by Caleb Pungowiyi (Alaska). At the 7th ICC general assembly Rosemary Kuptana (Canada) was elected as president for the next three years.

1995 gave new hope for the establishment of an Arctic Council with the Arctic governments as members and the three regional indigenous organisations, the Saami Council, the Inuit Circumpolar Conference and the Association of Indigenous Minorities of the Russian North as permanent observers. The final decision is expected to take place in July 1996 at a meeting in Canada.

In 1995 relocation issues played a prominent role in Greenland as in the Canadian north. All cases raised date back to the 1950s when, during the Cold War, military bases and installations were

installed all over the Arctic, and when sovereignty issues became prominent. These cases (to be dealt with) have revealed how badly the individual and collective rights of the Arctic indigenous peoples have been protected by the states. And to further humiliate those indigenous groups affected, in dealing with this matter, the Canadian and the Danish state have been more concerned about anticipated precedents for other indigenous peoples who have been relocated, than for restoring justice. Neither of the two governments has had the courage to apologize, and thus to heal the wounds of those unfairly treated.

In 1991 the EU decided to prohibit the import of certain fur products if they originate in a country where the leghold trap is still used, or where trapping methods do not meet international standards. The implementation of the ban was to be set in 1995, but now postponed to 1997. The reason is to be found in the problems of implementing the ban because of the lack of a legal basis. Furthermore Canada, USA and Russia have threatened to take legal proceedings against the EU to the World Trade Organisation (WTO) for breaking common trading rules. Indigenous peoples of Canada, Alaska and Russia depend on trapping and they fear that the ban will be a threat to their existence. On the other hand, the EU experiences extensive lobbying from animal welfare organisations who are trying hard to get a ban on all trapping, and if possible on the utilization of any wild animal.

The work in the International Standardisation Organisation (ISO) on the standardisation of trapping has been suspended in September 1995. At the same time the EU, Canada, USA and Russia have set up a governmental working group in order to develop international standards of humane trapping.

EU has also come up with a proposal which is called 'the indigenous exception'. The exception says that the ban does not apply to fur and fur products from animals caught by indigenous peoples. Inuit Tapirissat of Canada (ITC) and Assembly of First Nations, Canada, have pointed out that 'the indigenous exception' will not benefit indigenous peoples. The exception implies the necessity of a complicated labelling system which can be extremely difficult to implement. However, the biggest problem is that the ban will destroy the distribution channels for fur. Without distribution channels the exception is without any meaning. Even though the EU wants to give the impression that the interests of indigenous peo-

ples are taken into account, the ban, with or without exception, will endanger the fur trade and thus the future existence of Arctic indigenous peoples.

About 300,000 Inuit and Indians are directly or indirectly dependent on the fur trade which is an indispensable and inseparable part of their subsistence economy. Furthermore, trapping activities are of great importance to their social and cultural life. Both indigenous and non-indigenous peoples fear that the ban will cause serious social decay.

ITC has expressed it this way: "The effect of the sealskin ban [from 1983] on the Inuit subsistence economy can be linked to the removal of three legs from a chair... the current proposal to ban other fur imports has the potential to remove the final leg."

On the 22 February 1996 Denmark finally ratified the ILO Convention 169. Of other Arctic countries only Norway has ratified this convention which many indigenous peoples consider as being very important to secure their land rights.

ALASKA

Oil potential in the northeastern part of Alaska has split the indigenous peoples of that State into two camps. The opening of the Arctic National Wildlife Refuge (ANWR) has been debated for some years, but a turn was made when the Alaska Federation of Native (AFN) at its annual meeting in October adopted a resolution in support of drilling for oil within the refuge.

The only village within the refuge, Kaktovik, has supported the drilling as has the regional Native corporation which holds subsurface rights to sections of the refuge. Also in strong support has been another regional corporation, Cook Inlet Inc., which owns oilfield service companies interested in the development of the refuge. Fiercely against the drilling are the *Gwich'in* people in the interior, who depend on caribou hunting. The caribous migrate through the lands of the *Gwich'in* on their ways to and from the calving grounds within the wildlife refuge. The *Gwich'in* fear that industrial activities of even a small portion of the refuge will jeopardize the Porcupine caribou herd, which forms the backbone of their livelihood and culture.

The *Inuit (Inupiat)* villagers of Kaktovik who, like the *Gwich'in*, depend on caribou for subsistence, have supported drilling within

the refuge considering that one demand is met. This condition is that the village of about 250 people be placed at the helm of a regulatory structure to ensure it will be done safely and in conformance with traditional Inupiat knowledge of local resources and conditions dating back thousands of years. The refuge is their land and the area is dotted with grave sites, camps and other Inupiat landmarks. Having witnessed research teams harassing wildlife, they are sceptical about how well government agencies will monitor industrial development.

The Alaska Federation of Natives decision to take side in this major issue is a substantial departure from the neutrality that usually characterises inter-regional conflicts among Native groups. The support came after a request from Alaska Congressmen and Governor Tony Knowles to bolster their efforts to lift a long-standing ban on drilling in the refuge.

Even though the indigenous peoples of Alaska have rights to some lands (11 per cent) traditionally owned and occupied by them, their fishing and hunting rights are continually being encroached upon. Many Natives have lost commercial fishing rights, which they have been forced to sell when they owed tax or otherwise have been in need, and today most of these permits are owned by non-Natives, many of whom have come north to engage in the profitable salmon fishery.

The many attacks on Native subsistence activities are also serious. In 1995 the two major statewide Native organisations, the Alaska Federation of Natives and the Alaska Inter-Tribal Council closed ranks and called for restoration of aboriginal hunting and fishing rights. The Alaska Native Claims Settlement Act of 1971 extinguished aboriginal land titles and hunting and fishing rights which has left the Alaska Native in a vulnerable position vis-à-vis sports fishermen and others who try to limit the rights of Native peoples.

Another pending issue in Alaska is the question of sovereignty. The federal government recognizes more than 200 Native tribes in Alaska and the tribal councils are being allocated federal funds for various social services and other programmes. These tribes, however, are not recognized by the State, which works through city governments. Most Natives have therefore a tribal council elected by Natives only and a city council elected by all citizens of the village. Some villages have dissolved their city councils within or

against the law and turned the control with city affairs over to the tribal council. Seven villages in the Yukon-Kuskokwim delta region have done so, but the authorities have retaliated by limiting the powers of the tribal council significantly. With no local taxes the tribal councils usually turns to bingo and pull tabs as forms of taxation from which a significant income goes to the tribal councils.

CANADA

In Canada, two issues which both relate back to the first decades after World War II have occupied the minds of many *Inuit* of the Canadian Arctic. In both cases Inuit survivors have asked for an apology for infringements committed against them. In one case they have now succeeded, but not in the other.

As so many other indigenous children of the Arctic, Inuit boys and girls had to spend years in boarding schools far away from their home communities in the decades after World War II. Many of these boarding schools were run by various Christian denominations and a few years ago complaints of abuse of the children began to emanate in the press. At first very little attention were given to these complaints by those accused, the former students were not taken seriously and no serious apology given to them. But gradually so much evidence was raised that the institution most severely accused had to give in. This happened early in 1996 when the Roman Catholic Bishop, Reynald Rouleau, apologized to former students from the Sir Joseph Bernier federal day school for the sexual, physical and emotional abuse they suffered at the hands of members of the church over 30 years ago. The Bishop made his apology with these words: "I acknowledge and apologize for the harm that you experienced as children in the school and the residence, and for the effects these wounds have had on your lives and the lives of your families and friends". Although all those responsible are now dead, the former students have waited for this unconditional apology for years, in order for them to have a place from which to start the healing.

While former students from the Chesterfield Inlet boarding school were given an unequivocal apology, the same did not happen to those families who, in the early 1950s, were relocated from Quebec and Baffin Island to the High Arctic Islands. Seventeen Inuit families were then moved from the communities of Inukjuak

and Pond Inlet to Resolute Bay and Grise Fiord in the High Arctic. The Inuit have asserted that the relocation was done not only to help families in dire need, but first of all to assert Canadian sovereignty of the Arctic Islands. The Inuit have documented that the families were relocated without their full and informed consent, that promises made to them were violated by government officials and some of the Inuit were moved under conditions of severe stress and poor health conditions.

The children of those adults who were relocated have grown up and they now insist they tell their version of the history. For years they have fought the federal Canadian government for compensation and an apology. In March 1996 they finally received compensation, but no apology. The exiles will receive a statement of reconciliation acknowledging their pain and suffering and CAN\$10 million compensation.

The compensation of CAN\$10 million is the result of an agreement made between the government and the Inuit themselves. This is an agreement of reconciliation that recognizes the "hardship, suffering and loss" in the initial years of the relocation because of poor planning and implementation by the government. But it is also said that the government officials "were acting with honourable intentions in what was perceived in the best interests of the Inuit at that time." The Inuit have asserted that they were taken north and dumped on the desolate shores of the North without housing. They say they had to scavenge for food in the dump of a military base and were forced to adjust to the unfamiliarity of non-stop darkness in the winter. Concerning the role played by Inuit in asserting Canadian sovereignty over the Arctic Islands, the reconciliation statement only says that "the relocatees contributed to a Canadian presence in the High Arctic."

The Inuit, many of whom are bitter about the agreed statement, say they are accepting the compromise deal because they want to settle the matter before their aging elders die. Thirty one of the 86 original exiles have already died.

The compensation package includes a Can\$8 million trust fund for the families and Can\$2 million in cash for the 55 living exiles and the descendants of those who died.

The Inuit are still looking for an apology. John Amagoalik says: "I think there was pretty much unanimous agreement that the absence of an apology is a real slap in the face for us and everyone agreed that everyone wants to continue to pursue an apology."

Nunavut and the Quebec Referendum

The work to establish a new territory, Nunavut, in 1999 in which the Inuit will make up about 90 per cent of the population continues. A Nunavut Implementation Commission (NIC) continues the preparation and, as an important step, a decision has been taken about the location of the capital of Nunavut. Following a Nunavut-wide referendum, Iqaluit was chosen as the new capital.

A discussion paper published by the NIC suggested that a gender equality system could be introduced in setting up the Nunavut parliament. The proposal is for the establishment of two-member constituencies, each of which will elect one male and female. So far, no decision has been taken on this proposal.

In April 1995 the residents of Nunavut voted overwhelmingly not to allow the sale of municipal lands. Article 14 of the Nunavut Final Agreement stipulates that between one and two years after the ratification of the land claim agreement (1993) a referendum must be held to determine whether the communities can be allowed to sell municipal lands. All residents, Inuit and non-Inuit took part in the referendum, the result of which was a firm opposition in all Nunavut communities against sale of land.

In 1994, a small group of Inuit hunters from the community Igloolik took a bowhead whale. This was the first time in decades that a bowhead whale was taken in this part of the Arctic, and it was immediately deemed illegal by the authorities. The three hunters, Simeoni Qaunaq, Levi Qaunaq and Esa Kripanik, killed the whale to honour the wishes of a respected elder who said that he wanted to taste bowhead *mattak* (whale skin, an Arctic delicacy) before he died. Meanwhile, the elder has died, but the court case against the three hunters is set for June 1996.

The Quebec referendum on the future of that province ended against independence or sovereignty. While the provincial government wanted to separate from Canada, they would not allow the indigenous peoples of northern Quebec any say of their own future. The indigenous *Inuit* and *Cree* of that province therefore had organised their own referendum in advance of the province-wide voting. Ninety-five per cent of the 8,000 *Quebec Inuit* and ninety-six per cent of the 5,000 *Quebec Cree* voted against a sovereign Quebec. By doing this, the indigenous groups not only denounced an independent Quebec, they also strongly indicated that they want to remain within Canada. The voting furthermore gave new impetus to indigenous demand for self-government.

GREENLAND

Oil and Mineral Resources Development

In 1995, the Greenland Home Rule Government established a Minerals Office in Nuuk, staffed with geologists, lawyers and economists, in order to strengthen Greenland's influence in the administration of mineral resources. The Minerals Office is the result of an agreement between the Danish and Greenland governments for the period 1995-97 regarding a gradual build-up of expertise in Greenland in close cooperation with the Mineral Resources Administration for Greenland. The Geological Survey of Denmark and Greenland (GEUS) and the Danish Energy Agency are all under the Danish Minister for the Environment and Energy.

The Minerals Office, which was officially opened on April 11, 1996 by the Chairman of the Joint (Danish/Greenlandic) Committee for Mineral Resources in Greenland, Premier of Greenland Lars Emil Johansen, now has the capacity to tackle the prime task of transforming the mineral and gas potential of Greenland into an industry of significance for the national economy, which is a stated goal by the Greenland Home Rule Government.

In order to attract mining and oil companies a new strategy, involving changes in the conditions for concessions and taxation combined with international information campaigns, was initiated at the beginning of the 1990s followed by a recent amendment of the Minerals Act by the Danish Parliament allowing for the prolongation of the exploration and exploitation licences for companies operating in Greenland as requested by the Greenland Parliament.

The Joint Committee for Mineral Resources in Greenland is currently negotiating 2 proposals for offshore oil and gas exploration at Fylla Banke off the central west coast of Greenland, where seismic surveys have revealed geological structures indicating the presence of potentially very large quantities of gas.

During the Spring session of the Greenland Parliament two major issues of concern to the Greenland Home Rule Government in relation to the oil and mineral resources industry development were discussed. Namely, environmental protection and employment.

It was stressed by the Premier in his presentation of current and future oil and minerals exploration and exploitation activities that hunting and fishing continues to be the primary livelihood in Greenland and will be protected accordingly by means of strict environmental protection and monitoring efforts. Extensive environmen-

tal assessment and monitoring programmes are carried out by the Danish Environmental Research Institute and plans are under way to expand the capacity and preparedness of the Home Rule Department for the Environment.

With respect to local employment in the minerals and oil industry, the Mineral Office in cooperation with the Ministry for Education are currently undertaking prospector and 'drilling' courses and are planning to offer additional training with partners in Canada.

Thule

In 1995, the circumstances concerning the establishment and presence of the US Air Force's military air base at Pituffik (the Thule Air Base) once again attracted considerable attention from the media and public in both Greenland, Denmark and abroad.

Firstly, the Danish Ministry of Justice released a commission report on the relocation of 27 *Inughuit* families from the community of Ummannaq (Dundas) to Qaanaaq in 1953, to provide additional space for US Air Force installations, in relation to Pituffik established on the basis of the Danish-US defense agreement of 1951 and already occupying a considerable landbase in Inughuit territory. Contrary to the opinion of the local population involved, the Greenland Home Rule Government and independent experts, the Report, which had been under way since 1987, concluded that the relocation should be characterized as voluntary rather than forced.

As early as 1960, the Council of Hunters in Qaanaaq claimed compensation for their economic loss caused by the relocation from the then Ministry of Greenland in Denmark. Unfortunately, all files related to the claim were displaced and never recovered and Inughuit never received any compensation. Thus, in 1985, the Municipality of Avanersuaq (Thule) restated the claim to the Ministry for Greenland, while the former Premier of Greenland Jonathan Motzfeldt, in an attempt to remedy the situation, made the US government sponsor a foundation for the local population, though mainly for environmental protection and clean-up.

Secondly, the Danish government on June 29, 1995 made public that a former Premier of Denmark in 1957, secretly and contrary to the official Danish policy on nuclear weapons, had accepted US placement of nuclear weapons in Greenland. The Danish government later announced that the US in fact had nuclear bombs stored at Pituffik.

Since these first announcements, researchers, politicians and journalists have tabled a wealth of evidence through numerous documents and articles etc., demonstrating the poor handling of the 'Thule Case' by the Danish government.

Thirdly, the Danish Government on July 3, 1995 announced its decision to conduct a hearing on the health aspects resulting from the crash of a nuclear armed B 52 bomber on the ice off Pituffik. The hearing was provoked by the series of revelations of compromising evidence of Danish governments circumvention of its official nuclear policies which choked both the Greenland and Danish politicians and public. The 'Thule workers' (Danes working at the military base) and the Inughuit hunters who had been involved in the clean-up have since blamed the crash and subsequent clean-up for the many health problems that they have suffered and have claimed compensation from the Danish State.

While the hearing committee did not find sufficient evidence of a connection between the many health problems suffered by the Thule Workers and Inughuit hunters and their participation in the clean-up, the Danish government decided to indemnify all those who are able to document their presence and involvement or surviving relatives with 50,000 Danish Kroner (approx. US\$9,000).

The establishment and presence of the US military air base at Pituffik continues to be a sensitive issue. The Danish government has declined to extend a formal apology to the Inughuit and has so far rejected the demand made jointly by the Greenland Home Rule Government and the Municipality of Avanersuaq to establish a civil landing strip at Qaanaaq to make the local population independent of the military air base for travel. The many restrictions and limited capacity for civilians in transit to and from Qaanaaq and other North Greenland communities affect both local transportation and the opportunity for business development, such as tourism industry, for which the area has a great potential, and mineral resources.

There is currently an attempt to find a valid solution to the traffic problems and the isolation of Inughuit from the rest of Greenland and the outside world. The Danish government in cooperation with the Greenland Home Rule Government has now proposed that the US government re-establishes the former Uummannaq (Dundas) community as a civil area for transit passengers. The proposal is to be negotiated in the Permanent Committee, a

body with Danish, Greenlandic, and American membership established to facilitate cooperation between Denmark-Greenland and USA on matters concerning the US presence and operation in Greenland.

What has been achieved in the course of last Summers events is that the Danish government has agreed to a closer and more open dialogue with the Greenlandic authorities on security issues and has granted a seat to the Greenland Home Rule Government in the council of the Danish Foreign Affairs Institute (DUPI), which is currently investigating the Danish nuclear policy between 1945 and 1968.

In addition to this, a permanent committee of government officials from the Danish Ministry of Foreign Affairs and the Greenland Home Rule Government have been assigned to review the defence agreement of 1951 and to study security issues relevant to Greenland from 1968 till today. The committee will also participate in future meetings concerning the NATO/Greenland relations between the Danish Foreign Minister and the Premier of Greenland.

With respect to the relocatees, compensation and a formal apology is still an issue. Partly inspired by their neighbours in the Canadian High Arctic, who recently - as a result of numerous complaints to the Canadian government followed by extensive public hearings - have finally received a compensation of CAN\$10 million - the Inughuit have now formed an association called Higi-taq 53 - 'the ostracized of 53' - and are planning to bring their case against the Danish State before the European Human Rights Court.

RUSSIA

In the course of 1995 none of the federal laws concerning indigenous peoples promised by the Federal Government were enacted. At the Parliament hearing 'On the Ratification of ILO Convention 169' the following decision was taken:

- to take into account the view of the Federation's subject to recommend that the President as a guarantor of the Constitution propose Convention 169 to be ratified by the State Duma of the Federal Assembly of the Russian Federation at the spring session, 1995,

- to bring the entire legislation of the Russian Federation, including that regarding land, natural resources, property, taxation, ecology, among others in conformity with the ILO Convention 169,
- to charge the respective committees of the State Duma with elaborating and proposing for consideration a package of bills of the rights of indigenous minorities of the Russian Federation including those 'On the Legal Status of Indigenous Minorities of Russia', 'On the Traditional Status of Indigenous Minorities' and 'On the Traditional subsistence of Indigenous Minorities of Russia',
- the Russian Federal Government will be charged with the task of developing a set of practical measures to ensure the implementation of the articles of the ILO convention 169, including a ban on sale, purchase, exchange or lease of lands belonging to indigenous peoples.

However, none of the above-mentioned decisions were fulfilled during 1995. The ILO Convention was not proposed for ratification by the State Duma and no work was done to bring the Russian legislation in conformity with the articles of that convention.

The law 'On the Legal Status of Indigenous Minorities of Russia' was twice enacted by the Duma, but vetoed by the President as contrary to the Constitution and to some other laws of the Russian Federation. The law was again vetoed by the President on December 20, 1995 with the explanation that

"according to article 73 of the Russian Federation Constitution the RF subjects beyond the RF competence and authority regarding joint competence areas enjoy the entire state power, hence, the competence of the state power of the RF subjects in protecting the rights of indigenous minorities should be determined by the laws of RF subjects."

However, this seems to contradict other articles of the Russian Constitution, in particular article 69, whereby "

the Russian Federation guarantees the rights of indigenous minorities in conformity with the generally adopted principles and standards of the international law and international treaties, and article 80 whereby the President is the guarantor of the Constitution."

The legislation of the subjects is still being elaborated and their final adoption is related to the adoption of the Federal Law.

One of the central articles of the Federal Law 'On the Legal Status of the Indigenous Minorities of Russia' was also rejected as non-constitutional. In the message of the President of December 20, paragraph 1 of article 4 and paragraph 1 of article 8 are specially noteworthy. These guarantee the assigning to indigenous peoples of their traditional territories, and guarantee that ethnic villages and ethnic territories can be established. Article 27 envisages the establishment of subsistence territories to communities, enterprises and organisations whose activities are associated with traditional economic activities of indigenous peoples. However, this statement appears to be non-constitutional because only plots of land can be assigned.

The attitude of the federal and regional administration, which have hampered the enactment of laws of the rights of indigenous peoples for several years, appears to indicate their unwillingness to give and to guarantee to indigenous minorities their rights, primarily their rights to own their own resources.

Poor Legislation

The lack of laws concerning the rights of indigenous peoples has increased their deprivation and they are rapidly losing their lands and resources.

In the Yamal-Nenets and Khanty-Manisk Autonomous Areas in Western Siberia, the lands which were handed over to the indigenous peoples in 1991 have again been taken away from them. Some lands have been reclaimed by collectives and state farms and are now being used for industrial activities including oil and gas constructions. In other cases indigenous peoples have been forced into long-term lease of their lands. Such agreements have been concluded with the Russian Joint Stock Company Gazprom and ASCO. In these cases, the absence of firm legislation has made it difficult to brand these deals as illegal.

In the Far Eastern Region where the lands were never handed over to the indigenous peoples, the administration claimed that the hard economic conditions made it necessary to grant concessions to certain species of fish and marine mammals to Russian and foreign companies.

In Kamchatka, the result has been that the fishing quotas allocated to each indigenous person dropped from 200 kg to 30 kg in 1995. Taking into account that indigenous peoples are normally not

provided with essential foods, not even bread, it is understandable that Kamchatka's indigenous peoples are starving.

The local administrations usually claim that, on the one hand, they are unaware of the conditions in which the indigenous peoples now live, but, on the other hand, they admit that they are bound by various agreements with companies to which they have granted large quotas of fish and other resources. They also claim that there are no federal laws concerning the rights of indigenous peoples, that the central administration does not allocate funds for indigenous peoples and that the administration has to provide for the entire population in which the indigenous peoples often only make up a small percentage (10 per cent in Kamchatka).

The responsible federal institution, the Ministry for National and Regional Policy, is usually represented by one or two low-ranking officials and they are devoid of finances and depend entirely on the local administration, which provides them with offices, apartments, equipment and other services. All in all, they are unable to control the local authorities.

The indigenous peoples of the Sakha Republic (Yakutia) are somewhat better off. Laws have been enacted on the rights of the indigenous peoples and over one hundred indigenous communities have been allotted lands and other resources. But the programmes for developing these communities are barely funded and hence some communities have disintegrated.

At the reindeer herder congress that was held in Moscow in November, members of communities in the Sakha Republic and other regions complained that reindeer herding camps and villagers are not being provided with consumer goods. Some delegates called upon the restoration of the state-farm and collective-farm system which were said to have made better provision for them. The congress was organised by the Ministry of Agriculture and the Ministry of Nationalities as an annual Moscow meeting devoted to the problems of indigenous peoples. The officials from these ministries have managed to monopolize the allocation of funds and to control projects which, when managed from Moscow, are unable to improve the situation of the reindeer herders.

The general demographic condition of the indigenous peoples of the North and Far East continues to deteriorate. Alcohol abuse and mortality caused by accidents are on the increase while the birth-rate decreases. Under the severe conditions of the North, doctors

and teachers leave the indigenous villages, only adding to the deprivation. Under these conditions spontaneous revitalisation activities are needed in support of traditional cultural activities, recreation of clan-based communities, restoration of ancient forms of distribution and mutual assistance, re-use of traditional medicine as well as teaching the children traditional subsistence activities.

Saami People

After a long period of social and cultural marginalisation and stigmatization of the *Saami* people on the Kola Peninsula, a process of reconstruction of a specific Saami socio-cultural way of life has slowly begun. As in Scandinavia, there are now radio programmes in Saami language in Russia. A few schoolbooks in Saami language have been published and in Lovozero they teach in Saami language in the boarding school. Many Saami collections of poems have been published and three new Saami dance and song groups have emerged. Handicraft that was almost wiped out has now experienced a great renaissance. In 1989 the *Associacija Kolsikh Saamov* (Association of the Kola Saami) was formed and since then there have been more and more new Saami unions, for example: Saami Nursh (a youth organisation) and the Kola Saami craft workers and artist organisation. The Kola Saami are members of both the Saami Council (which is represented by Saami people in Scandinavia and Russia) and the Association of Small Indigenous People in the North, Siberia and the Far East. The Saami people on Kola want to establish a democratic Saami parliament like that in the Scandinavian countries. There has, however, been very strong resistance against these ideas from the governor of the Murmansk region, Evgenij Komaraov.

The economic situation in the area is disastrous. The unemployment rate is more than 60 per cent and housing conditions are very bad. Most of the year there is no heating of the houses in Lovozero where most of the Saami people live.

The privatisation of the reindeer-herding is very slow. The question is do the Saami people want privatisation like that in the west? Many Saami have said that they want private collectively-owned reindeer-herding farms rather than the state owned ones. One of the Kola peninsula 'state-farms', Tundra, has been privatised. In Loparskaja some Saami families have started private farming with a few hundred reindeer each.



Leif Hallonen from the Saami Council together with two Greenlandic girls in Sisimiut, Greenland. Photo: Claus Oreskov

Lately poaching has been a direct threat to reindeer-herding on Kola, especially the reindeer from Loparskaja. Of a total stock of 5,000 reindeer, about 1,000 have been stolen by poachers. According to the reindeer herders, the poachers are operating from modern speedboats, helicopters or tracked vehicles. They also state that a large number of the poachers come from the Russian army. They wear uniforms and are armed with kalashnikoffs which they fire uncontrolledly into the reindeer herds. Many herdsmen have been fired on when they have tried to defend their reindeer.

A positive development is that a Swedish company has entered the market on Kola. It has established a slaughterhouse in Lovozero and is exporting reindeer meat to Sweden. Formerly, much of the meat rotted because the infra-structure had broken down. A new problem, however, is that now there is a lack of meat in Lovozero because the majority of the reindeer meat is exported to Sweden. It must be noted that reindeer meat has always been a part of the everyday necessities on Kola, while in Sweden reindeer meat (for non reindeer-herding Saami) is an exclusive luxury article.

SÁPMÍ

Norway

The Saami Natural-League is warning the authorities against the increasing fishing taking place from trawlers in the inlets. The shrimp trawlers' activities is a threat to different species of fish in the inlets, because shrimps are the main food for the fish and therefore necessary in order to sustain the varied fish population.

In Tysfiord trawlers are fishing herring. The local coast *Saami* population cannot compete with the big trawlers. The coastal Saami have also been prevented from using another important marine resource, namely the lump-sucker. The lump-suckers' migration towards the coast is cut off by the trawlers which lie directly off the coast and harvest all the fish at the expense of the Saami. The Directorate of Fishing has proposed to use two more inlets for shrimp trawler fishing: Porsangerfiord and Tanafiord. This has made the Union of Settled Saami people protest. The population along Porsangerfiord and Tanafiord are coastal Saami. Fishing in the inlets is very important to them and at the same time it is an important part of the coastal Saami culture.

In Lakselvdalen there are also problems concerning the rights of the coastal Saami people. Since olden times, the right to salmon fishing has belonged to the Saami/Kvanske population (the Kvanske are Finnish speaking immigrants in Finmark). Through dubious cases of land exchange in 1950s and 1960s, the state acquired private land rights in Lakselvdalen at the expense of the traditional population who had the rights to the land. The State Forest in Finmark today claims to own about half of the fishing hamlets in Lakselven (Salmon river). The landowners union in Lakselv have for the last 45 years managed the fishing in the fjord. The landowners have always perceived the tenancy of the state's fishing rights as a formal continuation of the indigenous peoples' traditional rights to management of Lakselv. However, last year there was a disagreement between the State Forest and the landowners about the rights to management. The State Forest claims to have the right to fix the prices for fishing permits for the fjord. This cannot be accepted by the landowners. The State Forest in Finmark is now threatening to hand over the management of the fjord to the Lakselv hunting and fishing union. The landowners union has applied to the Saami rights committee, so that they in this way can

have their traditional rights protected, including the right to management of the Lakselv.

In November 1995, the Saami parliament produced a proposal for a programme of action for the Saami coast and fiord areas in the period 1997-2001. For the Saami parliament one of the main purposes of the proposal is to improve and continue Saami identity, language and culture. Another key purpose is to strengthen Saami society, through a stable settlement and a diversified trade. The third main purpose is to strengthen and improve Saami means of living, and their economic, cultural and political rights. These will be obtained through five strategic fields: agriculture, fishing, mixed economy, Saami culture house and the improvement of the Saami language.

A new law for reindeer-herding has been agreed. The most important changes in the new law is doing away with years of injustice against the Saami working with reindeer-herding. Previously, when there was a disagreement about the right to a grazing area, it was the reindeer owner who had to prove that they had the right to a grazing area. If today there is a disagreement between farmers/land owners and reindeer owners about the use of a grazing place, it is now the farmer who has to prove that the reindeer owner has no right to grazing in the area. Before the new reindeer herding law there was a long debate in the medias and among the politicians. The landowners complained about the loss of their rights to the Saami. In this connection it is important to remember that the Saami who work with reindeer herding had to give up large grazing areas to the farmers in 1894, when there was a royal resolution which established the reindeer herding grazing areas into districts. The Saami working with reindeer herding in Hedmark and Sør-trøndelag were driven out of a large area which they had used for a very long time. The new reindeer herding law does not make it possible for the Saami reindeer owners to expand their grazing areas, which they have occupied since the resolution concerning districts from 1894. But they will be able to keep the reduced areas which they were given at that time.

The land owners will keep the area that they have now and they will be offered compensation for verifiable loses in cases of illegal grazing in their areas. The vice-president of the Saami parliament, Ing-Lill Pavall, said to the Saami newspaper *Ságat*: "I am happy that the Norwegian parliament at last has taken the responsibility in

relation to the obligations that Norway has towards the Saami people in general and especially for the reindeer herding as trade". Ing-Lill Pavall stresses that the new law must be used to seek a dialogue between conflicting interests and not to produce new conflict.

Sweden

In August 1995, a walk for Saami rights began in Karesuando. On the 17 August the walkers arrived in Stockholm where they delivered a letter to the Swedish government. Saami people from many Saami villages, Saami unions and different trades participated in the walk. In the letter to the government the participants in the walk demanded that the Saami people should have the right to self-government as indigenous peoples as guaranteed in the constitution; the recognition of the Saami language as an official language; that Sweden ratifies ILO Convention 169; and that the Saami people administer the hunting and fishing rights. The representatives on the walk pointed out that they wanted a political solution to the issues rather than a legal settlement - a political solution that can settle the administration of land and water in the Saami areas without necessarily making it clear that it is the Saami people or the state who own the areas.

The Saami people continue their protest against the state taking over the administration of small game hunting. The matter has been taken to the European court in Strassburg (see *The Indigenous World* 1994-95:44). Since then the Saami villages in Jämtlands county decided to prohibit hunting of small game on their land. "We do not have the legal power today to issue such a prohibition" says Olof Johansson, the spokesman of the Saami villages in Jämtland, ... "but we have the moral power to do it". The Saami people hope that the hunters will respect 'their moral power' and boycott the hunt in the Saami areas.

The Swedish parliament has decided that the Saami parliament should take over the administration of payment for carnivore damages on the reindeer stock, from the 1st January 1996. Ingvar Åhrén, spokesman of the Saami parliament, pointed to some important problems concerning the new system. The amount of compensation, 14 million Swedish kroner a year, is based on the number of reported reindeer killed by carnivores. Åhrén says that the compensation must be re-measured on the number of carnivores. The idea is to pay compensation to the reindeer owner whether or

not the killed reindeer are located. If the Swedish government maintains 14 million kroner basis for compensation then they must reduce the present carnivore stock to 1/3, says Ingvar Åhrén.

On the 21st February 1996 a district court ruled on the Saami right to winter grazing in Härje-valley. The verdict stated that the Saami do not have the traditional rights to reindeer grazing beyond the treeline. This means that two Saami villages, which have all their winter grazing in Härjevalley municipality, will lose all their traditional wintergrazing. Two more Saami villages which also have winter grazing outside the municipality will lose half of their necessary winter grazing. The verdict is a temporarily end to a very long conflict between the reindeer-herding Saami on one side and Swedish farmers and different Swedish forest companies on the other.

Finland

As a result of a Saami initiative, the law (L. 17.7.1995/973) on Saami cultural autonomy as indigenous people in the Saami homeland (which does not concern rights to land and water) was established. Most of the 7,000 Saami people in Finland live in the Saami Homeland in the northern part of Finland. In relation to this, a new representative organization for the Saami people was established (L. 17.7.1995/974), the new Saami Parliament (Sámediggi). The first elections to the new Saami Parliament was in autumn 1995 and Pekka Aikio was chosen as the first president. The new Parliament will take over the different functions of the former Saami parliament.

The law for the new Saami Parliament and cultural autonomy may become a boomerang, turn against the Saami people and oust them from their own representative organ. At the same time as the adoption of the Saami parliament law the Finnish parliament changed the existing Saami criterion so that anyone who can identify a Saami among their forefathers can define themselves as Saami and thereby have the right to vote and the possibility to make nominations in the new Saami parliament. Previously, the criterion of being Saami was that at least one parent or grandparent must have had Saami language as their main language and this gave the right to vote for the Saami parliament. The new 'blood criterion' for being Saami makes it possible for a large number of people who are not 'ethnic' (cultural) Saami to vote for the new Saami parliament. Many individuals, far from the present Saami areas who are ethni-

cally 'Finnish' may be able to prove that they have Saami forefathers. Ethnic Saami fear what may happen if these potential 'new Saami people' acquire influence in the new Saami parliament.

The law of Saami cultural autonomy has provoked a disgraceful persecution of the Saami people in the Finnish press. The press has one-sidedly supported parts of the population who are anti-Saami. In the northern Finnish areas many Saami people have been exposed to violent threats.

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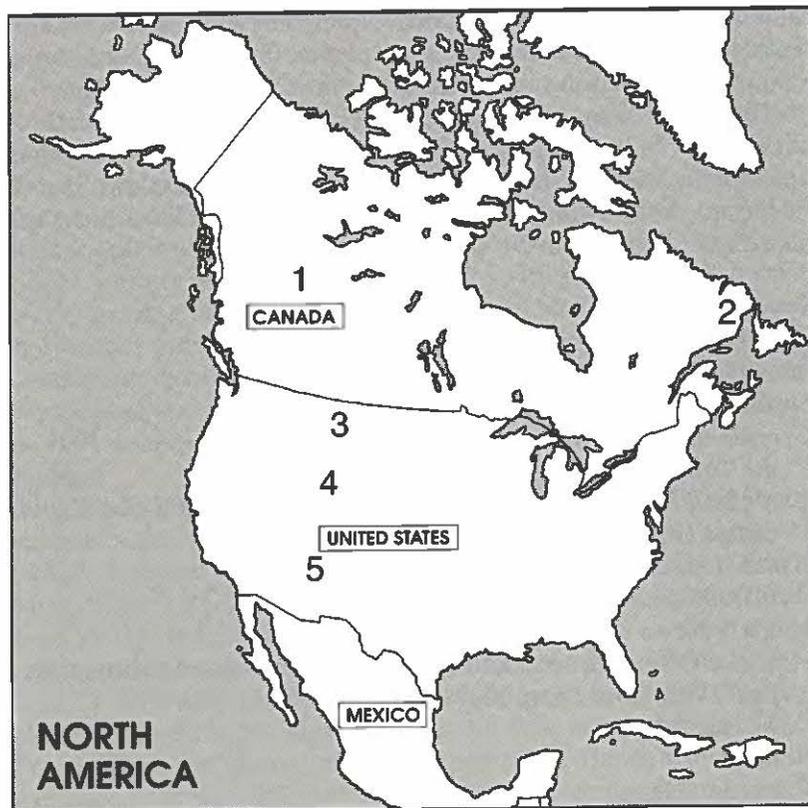
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1. Lubicon
2. Innu
3. Blackfeet
4. Shoshone
5. Apache

NORTH AMERICA

CANADA

Lubicon Cree Nation

In Northern Alberta the situation of the small *Lubicon* Indian band is still dramatic: While old threats, such as Daishowa Paper Co. clearcut-logging and UNOCAL sour gas plant operation linger on, the further split-up of the Lubicon Nation and renouncement of the 1988 Grimshaw Accord by the province of Alberta are imminent (see also IWGIA reports since 1984 in *Indigenous Affairs*, latest: No.2 1995; *Indigenous World*, latest: 1994/95).

The Lubicon Lake Cree, numbering about 500 people in 1988, have their traditional (hunting) territory of 4,000 square miles east of the Peace River and north of Lesser Slave Lake, their homes around Lubicon Lake, where they claim a 95 square mile reserve. Since they never became part of Treaty 8, they still retain aboriginal land title to their traditional lands.

As to the Daishowa - Friends of the Lubicon (FOL) controversy, the paper company Daishowa had in January 1995 filed a 5 million dollar law suit against FOL, accusing them of 'illegal boycott activities' and of having done 'irreparable harm' to the company. The Daishowa injunction, stopping FOL boycott for three months, was, surprisingly enough, not granted by the Ontario Provincial Court. Instead, on May 19th 1995 Judge Frances Kitely ruled that secondary picketing, where Lubicon supporters maintain information pickets outside stores that sell Daishowa products or talking to customers is not illegal. On the other hand, the friends of the Lubicon were instructed not to use the term 'genocide.' The Lubicon Lake Indian Nation reacted to the positive court decision in a media notice:

"We hope Daishowa gets the message that they can't use the Canadian courts to suppress criticism of their actions in Canada. We also hope that Daishowa will make further boycott activity unnecessary by issuing a clear, public and unequivocal commit-

ment not to cut or buy timber from unceded Lubicon territory until there's a settlement of Lubicon land rights and a timber harvesting agreement negotiated with the Lubicon people which respects our wildlife and environmental concerns."

On Daishowa appeal however, the Ontario Divisional Court ruled, in January 1996, the Friends of the Lubicons' boycott illegal, forcing a temporary halt to the boycott until Daishowa's case seeking a permanent injunction can be heard. The Court found that the Friends' primary intent in boycotting Daishowa was to cause economic damage to the company, and not to support the Lubicon Nation. "This decision seriously jeopardizes freedom of expression," said an FOL lawyer.

Last fall, the Lubicon Indians again feared that the Daishowa Paper Co. might start cutting trees on their territory as they noticed renewed road construction. In the answer to a concerned letter by IWGIA on the matter, Daishowa-Marubeni International Ltd. assured in December 1995, that this was "not new construction but is instead modifications and improvements to a temporary winter access route that was constructed for the logging season last year." DMI had "personally consulted with the Lubicons," who had "not demanded that DMI stop this work." On the contrary, in a reply to a Daishowa subsidiary from November 1995, Lubicon chief Ominayak made it clear that "while we appreciate the effort to keep us informed of your ... operations, we would appreciate even more Daishowa respecting our March, 1988 agreement to simply stay out of the Lubicon territory until there's a settlement of Lubicon land rights..." "...Failing that, we again ask with respect to proposed widening of the existing access route.....that Brewster (Construction Ltd.) ...consult with us in advance about any proposed work; agree to respect our wildlife and environmental concerns" and "agree to consider Lubicons for any resulting employment..."

Concerning the UNOCAL sour gas plant, less than two miles from the proposed Lubicon reserve that went into operation in mid-April 1995, the Catholic order of the School Sisters of St. Francis, a Lubicon ally and UNOCAL shareholder, did succeed in getting a resolution on the agenda at the Annual Shareholders Meeting in Houston on 22 May. It calls for a full report on the sour gas refinery, including 'the likely consequences' of operation. According to chief Bernard Ominayak, the plant:



Lubicon village, Little Buffalo. Photo: Gérard Pleyner

"poses a grave health risk. It processes hydrogen sulphide and sulphur dioxide, chemicals associated with respiratory and skin disease and several cancers. We have asked Unocal to shut down or move the plant about 12 miles to the south where it would no longer be directly upwind from our reserve site. Unocal has refused...The majority of Unocal's retail outlets are the Union 76 gas stations...We ask Californians to buy their gas from someone other than Union 76..."

In summer, 1995, a news conference was held to announce the California boycott of Union 76 and Unocal, in support of the Lubicon Cree Indian Nation.

In December 1995, a report on environmental damage caused by oil and gas development in Alberta by the Alberta Environmental Centre, as requested of the Alberta Cattle Commission, became known. The draft summary states that

"polluted soils and contaminated groundwater are identified at many of about 13,000 battery sites... Cattle have died, been injured, and suffered reproductive and growth problems...Sour gas poisoning has occurred in cattle exposed to gas well emissions."

With over 400 oil wells within a 22 km radius of their community, and many more throughout their traditional territory, the Lubicon Indians at a UNOCAL plant hearing last fall doubted that many cattle in Alberta experienced the same concentration of oil industry pollutants faced by Lubicon children. On December 21st another Lubicon baby died of acute upper respiratory distress. The original full report approved by the Cattle Commission is being suppressed by the Alberta Provincial government as "flawed" and because "if it gets out the Japanese won't buy Alberta beef."

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The Innu of Nitassian (Labrador)

In last year's edition of *The Indigenous World* reference was made to the mineral explorations in Northern Labrador. At the moment, the gross value of the deposits of nickel, copper and cobalt found amounts to around 20 billion Canadian dollars. Since the last issue of *The Indigenous World* mining related activities have exploded. Today there are more than 280,000 claims staked in Labrador by 170 public companies and individuals. More than 40 companies have active drilling programs in an area covering almost the whole *Mushuau Innu* and *Inuit* territory. This frenzied exploration activity is taking place without the awareness, consent or consultation of either Inuit nor the Innu.

At an Aboriginal People and Mining Conference in November 1995, Peter Penashue, President of the Innu Nation, made it clear that:

"Innu have never recognized the jurisdictions that now claim us. We have never signed a treaty, nor ceded a square inch of our land. In the past these things were not necessary, as it was possible for Innu and Akenishau people (White people) to share the land and its resources. But today, we are being forced to deal with governments, companies and individuals who are trying to push us aside in their rush to claim this land as their own for industrial development."

Comparing the 'land claims' of the Innu with the claims which the mining companies are making in Innu territory, Penashue made some important points which are pertinent to the 'land claims' of all indigenous peoples:

" 'Claim' seems to be an important word right now. I'd like to talk about what claims mean to Innu people. We have spent years in so-called 'land claims' negotiations. I use the word 'claim' here unwillingly, because Innu people are not claiming anything. If anything, it is Canada and Newfoundland who are 'claiming' land from aboriginal people. Our experience with the 'land claims process' has left us with the impression that it is little more than a public relations exercise for government, a way to satisfy the public conscience. I say this with regret, because when we entered the process we hoped things were changing. But it is hard to maintain hope while we sit at the table watching Newfoundland and Canada give away our land and our future.

We have also learned that governments make a clear distinction between aboriginal 'claims' and the claims of mining companies. Since last November, more than 250,000 mineral claims (as of Nov. 1995) have been staked in Labrador. Many of these claims are on Innu lands. But these mineral claims are taken more seriously and are given more consideration by the Newfoundland government than the Innu claims have ever had.

For a company to stake a claim, all it takes is a short visit to the Mineral Lands in St. John's to draw a few lines on a map. This guarantees government recognition for mineral rights. When Sango Bay was staked, the site chosen by the community of Davis Inlet for relocation, we were told that the decision was irreversible. Company's mineral claims are obviously more important than our rights. For Innu to have their rights recognized, we must spend years and hundreds of thousands of dollars completing detailed land use and occupancy studies which are then submitted to governments for 'consideration'. We must wait for governments to decide to negotiate with us, a process that can take years. We submitted our original land use and occupancy studies in 1977. We have now been at the table for 5 years, and we have only been able to agree to a list of items for discussion."

It is important to note that, according the governments of Newfoundland and Canada, the claims of the mining companies consti-

tute 'third party interests' at the table where the Innu Nation shall negotiate their land rights. This means that these interests will be 'protected' in negotiations with the Innu Nation. In addition, if they are actively explored, there are numerous direct and severe impacts on Innu rights and the environment before any settlement is reached.

The handling of the mining activities taking place in Labrador is a repetition of all the decisions and actions by federal and provincial governments which MacRae criticises in his Human Rights report on Davis Inlet (MacRae 1993). In his report MacRae points to the fiduciary responsibilities which the government of Canada has neglected, and with dramatic negative consequences for the Innu; consequences which are reflected in an alarming morbidity pattern and suicide rate (see Rich 1994). Once again the rights and interests of the Innu are ignored.

According to a prevalent view held by Euro-Canadians in Southern Canada, the Innu and the Inuit of Labrador should no longer be regarded as subsistence hunters and fishers. Wildlife harvesting is regarded as an outdated way of making a living. However, the fact is that for the indigenous peoples of Labrador subsistence hunting and fishing continues to be of crucial significance, and will remain so even if some indigenous persons should be employed by the mining companies. This is the case for a number of reasons: economically they are tied only marginally to the market since there is a scarcity of products which can bring cash. No less important is that wildlife harvesting is crucial in their management of social relations and identity production, and plays a critical role in their culture.

"Innu people continue to depend on the land for food, well-being, and spiritual and cultural values. When our elders talk about 'protecting the land', it means much more than 'environmental protection'. To us, the land is still the touchstone of our identity. It is our history and our future" (Peter Penashue, op. cit.).

Although a number of Inuit persons are looking to possible future economic benefits from the mining industry, both the Labrador Inuit Association and the Innu Nation react strongly to the way their rights and interests are ignored by both government and companies. This has led to cooperation between the two indigenous organizations.

While the mining activities are stepped up with tremendous speed, the low level flying continues unabated. An agreement be-

tween Canada and NATO partners to continue the flights was signed in February 1996. This allows up to 18,000 military flights annually over Innu lands over the next 10 years. In an effort to dissuade NATO countries from renewing the agreement, Innu supporters staged a dramatic civil disobedience action at the British and Dutch consulates last November.

Nine of the Innu supporters who were charged with trespassing during the protest have been ruled innocent in an important court decision which declares that extreme actions are justified in order to prevent further destruction to the Innu by low-level military flights over their lands. "I am prepared to hold that the defendants broke the letter of the law by non-compliance to prevent a greater evil, that is, to prevent the destruction of the Innu people and their basic human rights," said Justice of the Peace Robert Phillips, in making his ruling yesterday.

Over three days of moving testimony before a full to overflowing court, evidence was given of the environmental destruction caused by low-level military flight training over Innu lands in Labrador, and of the cultural assimilation and systemic discrimination faced by the Innu and their fierce resistance to cultural genocide.

Innu witnesses at the trial testified to the grave threat caused to their communities' health, culture, and land by the low-level flights as well as by the more recent development of the proposed Voisey's Bay nickel mine on their traditional territories. After hearing evidence from the nine defendants as well as numerous experts witnesses, including Innu Nation President Peter Penashue, former Member of Parliament Dan Heap, economist Mel Watkins, legal expert John Olthuis and others, the presiding Justice of the Peace ruled that the November civil disobedience action was justified given the grave and immediate threat to the Innu.

Defense lawyer Peter Rosenthal said that the decision clears the way for similar protests, an assessment affirmed by defendant Carolyn Langdon, who maintains,

"This is a very important ruling for the Innu, but also for the many of us who work for justice. Here is a positive ruling that others can use in their defense, for example, when resisting in this way to the Harris government in Ontario and its policies which critically harm vulnerable people."

Defendant Lorraine Land, also one of the nine acquitted by the judge, says

"I am ecstatic about this decision. We intend to ask the Canadian and NATO governments what they will do, now that the courts have ruled that the risk these flights cause to the Innu is imminent and Canadians are justified in taking extreme steps such as civil disobedience in order to stop them."

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UNITED STATES

Blackfeet

The situation of the *Blackfeet* speaking community of Montana/USA is still unsolved. Though the US government prolonged the drilling stop once more until June 30, 1996, the Chevron group, USA, and Petrofina Belgium, have not given up plans to drill for oil in the Badger-Two Medicine area. The area is part of the traditional land of the Blackfeet nation, especially its *Pikuna* tribe, dotted with many sacred places. Furthermore, Badger-Two Medicine is one of the last wildernesses in the USA outside Alaska and is a retreat for many threatened animals and plants. The background for the efforts of the oil companies to get access to the area where the chance of finding oil is at only 0.5 per cent, is to create precedent with the future aim of opening up Alaska's great oil reservoirs, which lie on indigenous territory, for economic exploitation.

Both the Blackfeet community and environmentalists have promoted a bill which would protect the Badger-Two Medicine area from exploitation. But after the mid-term election in 1994 there are no senators or representatives left who wish to support legal actions which would protect the environment and secure America's First Nations' traditional rights. Therefore, the Blackfeet of Montana made many efforts to strengthen their community last year. In June 1995, about 100 elders met in Montana and decided to re-found the confederacy which consists of the Northern and Southern *Pikuna* (Alberta/Canada and Montana/USA), the *Siksika* and *Kai-na* (Alberta). Once a year, they are going to hold a common

meeting as the Blackfeet did before they were colonized. Furthermore, every tribe will appoint contact persons which meet between the annual meetings and prepare them. This Elder Council shall advise the Blackfeet Confederacy on large areas as politics, culture, religion and economy. Interpretation of the old treaties between the Blackfeet Confederacy on one side and Canada and the USA on the other side and protection of the holy places are very important aspects of these consultations. This is probably the most important result of the cultural revival of the whole Blackfeet Nation. The main political aim is to re-negotiate the Treaty of 1895 in order to achieve consideration of the Blackfoot Confederacy's interest, fair settlement and peace. Furthermore, an official apology for the Massacre of Manias River in 1870 when 173 Blackfeet were killed by the US Cavallery is an important demand for the Blackfeet.

The establishment of the Elder Council should prevent the Tribal Council of Montana's Blackfeet-speaking community from selling the tribe's properties and rights too cheaply. For example, the Tribal Council has given the State of Montana the right to police the reservation and gave a non-Indian contractor the right to build the new Bureau of Indian Affairs (BIA) building. Instead of the Blackfeet tribe owning this building and leasing it to the BIA, now it will be owned by the contractor. The net loss for the Blackfeet amounts to \$15 million over the next 20-25 years.

Western Shoshone

The situation of the *Western Shoshone* upon whose traditional territory the Nevada Test Site (NTS) for nuclear weapons is situated, has not improved recently (see also *Indigenous Affairs 3/95*). On the contrary, the US government announced two nuclear tests in June 1996 although the French tests were met with a very negative reaction the world around. Furthermore, the Western Shoshone National Council passed a resolution on December, 2 1995 designating their whole traditional territory a nuclear free zone. In a letter to President Bill Clinton, Chief Raymond D. Yowell denounced the proposed nuclear tests as blatant and direct violations of the Treaty of Ruby Valley of 1863 in both its spirit and terms. Chief Yowell stated in his letter to the President that

"... The continued actions of the US which deliberately conflict with the principles and interests of the Western Shoshone Government through the development, testing or promotion of our terri-

tory for US nuclear activities can only be considered an act of genocide. And thus an act of savagery which surpasses that of the past and must be vehemently condemned as horrendous. ...”.

Furthermore, Chief Yowell demanded fair and open discussion of various unsolved problems such as information on the effects of the hundreds of nuclear tests from the 1950s until the 1990s, analysis of cumulative radiological impacts at the NTS, environmental restoration and waste management, monitoring and measurement plans, compensation and mitigation for victims of nuclear tests and waste management, employment and protection for historical and prehistorical archeological sites, etc. It was absolutely necessary to ask the President these questions because of the consequent ignorance of the BIA and its refusal to enter into constructive negotiations.

In November 1995, a new problem arose for the Western Shoshone. Lander County proposed the construction of a recreational dam and park at Rock Creek (Bah-tza-gohm-bah). The Western Shoshone have conducted important religious and spiritually significant ceremonies at Rock Creek for thousands of years. They continue to hold religious gatherings there to this day. Therefore, the area qualifies for inclusion in, and protection by, the National Register of Historic Places and the American Indian Religious Freedom Act. Furthermore, Shoshone burial sites are located here.

But it is not out of concern for their constituents' 'recreational opportunities' that Congressional members express concern for the Rock Creek project. It is to bolster the expansions and profitability of the multinational gold machines that drive both the Congressionals and Lander County (see *Indigenous Affairs* 1994/95). American Barrick and Newmont Gold, both transnationally owned and operating, have been expanding their open pit, cyanide heapleach gold mine facilities approximately forty miles east of Rock Creek. Both mines are dewatering, meaning they pump water from the aquifer that emerges at the bottom of open pits hundreds of feet deep. Newmont and Barrick have been dumping the pumped water in the TS Ranch reservoir, owned by Newmont. This reservoir is now at over-capacity. Under all the weight and pressure, the reservoir has developed a small fissure that leaks water underground, causing a number of downstream seeps and springs to emerge. Faced with permit violations, Newmont attempted to repair the crack, only to be met with a road blockade of Barrick's haul trucks. Filling in the fissure meant the curtailment of dewatering activities

until another location is found that can accept the discharged water. The two mines sought arbitration. The State Engineer, Mike Turnipseed, has recommended and applied for a permit to allow the mines to dump 60,000 to 70,000 gallons per minute into Rock Creek! This water is high in arsenic and meets only agricultural standards. Ordinarily this would overwhelm the Creek, but with the Reservoir, and the County's need for water flow and water rights, the State Engineer's suggestion is coincidentally timely; with the permit in progress, a union between the mines, the state and the county has jointly birthed and sealed the Rock Creek dam and reservoir project.

The US Bureau of Land Management continues its attempts to break the Dann family. The Danns, along with other Shoshone people in the Great Basin, have been in controversial litigation challenging federal and state land claims. This struggle has stretched over 20 years of legal battles. A standing camp of Shoshone and supporters remains year round to protect the land, wildlife, and people. In 1995, the Bureau of Land Management saw a chance to confront Tim Dann with a new dubious accusation. July 20 - 23, 1995 a fire raged a quarter of a mile from the Dann Ranch. Tim Dann along with the Western Shoshone Defense Project and other locals attempted to extinguish unnecessary backfires set by the Bureau of Land Management. Tim Dann was charged with impeding an officer. The Court has not decided the case.

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Apache

Since 1989 the *San Carlos Apache* and American environmentalists have been fighting the Mount Graham International Observatory (MGIO), a telescope station on top of sacred Apache mountain 'Dzil ncha si an'. It was illegally taken out of the San Carlos reservation and placed under the jurisdiction of the United States Forest Service (USFS) in 1873. Mount Graham is one of four holy mountains of the Apache that are inhabited by the 'Ga'an' ghosts. It is focal point of religious songs and ceremonies as well as Apache identity. Medicinemen are still gathering herbs and water for healing practices from the top region, where there are also numerous cult and burial sites. Today, huge concrete observatory buildings and metal telescopes (obstructive to prayers) block Mt. Grahams top area.

To environmentalists it is an ecological refuge of ice-age vegetation - among other things, the largest boreal forest in the US Southwest - and unique fauna such as black bear and red squirrel.

Despite the protests, two smaller telescopes, the VATT Vatican observatory and that of the German Max-Planck Society (MPG) have already been built. Now the Apache Survival Coalition (ASC) under the leadership of 77-year old Ola Cassadora Davis and a coalition of environmental organizations are fighting for the relocation of the telescopes and to prevent the construction of the much larger Large Binocular Telescope (LBT) by the MGIO under leadership of the University of Arizona. While most American partners resigned from the project because of irregularities with obtaining the special building permission, another German institution, the Council of German Observatories (RDS) decided to join in November 1995. Only by exemptive legislation from the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), was special building permission (including the LBT) granted for a defined area. Despite this, in 1993, the University of Arizona engaged in illegal felling of old growth forest outside this area, which led to a construction stop by US courts.

The Apache Survival Coalition's protests against the telescope site are backed by five resolutions of the Tribal Council (the latest in June 1995), a petition by 15 Apache spiritual leaders, and support from other Tribal Councils such as the Mohawk, the Salt River Pima-Maricopa and the Kaibab-Paiute as well as the National Congress of American Indians. The latter passed a resolution in

November 1995 against new exemptive legislation prepared by the USA and senator Kolbe. In the meantime, another organisation, the Apaches for Cultural Preservation (AFCP) joined the telescope opponents.

In November 1995, vice chairman Marvin Mull of the Tribal Council sent a request to the Attorney General at the US Department of Justice to investigate the following presumed law violations: in June 1993 Coronado National Forest Supervisor, Mr. Tippeponnic, had admitted in writing that his office had not gone to the trouble of finding out about the Apache views on the planned observatory construction - while knowing many traditional Apache to hold Mt. Graham sacred - except for a letter to the Tribal Council to announce opening up of the construction site. In the second case, the US Forest Service had written to the San Carlos Tribe on December 1st, 1993, for discussion of the final localisation of the LBT, but had, on December 7th, already started clearing more than 500 old trees outside the area provided by special legislation.

Last in 1995, the Apache Survival Coalition informed that on December 12th, 1995, Representative Jim Kolbe in the US Congress successfully displaced a Rider that would help prevent AIDS in the Native American community with a Rider to exempt a University of Arizona telescope from all environmental and cultural laws.

But the standpoint of the San Carlos Apache Tribal Council (SCATC) seems clear, as expressed in the resolution of June 13th, 1995: "be it resolved: that the SCATC respects the spiritual beliefs of all its tribal members," and "that we...do hereby and wholeheartedly rescind Tribal resolution JY-93-130, and thereby state our opposition to the MGIO telescope project."

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Leonard Peltier

Leonard Peltier is still in prison. He was sentenced to two consecutive life sentences for the murder of two FBI agents during a fight at the Pine Ridge Reservation in South Dakota in 1977. However, he was convicted on false evidence, which was produced by the FBI, and a false testimony (see also *IWGIA Document 62*). Leonard Peltier's advocates received documents which had until recently been withheld in order to find new legal possibilities.

Besides this, Leonard Peltier had a new parol hearing. It was very successful and he impressed the commission with his arguments and the theoretical work about programs for elderly people and children he has done. The FBI witness impressed the parol commission in another way when stating: "The agents were killed by someone. Even if it wasn't him, it was someone else." On a basis like that statement, Leonard Peltier has spent 20 years in prison! Usually, the Parol Commission makes its decisions few days after the hearing. In Leonard Peltier's case, the commission demanded additional evidence.

"The December 1995 hearing led to a re-examination by the hearing examiner of the issues beyond the normal scope of an interim hearing, including the previous findings made by the Commission that you participated in the execution of two FBI agents. The limited purpose of an interim hearing under 28 Code of Federal Regulations 2.4 is to determine whether circumstances that have changed since the last hearing warrant a different decision. The Commission declines to reopen your case to re-examine your role in the offense since there are no significant changes regarding information on this issue from the information presented at your last parole consideration. You have not given a factual, specific account of your actions at the time of the offense that is consistent with the jury's verdict of guilt. Considering either theory of your participation in the crimes outlined by the government at the trial, the Commission therefore has no reasonable basis to find an explanation of the facts concerning the agents' execution other than the version presented by the government. See 28 Code of Federal Regulations S2.19C. The government has not changed its position that circumstantial evidence presented at your trial established your complicity in the executions of the agents. Their circumstantial evidence described in several of the decisions of the Eighth Circuit rejecting your appeals supports the previous find-

ings that you participated in the executions. A full consideration of your case will not be appropriate until your 15 year reconsideration hearing. Appeal Procedures: The above decision is not appealable."

3/18/96 National Commissioners, Document Number DNJ OJ Referral p.101

The above decision is a clear and blatant example of a complete disregard for justice. The USPC states in this decision that, regardless of the information brought back to them from the Parole Officer presiding at the December 11th hearing, and despite the favourable recommendation which that officer made following the government's distinct concessions that no direct evidence exists against Peltier nor do they have a clue as to who was culpable in the deaths of their agents, that it is more convenient to keep an innocent man in prison than to deal with the controversy and impropriety that may erupt regarding this case. They even go as far as stating that Leonard has never given a factual account "consistent with the jury's verdict of guilt".

How can an innocent man give a factual account of guilt when he is not responsible? Rather than face the FACTS of Peltier's outrageous incarceration, the USPC would rather scold its own employee for overstepping his bounds where they should commend him for his social conscience. Still a mystery is that the Parole Officer who made the favourable recommendation has since lost his position within the USPC.

After the hearing Leonard has been moved from Leavenworth to Oklahoma to a transfer unit. It was unclear why and when he was supposed to transfer, but a wave of protest letters and faxes convinced the Bureau of Inmate Transfers to do something in order to prevent losing face. Leonard Peltier is at present imprisoned in Springfield/Kansas where he gets the medical aid for his eyes which has been refused him for many years. The Canadian government has not finished the examination of Leonard Peltier's extradition from Canada to the USA.

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MEXICO AND CENTRAL AMERICA



1. *Hichol*
2. *Nahua*
3. *Maya*
4. *Rama*
5. *Sumu*
6. *Miskito*
7. *Kuna*
8. *Guaymi*
9. *Embera-Waunan*

MEXICO

Chiapas - Resources Urgently Needed in Indian Communities

Much of the world, including much of Mexico, seems to be under the impression that the conflict between the Zapatistas and Mexican authorities is on the verge of being settled. Indeed this is the image that has been projected by much of the Mexican press and actively sold abroad by the Mexican diplomatic core, with its long experience as make-up artist for a country with deep inequities and injustices. However, those of us who have been close to the situation in Chiapas for many years see a very different reality - never has the situation of the Zapatistas and the hundreds of thousands of Indians and campesinos they, to a large extent, represent been so desperate, never has the government shown a more intransigent and despotic attitude to Indian demands and never have peace, democracy and prosperity for the majority seemed so far from reach. Three fundamental problems are contributing to the current instability:

1. The Mexican government now openly scorns the negotiations underway with Zapatista representatives. During the most recent talks, government negotiators arrived in week-end clothes, refused to respond to Zapatista questions or make any statements what-so-ever and read or engaged in other activities (one government representative is reportedly studying Japanese at the negotiation table) while Zapatista delegates spoke, in an attitude of brazen disrespect and provocation.
2. The presence of the army and the tactics of 'low intensity warfare' (which many observers claim are the calling cards of US military advisors) are increasing in the Lacandon Rainforest and other areas where the Zapatista are known to have social support. Intimidation and now, under the pretext of looking for "marijuana plantations" direct intrusion of the army in areas of restricted access under the negotiation terms.

3. Funds for economic development that have been made available over the past two years continue to spoon-fed only to those communities or cooperatives that collaborate fully with the government, especially by joining the PRI-controlled political organizations. Independent coops and especially communities who expressed "Zapatista" leanings, (for example during the last congressional elections) are left out in the cold -in some cases their schools have even been closed down!

Of the strong-arm tactics used to pressure the Indians, the last point is the most worrisome because it clearly indicates that the government has refused to change fundamental attitudes directly responsible for the uprising in the first place. Shortly after the end of the fighting in 1994, *Epoca*, a national news weekly, published some revealing figures on agricultural development in Chiapas during the previous years. They reported that even before the Salinas administration years, Chiapas had been identified both by international and federal agencies as a social time bomb. More and more money was made progressively available to local authorities for economic development. During the Salinas government, Chiapas was the major recipient of funds allocated by the federal government for socioeconomic programs.

Epoca pointed out, however, that an analysis of the programs actually carried out during those years reveals a curious paradox: Of the funds made available for the different areas of agricultural development in Chiapas during the Salinas administration only 15% were actually mobilized! The rest stayed in the bank, not even to be robbed by corrupt officials or absorbed in local bureaucracy. The reason for this failure to spend available funds is that those funds were given out in the same manner mentioned above: conditioned on full political cooperation with the government and its official party the PRI. But times had changed; many Indians had become disenchanted with official organizations and had formed their own coops, trying to take direct control of their economic activities without the burden of political tyranny. The local government (ultimately with federal backing) refused to allow financial resources to reach the hands of these independents. Seeing their economic freedom blocked, and facing increasing direct repression from local state police and private gun-slingers, many Indians decided that the Zapatistas were right - the only possibility was armed rebellion.

This terror on the part of the local and federal governments of allowing Indians control of their own economic development apparently continues to obscure the political gaze. In 1995, the government began negotiations with a group of over 30 independent Indian coops who had formed a coalition known as the Democratic State Assembly of the People of Chiapas (AEDPCh in Spanish). This organization represented, among others, most of the groups who had occupied disputed lands since the uprising. Although they publicly supported the Zapatista demands for political and social reforms, they risked Zapatista disfavour to enter into direct talks with the federal government. In fact, the Zapatista central committee at first criticized this decision but later retracted to a more tolerant position. After months of hard work and negotiation with the federal representative, the AEDPCh and its advisors presented the government with a plan and asked for financial backing.

The plan involved an integral regional sustainable development project based on a strategy of promoting selected export crops (such as organic coffee), community-based ecotourism and regional food security. It included a plan for the indemnization of private claimants to Indian lands. This plan clearly demonstrated that Indian organizations had the capacity to initiate a creative, sustainable development process capable of generating local employment, protecting the environment, fortifying and diversifying the state economy and participating successfully in the global market. The response of the government came like a bucket of ice water. Only a few isolated, low priority projects were approved (for communities that had proved more pliable to government wishes) - a package of barnyard animals here, a fruit tree nursery there, a pig feedlot elsewhere. The major integrative projects, that would have given economic coherence to the whole and allowed the Indian organization to operate as a kind of "incubator" of locally-owned businesses were not approved. The AEDPCh called the response an "insult" and refused to continue discussions, publicly recognizing that the Zapatistas had been correct in their criticism.

With this experience it became clear that the government would under no circumstances loosen its iron grip on the absolute political control of all development processes, which is the principle factor currently holding back the economic progress of the region. To date, such funds as have been released have been given to fully

official organizations such as the so-called "ARIC official". Independent coops or communities are denied any kind of aid and troops are usually located near them. Individuals are approached by "ARIC official" members and offered sums to switch their allegiance to the official organization, a situation that has provoked considerable conflict within the communities as the economic situation becomes more desperate and the military's low level pressure inches up.

Sadly, there are, at present, few alternatives for the independent organizations. The talks with the Zapatistas are stalled and seem unlikely to provide an alternative mechanism for economic support of development and the training and technical assistance it requires. The actions of non-government organizations have in large part been blocked by government action as well. In a recent press release the "ARIC official" announced it would request that "foreign" NGOs be expelled from the region for causing "divisions in the communities". (It's a long standing PRI tactic to accuse the opposition of what the PRI is in fact doing!) Naturally, "foreign" NGOs (really Mexican NGOs who have managed to garner very scarce foreign resources, principally from Europe) not only serve as witnesses to government pressure tactics but theoretically could offer an alternative to the government monopoly on development resources.

The international financial agencies, despite noble declarations to the contrary, seem to be no more sensitive to the situation nor interested in fostering locally controlled, democratic economic development. The infamous International Finance Corporation of the World Bank recently announced investments in Chiapas. Yet even a superficial look at the projects proposed induce a sense of nausea. The Fondo Chiapas, which the IFC says it will now support, will promote plantations of rubber, oil palm, and bamboo in the rain forest. It's hard to believe, even considering that the IFC is the private sector wing of the World Bank, that anyone could be seriously discussing these projects for Chiapas, given the social and political situation and the urgent need to find development patterns that conserve the incredible biological treasures of the Selva Lacandona. Crops like rubber occupy prime forest lands; Indians would go into debt to become, essentially, workers in an agro-industry in which their sole function would be to provide a cheap raw material to the corporations who would receive all the value

added. Schemes like these conjure up visions of a future Lacandon Rainforest converted into a dismal concentration camp, tended by the army, where jungle has been replaced by monoculture plantations and free men and women have become prisoners of yet another system to remove their resources and wealth and leave them at the lowest rungs of society.

These projects also demonstrate a myopic vision of Mexico's problems that seems to be quite generalized in official circles. Since entering into NAFTA and GATT, Mexico's food production has plummeted. The country now spends the dollar equivalent of its total petroleum exports on the importation of food, even such basic staples as corn. Mexico contemplates importing as much as 9,000,000 tons of corn, mostly from the US, during 1996. This is 75% of its historic levels of annual production in recent years. Yet Sparks Commodities recently announced that US corn reserves are at a 50 year low and that the Clinton administration may be forced to embargo US grain exports later this year. Is no one in the Mexican government or in the World Bank asking themselves how Mexico will feed itself in the near future if these predictions pan out? Has it occurred to no one that the millions of Indians and peasant who still farm the land, in spite of years of official abandonment, repression and scorn, could be part of the solution?

It is urgent that the Indian businesses and communities of Chiapas, independently of their political affiliations, have access to financial resources, receive sympathetic training and technical assistance and be empowered to take the development of their homeland into their own hands. It is the only way the resources of the tropical rain forest can be preserved and it is the only hope for peace, prosperity and democracy in the region.

Legislation Discussions

In 1995, Mexico became an immense debating chamber focused on the important issue of what could become a national project for the defence and respect of Mexican indigenous peoples. In this gigantic movement of reflection, exchange and reconciliation, delegates of Mexican indigenous groups participated as well as representatives of democratic organisations from civil society, intellectuals and academics specialised in the subject and Mexican government officials. The exchange of ideas and deliberations took place in the *Tzotzil Mayan* indigenous community of San Andres Larrainzar, in

the heaving state of Chiapas. Delegates from the Zapatista National Liberation Army participated in all the meetings.

Obviously, the main theme on the table was the urgent study and the necessary legislation and application of new constitutional articles referring to the recognition of the principle of autonomy for the indigenous peoples of Mexico. The participants were unanimous in their denunciation of the shortcomings, or rather the existing aberrations, of the Magna Carta with regard to the lack of respect for indigenous institutions. However, they did not reach complete agreement on the autonomy proposal, perhaps because it lacked a definition of the precise criteria for autonomy and, above all, because of the magnitude of the problem it comprises, the diversity of alternatives which it offers and the multiplicity of social environments which it will affect or benefit.

In fact, no one doubts that there is an urgent need to legislate for new forms of social and political participation for indigenous peoples and on the creation of spaces and channels for representation of the Mexican ethnic groups within the federal legislative apparatus. Everyone is aware that it is essential that indigenous forms of authority, models of community management and other indigenous decision-making bodies are recognised, respected and that their agreements are observed by the regional or federal political administration. We know that autonomy does not signify territorial break up or the principle of secession leading to a confederation of small nation-states embroiled in the search for alternatives to an atomised survival. But many people worry that a frenetic and perhaps illusory search for ethno-cultural differentiation, sustained by the implementation of a new project of communal jurisdiction (at the municipal, ethnic or even regional level) could lead to a proliferation of mistakes which could endanger minority groups in these communities (women, children, political dissidents, religious minorities, etc.) leaving no possibility for bodies or even sectors empowered by the constitution to intervene to ensure respect for the fundamental rights of all citizens.

The inherent perversions of the Mexican political system have also infiltrated ethnic groups' political spaces and power management models and require considerable caution when it comes to legislating on indiscriminate adoption of the indigenous institutions and indigenous rights as part of our constitution. We cannot blindly deliver a defenceless section of the population over to the rules of

certain institutions without weighing up the consequences this might have for fundamental rights. In Chiapas, it is the Tzotzil women themselves who are complaining that they have no right to inherit land and goods from their fathers or husbands because of certain institutional atavisms. The Tzeltal women have repeatedly denounced the methods of family coercion used to force them to enter into unwanted marriages. Traditional respect for the status of children in the indigenous social universe is often constrained by authoritarian attitudes which cross cut the legitimate interests and aspirations of children to study or be involved in different types of activities according to their personal preferences.

Expulsions and other forms of repression still obvious today and used against minority sectors of the population have repeatedly served to stress the aberrations of supposed ancient institutions which serve the interests of the indigenous caciques rather than the legitimate application of the people's fundamental right to live happily and according to their customs.

GUATEMALA

"History is circular, just as time is circular. There are good cycles and bad cycles. The cycles of the history of the *Mayan* people are marked by more or less 500 year periods...so it is written". Thus speak the *Mayan* elders to explain the phenomena which are happening in their "lands of maize". This is how they explain how the most recent bad cycle which began with the Spanish invasion of the continent. They also explain that the end of this negative phase and the beginning of the rebirth of the *Mayas* was marked by the award of the Nobel Peace Prize to the *K'iche* leader, Rigoberta Menchu Tum in 1992, five hundred years later.

What has been happening since then is encouraging for the *Mayan* peoples. The UN-declared Decade is a process of peace which will allow the country to turn its eyes towards the vast impoverished majority and to the upsurge of new and varied forms of indigenous organisation which are gradually taking up the seat of honour which is due to them in the transformation of Guatemala.

Four victories in 1995 marked the new era for the indigenous peoples of Guatemala: the Agreement on the Identity and Rights of the Indigenous Peoples, the first *K'iche* electoral triumph in 500 years in the country's second city; the winner became the first

indigenous mayor in this important municipality; the election of several indigenous leaders who have taken up their seats in the Congress of the Republic; and the ratification of ILO Convention 169 by the Guatemalan Congress at the beginning of 1996.

Although clearly the achievements and advances of the Mayan peoples have been in different fields and to different extents, these four achievements are, nevertheless, important landmarks in the present history of the country.

Guatemala is living through a process of negotiations to find a means of ending one of the oldest conflicts in Latin America. For more than 30 years Guatemalan guerrillas tried to achieve power through armed struggle, and offering the population in general a more just system. The indigenous peoples joined this struggle in the 1980s although it did not recognise them as peoples but had an ideology which only encompassed social classes. Within this concept they were part of an oppressed and exploited class, in a simplistic interpretation of the multiethnic and pluricultural reality of the country. On the other side, the army swelled its ranks through conscription and hundreds of thousands of indigenous people defended a system which had never taken any account of them. The leadership of both sides in this war was in the hands of non-indigenous commanders and generals (or *ladinos* as the mestizos and whites are called in Guatemala).

The peace negotiations between the guerrillas and the army allowed the indigenous peoples to put forward proposals through the Civil Society Assembly, created to allow the participation of civil organisations in these negotiations. For the first time Mayans from different ethnic groups, working together in the Coordination of Mayan Peoples' Organisations (COMPMAGUA), had the opportunity to make proposals in favour of the Mayan peoples as a group. Their proposals were the impetus which shaped the discussions at the negotiating table into an agreement which recognised their identity and their rights.

This agreement conceded the right to land, to the use of indigenous languages, and also the officialisation of these languages in Maya speaking areas; to the wearing of their dress and to respect for ancestral Mayan customs through which the Maya exercise their spirituality, banned since the arrival of Europeans on their continent. It also talks of respect for customary rights in areas in which community norms are maintained over and above national

law. The agreement today is the most important indicator of development and progress which the indigenous peoples of Guatemala have. The points addressed in it will become law when the peace is signed and the agreements are implemented.

Quetzaltenango is the second most important city in Guatemala. The ethnic and cultural contradictions there mirror the situation at the national level. With an indigenous population of almost 60 per cent, the levels of discrimination are quite marked.

The city has been governed since colonial times by *ladinos* and any attempt by the indigenous peoples to aspire to municipal government was treated with ridicule. The pressure was such that to stand as a candidate meant first subordinating indigenous identity to that of the region. This is the way Roberto Queme Chay, a K'iche professional who left the Xel-Ju civic committee and managed to beat the powerful machinery of the political parties, triumphed and pulled off a landslide victory which extended beyond the city limits and became a symbol of what could be achieved at other national levels. The Xel-Ju, whose name is the same as that of the city in K'iche, played out their struggle over 25 years to achieve this victory, which was one of the greatest recent achievements in the national indigenous movement.

In a similar fashion, several Mayan leaders entered the Congress of the Republic with important recognition both at the national and international level. Rosalina Tuyuc and Manuela Alvarado perhaps best exemplify this. Leaders such as Rosalina Tuyuc, who were always critics of the system, standard-bearers of struggles such as the abolition of forced military service and the exercise of conscientious objection, today have the opportunity to propose and approve laws aimed at expanding these political spaces in the still fragile Guatemalan democracy.

Although previously there were indigenous people in Congress representing traditional parties, they never had the position they have now which is so clearly in favour of their own interests and their mission to strengthen their cause.

After several years of lobbying, the Congress of the Republic approved ILO Convention 169 with some amendments. With this act, the Mayans now have their first legal instrument in force, one which touches on one of the most sensitive issues in the country, the recognition of Mayan peoples' rights to the land which they have traditionally occupied. Until now the land problem has been out of

bounds. Any talk of agrarian reform in the country has been until only very recently almost a sin because large landowners forged their fortunes by plundering land from the indigenous people, who were displaced to less productive areas and slowly transformed into a cheap source of labour.

In Guatemala one can find cases of land which is legally registered in the name of different proprietors, all of whom claim to be its legitimate owners. This came about after different dictators in turn granted their loyal followers lands won from their adversaries, who in turn took out titles in spite of it being the property of the indigenous communities who lived there.

The problem of land ownership became one of the most important issues in the negotiations for peace between the government and the guerillas because it was one of the main issues which generated the violence. However, although the National Constitution recognises many more rights than those recognised in Convention 169, the latter allows action to be taken immediately unlike the Constitution which must await the establishment of these rights in laws which have not been written yet.

The number of Mayan organisations continues to increase. Today there is a flowering of organisations of Mayan priests, women, mayors, etc. There are new means of communication using Mayan languages following the example of *El Regional*, the pioneering weekly newspaper published since 1991 in indigenous languages. A Mayan news agency belonging to one of the large national newspapers, as well as some small but significant local media, are symptoms of another battle which the Mayan have won for the opening up of communications so they can express themselves.

With these other successes, the Mayans of Guatemala are beginning to stride out with a sure footing along this long road which, according to the legend, ought to lead them to 500 years of success.

HONDURAS

Eighty per cent of recognised protected areas in Central and South America are inhabited by indigenous peoples who have been subject to different types of restrictions, especially to their traditional forms of production. In Honduras the government has decreed the formation of two National Parks in a *Garifunas* area. These are Cayos Cochinos which is an insular archipelago comprising 18

small islands, and the Punta Sul Park in which five Garifuna communities live. These communities have still not been thrown off their land but they live in fear of imminent expulsion. The Honduran Advisory Commission for the Development of Autochthonous Ethnic Groups expresses the situation in the following way:

“We are clearly not against the protection of the environment and the natural resources because at present the only areas of Honduras where the natural resources have not been indiscriminately exploited are the areas inhabited by the indigenous and black peoples. But any government decreed laws to protect the environment which do not include the participation of the people who have historically lived on these territories appears to us a violation of human rights”.

NICARAGUA

The indigenous peoples of the Atlantic Coast of Nicaragua are struggling to defend their lands and territories from the constant encroachment of the agrarian frontier and economic interests. Every year the agrarian frontier is gradually moving its way across the country into lands of the *Miskitu* and *Sumu*. Logging companies, such as SOLCARSA, MEDENSA and other economic enterprises, are interested in indigenous timber resources and offering deals to impoverished communities, such as *Yulu*, *Sukatpin*, *Kligna*, *Miguel Bikan* and countless others, which could strip them of their resources. Those which refuse face the constant threat of illegal logging, now endemic throughout the last remaining forest areas of the Atlantic Coast.

Since the war finished ten years ago, the rehabilitation of indigenous communities has been slow and difficult. The communities of the R!o Coco face problems from several directions. Communities such as Andres are still mined and the army complains that it has no resources to clear the area. During the year a teacher in the community lost his foot and several head of cattle were killed from the mines. Furthermore, the communities depend on their survival by using their traditional lands on both sides of the river Coco which borders on Honduras. The communities are based on the Nicaraguan side and their gardens are on the Honduran side. Until last year, the Miskitu from the Coco had to pay 10 percent tax on all

produce grown to the Honduran army; in 1996 this was put up to 20 percent. This extortion takes place within the context of a gradual desiccation of the river as the result of the over-exploitation of timber in the headwaters.

The regional autonomy structures of the Atlantic coast has room for participation of indigenous peoples and different Miskitu political groups have managed to ensure that their interests are represented. The two year change of government in May, 1996, led to a shift from an alliance between the Frente Sandinista and Yatama under the governor of Marcos Hoppington to one led by Steadman Fagoth. In spite of indigenous political representation at a regional level, the main problem for the regional governments of northern and southern Atlantic Coast is obtaining the necessary resources to carry out an autonomy which reflects the needs and desires of everyone in the area.

1996 is the year of a general election and there is a concern that if the right-wing front under the current Mayor of Managua wins, a strong neo-liberal regime will lead to even more suffering for the indigenous peoples of the area. This will mean an increase in the exploitation of the forests which the communities need for their basic subsistence.

PANAMA

In Panama the conflict over the boundaries of the Kuna Yala Comarca and the border with the province of Colon continues. At present the boundaries between both regions are laid down in Article 21 of the Law of 16th February 1953. This states that it runs from the mouth of the Playa Colorada river, at the Caribbean sea, and follows an imaginary line southwards until it meets the Mandinga river. There it continues upstream to the source of the river, on the summit of Cerro Brewster. But the *Kunas* have never recognised this boundary in that it cuts off an important part of their Kuna territory where several indigenous communities live. The Kuna protests over this contested area have been provoked by the government's plans for a tourist centre, run by Mandinga Tourist Development SA.

On the 10th March 1996, at a meeting called by the Kuna General Congress in Achutupu, a declaration was made in which the indigenous peoples "expressed their total rejection of the anti-



The Kunas continue the demarcation of their traditional territories, Panama. Photo: Alejandro Parellada

indigenous policy of the Panamanian government" basically because of the government's lack of recognition of the boundaries of their territories. Meanwhile, and with international cooperation, the Kunas continue to physically demarcate Kuna Yala although they have still not had this work officially recognised. Another serious problem facing the indigenous peoples of Panama is the government's enthusiasm to authorise mining concessions. To date, there are more than 140 permits for mineral extraction, many of which are located in indigenous territories. The Kuna General Congress expressed its concern for

"the access this provides foreign companies to the goods and resources of the Republic and the indigenous peoples of Panama and for the disdain and humiliations which it brings to us the original inhabitants of this country. What other way should we Kunas react and feel when we hear that mining concessions have been authorised on our Comarca, in spite of us having cared for and lived for thousands of years on these lands."

They also specifically denounced the Canadian company, Western Keltic Mines, Inc. for carrying out a policy of penetration with the

aim of “dividing, mining and weakening Kuna political institutions”. This company is ready to begin the exploitation of five concessions on Kuna territory.

The Kunas accuse the government of contravening ILO Convention 169 and the National Constitution which in Articles, 5, 86 and 123 protects the rights of the indigenous peoples to special regimes, to defend their ethnic and cultural identity and to guarantee the collective property of their territories. On the 13th February 1996, the Council of Ministers approved a contract between the Cerro Colorado Mining Corporation (CODEMIN) and Panacobre Society AS for the exploration and exploitation of mineral deposits located on indigenous territories. This mainly relates to the extraction of copper in a zone considered to be one of the richest in the world. However, the *Ngobe-Bugle* people, who are one of the main peoples affected, have not participated in the decision making. If this is a multi-million dollar contract, as the *Ngobe-Bugles* suspect it is, the profits will go directly to the mining companies and the state and the real owners of these lands will continue to be ignored. Faced with this situation, the indigenous peoples are continuing to organise themselves not only against the mining activities but also in support of the creation of their own Comarca.



- | | | |
|-----------------|------------------|-------------------|
| 1. Yucpa | 7. Candoshi | 13. Enxet |
| 2. Yanomami | 8. Ashaninka | 14. Totobiegosode |
| 3. Embera-Katio | 9. Guarani | 15. Whichi |
| 4. Huaroni | 10. Macuxi | 16. Toba |
| 5. Shuar | 11. Parakana | 17. Kolla |
| 6. Aguaruna | 12. Urubu-Kaapor | 18. Mapuche |

SOUTH AMERICA

VENEZUELA

It has now been 12 years since Venezuela passed a decree which made ILO Convention 107 on Indigenous and Tribal Peoples part of national legislation. However, efforts to put this legislation into practice have been minimal. Over the last ten years in particular, the indigenous peoples have experienced a tremendous increase in pressure on their land from mining and timber activities and state infrastructure projects (as well as other illegal projects) and, more recently, from 'ecotourism'. Nevertheless, in spite of the government's legislation, the authorities have done little or nothing to protect the interests of the indigenous peoples.

On the contrary, many government departments have ignored and actively rejected indigenous rights, even authorising or encouraging invasions of indigenous lands. Although 72 per cent of the indigenous communities still have some kind of property title to their lands, there are detailed reports of invasions of indigenous lands and territorial conflicts throughout Venezuela.

The colonisation of the lands of the *Bari* and the *Yupka* by ranchers and poor farmers continues in the Sierra de la Perija, which has also been taken over by large open cast mines. The local government has tried to award the *Kari'na* peoples' lands in Monagas to third parties even though the indigenous peoples have colonial titles to the lands. Farmers have been given control of the majority of the *Yaruru* indigenous reserve in Apure, while the *Yaruru* are prevented from entering what remains of their territory as this has been made into a national park. The Ministry of Energy and Mines and the Venezuelan Corporation of Guyana are handing out mining concession and permits with no concern for the indigenous peoples. The state of Bolivar continues to authorise timber concessions for lands inhabited by the *Pemon*, *Akawaio* (*Ikapon*), *Karin* and *Arawak* (*Lokono*). Of course, the government's Forestry Service lacks any policy for indigenous peoples and the forestry concessions are undermining the way of life of the *Warao* in the Amacuro delta.

In Amazonas, the most isolated state in Venezuela, territorial conflicts are also on the increase. Ranchers threaten to destroy the Yabarana, while road building and colonisation are encouraging forest clearance along the length of the Orinoco river, which is leading to serious conflicts with the *Piaroa* (*Wotuhjeje*) and *Gua-hibo* (*Hiwi*). Illegal mining, most of which is carried out with the connivance of members of the National Guard and local politicians, has also extended to indigenous areas. Over and above this, 'ecotourism' camps are being constructed in many areas which are provoking serious conflicts, mainly with the Piaroa.

Violence towards the indigenous peoples has also increased. The killing of *Yanomami* by Brazilian miners in 1993, in the Upper Orinoco, not only goes unpunished but may well happen again. There are reports of incursions of miners all along the border with Brazil from Neblina in the southeast to the upper region of Caroni in the east. There are also reports of killings of indigenous people by the military and police in *Goajiro* (*Wayuu*) and *Yupka* areas in the northeast of the country. There have been a number of attacks recently on *Cuiva* hunters and gatherers in the state of Apure. Indigenous organisations and human rights groups have waited in vain for official investigations into these abuses.

In terms of health, medical care for the indigenous peoples in Venezuela is minimal and well below the levels of service provided for other citizens. The indigenous census of 1992 revealed that 86.8 per cent of indigenous communities did not have access to a dispensing clinic. This lack of health provision has led to serious problems for the indigenous peoples, especially in isolated communities in remote areas far from medical centres and with relatively little experience of western infectious diseases. There are reports of epidemics, mainly malaria which is extensive among the *Yanomami* and *Sanema* in the states of Bolivar and Amazonas where local clinics do not even have the most basic resources to tackle these problems. Tuberculosis reached endemic proportions in the Caura and Paragua regions at the beginning of the 1980s and still continues untreated. Over and above these problems there is evidence of increasing mercury contamination in the water, rivers and ecosystems caused by uncontrolled mining activity by gold panners.

In general, the government's policy for the indigenous peoples has had little coherence and is ill defined. The very centralised nature of most government decision-making since the 1960s has left relatively little space for local or regional initiatives to influ-

ence national policy; centralised decision-making has isolated indigenous issues. The state institution with responsibility for indigenous affairs has been and continues to be poorly resourced and lies on the political margins with limited authority. Since the 1970s responsibility for indigenous affairs has been with the Department of Indigenous Affairs of the Ministry of Education but this body is not authorised to work on the most important issue for the indigenous peoples: lands.

In the last few years, the indigenous communities themselves have begun to mobilise and organise themselves into local, regional and national organisations which have ensured that indigenous issues have begun to receive much more attention in the national media.

COLOMBIA

In Colombia on the 22nd March, the national government presented the Organic Law of Territorial Legislation to the Congress of the Republic, known as Draft Law No. 191. In general terms, the Draft Law does not recognise the integral character of territorial bodies within the Republic which the Constitution does in relation to Indigenous Territories. On the contrary it tries to limit them to their minimal expression and ignores their articulation with other territorial bodies in the context of national legislation, so that legislation for regions and provinces does not even refer to them or their competencies, as if they did not exist.

For its part, the *U'wa* territory, like many others in the Amazon region, is being threatened by oil companies. Twelve years ago the Colombian Petroleum Company (ECOPETROL) signed a contract with the multinational, Occidental Petroleum Corporation, for an area which was called the Samore Block, a quarter of which belongs to the *U'wa*. These indigenous people have been suffering since the 1960s from the loss of their territory through the colonial state policies and from the construction of an oil pipeline. At present, the *U'wa* have a land title for three reserves (*resguardos*) in the Samore block but there are also several *U'wa* communities within the same area which have not had their situation legally recognised.

The *U'wa* have been demonstrating their opposition to this oil exploration in their territory and are already aware of the disas-

trous experiences of the indigenous peoples in the neighbouring department of Arauca.

In spite of this indigenous opposition and the obvious devastating effect which even the oil exploration phase will have on the economic, social and cultural integrity of this people, the Minister of the Environment awarded the project an Environmental License with complete disregard for Article 330 of the Constitution which forbids the exploitation of natural resources in indigenous territories when these contribute to the disintegration of the communities. Meanwhile, ILO Convention 169 (Law 21 of 1991) demands that the community gives its consent to measures which affect them through an appropriate form of consultation. The U'wa, by means of the Peoples' Defence, took out a protection order to stop the Environmental License going ahead and at the same time they demanded that the State Council annul the license.

Although the contracts do not state it, in Colombia oil exploration and exploitation licenses give the multinationals the right to decide on the destiny of indigenous lands. This is exactly what happened in Magdalena Medio and Opon-Carare where the indigenous inhabitants were totally exterminated in the first half of this century. In the Perija Mountains the *Motilon-Bari* were forced onto a war footing against the oil extractors. In Arauca, the *Guahibos* have been cornered into minuscule reserves and reduced to begging in the oil capital. In the Putamayo, over the last 15 years the oil companies have made roads on the *Kofan* people's territory and in the last few years they have lost 80 per cent of their lands. Today the Colombian government has handed over not only a contract to Occidental but the destiny of the U'wa.

GUYANA

There are worrying signs that the freeze in the hand out of logging concessions to foreign companies in Guyana is about to break. Under heavy pressure from foreign investors, the Guyanese Government may be about to offer new permits to foreign companies, despite promises made to the aid agencies in 1994 that no new logging concessions would be handed out until the moribund Forestry Commission was revived and back in control of the 'existing' timber cutting.

According to the national newspaper, 'Stabroek News' on 12 March 1996, the Presidential Adviser for Science, Technology and

the Environment, Navin Chandarpal has been negotiating with the Malaysian company, Solid Timbers Sendirian Berhad, to grant it a 500,000 hectare timber permit in the Upper Corentyne / New River area in the extreme south of the country. This is about half the over 1 million hectares the company had originally sought even further south in the New River Triangle area - a territory disputed with neighbouring Suriname. Both areas are outside the jurisdiction of the Forestry Commission and way south of the country's existing road network. According to the newspaper report, the Government would first pass legislation expanding the area of State Forests and then offer the company an exploratory lease to the area, under which it would carry out a forest inventory and develop a forest management and investment plan. The same report also alleges that two other South-East Asian investor groups including Alex Ling Lee Soon and Vincent Tan's Berjaya Sdn. Bhd. are still seeking further areas in the south.

Under its agreement with the aid agencies, the Guyanese Government has agreed that - in order to ensure sound forest management and profitable returns to the Guyanese Exchequer - no new timber permits should be issued for a minimum of three years after May 1995 or until the Forestry Commission is able to regulate the industry. Meanwhile, with the technical and financial support of the British Overseas Development Administration, the Forestry Commission is attempting to build up the numbers and training of its staff and revise forestry regulations and royalties with the initial aim of establishing control over the nearly 9 million hectares of forests already under concession, while making the industry a profitable source of national revenue.

Guyanese foresters agree that it will be years before this is achieved and that meanwhile concessionaires are subject to minimal supervision. This is just the kind of situation that logging companies thrive on. Poor supervision, low taxes and cheap labour are thus attracting investors to the country. Indeed, at present loggers get their timber in Guyana extraordinarily cheap. A study carried out for the World Bank in late 1995 showed that the royalties, taxes and forest fees being paid by loggers in Guyana are some of the lowest in the tropics, being less than a tenth of those paid in most Africa and Asian countries. Moreover, since 1988 fees have been falling in real terms. Royalty rates are at 30% of their former value, while customs duties and acreage fees have fallen by more than 90% in the past decade. On top of this, the report states,

foreign companies enjoy 'generous tax breaks and other incentives creating conditions of unfair competition (for local producers)'. As a result Guyana is liquidating its forest assets for little national gain. Warns the report:

"This kind of forest mining entails a boom-and-bust pattern of development that can be highly disruptive to employment levels, trade balances, and other factors of macro-economic stability"¹

To get around their commitment to the aid agencies not to grant new logging licences, the Government seems to have invented the legal fiction of 'exploratory leases' - a category of permit which does not exist in Guyanese law. By this means the Government hopes to keep foreign investors interested and then grant them licences as soon as they can get away with it.

Aid agency officials in Georgetown have been aware of these negotiations for some time and are also concerned by rumours that the Canadian timber company, Buchanan Forest Products, is seeking access to a 400,000 hectare concession on the Middle Mazaruni river. This unlogged area was recently relinquished by Mazaruni Forest Industries Limited (a consortium formed by members of the Prime Group of Singapore) in exchange for the Prime Group's takeover of the financially strapped Demerara Timbers Limited which is exploiting a 500,000 hectare concession on the Middle Essequibo. Buchanan's proposed operations on the Middle Mazaruni would bring it into conflict with a number of villages of Aka-waio Indians who have inhabited the area for centuries. Under pressure from Buchanan, which enjoys support from the Canadian Embassy in Georgetown, the Government is alleged to be considering also granting them a three year 'exploratory permit'.

Buchanan does not have an untarnished reputation back in its home province of Ontario in Canada. A report made for the Canadian Paperworkers Union in 1992 notes that Buchanan

"has evolved into a company riddled with contradictions. On the one hand, it has a long history of doing all it can to avoid forestry, environmental and labour legislation. On the other hand, as it has grown, the Buchanan group of companies has become more mainstream."²

The report details how Buchanan has successfully fought to reduce labour costs and has extravagantly logged forests to maximise

profits with little regard for the damage to residual timber stands and little concern for timber wastage. According to the report, Buchanan has also used strongarm tactics - threatening to close mills - to pressure politicians into granting it access to forests. Of particular relevance to Guyana, the report highlights how the company thrived on lax government controls, reaping financial benefits while passing on the social and environmental costs to be borne by others.

The report alleges that the company was able to avoid prosecution for violating environmental and forest management regulations, due to close connections with senior politicians in the environment ministry. Tracing the company's history, the report notes how 'laissez-faire' and political connections allowed Buchanan to get away with repeated violations of the Crown Timber Act, especially during the 1960s, 70s and early 80s. In recent years, however, due to growing public concern for the environment, supervision has tightened and compliance has been more carefully enforced, obliging Buchanan to toe the line.

Despite improved compliance with forest management practices, Buchanan has nevertheless managed to keep costs low, mainly by defying the trades unions and avoiding obligations to its employees. Notice the report:

"Buchanan's track record in labour relations has steadily deteriorated from the late 1970s and throughout the 1980s. Buchanan's defiance of union agreements, its avoidance of mandated employee benefits and treatment of contract labour in woodlands are notorious."

Meanwhile the mining industry in Guyana is also moving south. Leading the way, again, is the Malaysian firm, Solid Timbers Sendirian Berhad, whose wholly owned local subsidiary, Tanahmas Gold Mining Company has just been granted a 7,000 hectare mining lease in Camp Jaguar on the New River. The company has also applied for a further 14,000 hectares in an adjoining area.

Mining is also intensifying in other indigenous areas. Carib Indians on the Barama river report several new gold mining operations on their traditional lands including Citadel Co., Sonic Soil and the Roraima Mining Company.

SURINAME

After months of deliberations, the Surinamese Government's special commission reviewing draft contracts granting several huge logging concessions to foreign companies has finally submitted one contract to the National Assembly for approval

The contract, which allegedly grants the Malaysian company, Berjaya Sdn. Bhd. a one million hectare concession in the eastern part of Suriname, is being fiercely opposed by the indigenous and *Maroon* peoples who inhabit the interior of the country.

The interior peoples are dissatisfied that the Government continues to give priority to foreign companies while it refuses to honour promises made to them in 1992 to recognise their rights to their ancestral territories.

The contract was passed through to the Assembly in mid-January but in view of the opposition in the interior the Assembly chose not to accept it immediately and asked for two weeks to consult with the leaders of the local peoples in the concession area. On February 6, the Assembly demanded a further extension as the local leaders had forcefully expressed their opposition to the contract. Fierce debate now rages in the capital, Paramaribo, over whether the concession should be granted. Domestic timber companies have also expressed opposition to the contract since they claim Berjaya will be granted fiscal benefits that the local sawmills do not enjoy, thus making them uncompetitive.

Berjaya claims that it has already invested US\$20 million in Suriname and has expressed considerable impatience over the delays. However, in response to objections raised by the Maroon and Indigenous leaders, the company has also stated that it will not log areas where the local communities are opposed to its presence. A Berjaya spokesperson has been quoted in the press as stating that if the forest communities in eastern Suriname are opposed to the logging they would prefer to be granted a concession further west, perhaps in the area initially slated for the Indonesian transnational Suri-Atlantic which appears to have withdrawn its bid for the forests south of Apura.

The Berjaya company has been embroiled in equally heavy controversy in the Solomon Islands. Last year, after being accused of bribing government officials and then getting caught up in a land dispute with the indigenous communities, the company pulled out and embarked all its machinery for South America. It is uncertain whether this plant will

be sent to Suriname or neighbouring Guyana, where Berjaya has already secured control of an existing but unexploited concession previously granted to local companies UNAMCO and Case Timbers.

Meanwhile the Indonesian logging company MUSA, which has been operating in Suriname for several years, has also become embroiled in a land dispute with a local plantation owner having expanded its milling operations far beyond the small 50 hectare site it had acquired. Even after a judge concluded that 90% of MUSA's activities at the site were outside its legal holding, MUSA refused to pay compensation, leading the courts to seize the company's machinery, buildings, land and lumber.

The controversy over foreign loggers has gained significance as Suriname is to hold general elections in only four months. Opposition members of parliament are contesting the concessions as they would present any incoming government with an uncomfortable 'fait accompli'. Efforts to secure the votes of the interior communities in the upcoming elections have raised the political temperature.

At the end of January, local human rights, indigenous and environmental organisations placed a full page advertisement in the national press opposing the concession as politically irresponsible, economically unprofitable, environmentally ruinous and as an affront to the rights of the interior peoples.

They have called on the Government to: postpone the granting of the concession; legalise the granting of land rights; provide educational, health and social services in the interior; involve the local communities in future decision-making; and strengthen the capacity of government to regulate the timber industry.

The Maroon and Indigenous organisations are demanding that their territorial rights should be fully and legally recognised and effectively secured before any concessions are granted in the interior. They also demand that they be fully involved in negotiations with the companies and allowed to represent themselves through their own institutions.

ECUADOR

In January and February 1995, the undeclared conflict between Ecuador and Peru directly affected the *Shuar* peoples of Ecuador and the *Aguaruna* of Peru. The indigenous organisations of both countries were extremely worried, as was COICA, because these two peoples

had declared their support for and participation in their respective national armies. In fact, the defence of "national sovereignty" has not benefitted the indigenous peoples one little bit, but rather, on the contrary, has increased their poverty and marginalisation.

Wanting to initiate a dialogue between the opposing indigenous peoples, COICA organised three meetings with representatives of the Confederation of Indigenous Nationalities of the Ecuadorean Amazon (CONFENIAE) and the Shuar Federation on the Ecuador side and, on the Peruvian side, the Interethnic Association for the Development of the Peruvian Rainforest (AIDSEP). The most important resolutions to come out of these meetings were: 1) their disagreement with the military policies of both States, their willingness to overcome nationalistic ideologies and to work for the unity and organisational consolidation of the indigenous peoples; 2) the indigenous peoples' rejection of government policies with respect to the border areas wherein, under the protection of the Law of National Security, States can assume control of these areas thus putting the indigenous peoples' ancestral possession at risk; 3) that both countries work to find peaceful solutions to their differences; legalise indigenous territories in favour of the indigenous peoples and that these territories be divided between the indigenous peoples themselves as a Zone of Union and Friendliness.

Some months later the national government approved the Agrarian Development Law which is a direct threat to the integrity of the indigenous peoples. Immediately, the Indigenous National Confederation of Ecuador (CONIAE) came out against a law of this nature which ought to have been the product of the reflection and discussion of all social sectors of the country. In view of the fact that it was not produced in this way, and faced with the state's refusal to revise it, the indigenous peoples held an extraordinary assembly of CONAIE on the 7 and 8 June. The meeting decided to begin a campaign against the law which paralysed 12 of the country's 21 provinces for 10 days. Finally, on the 23rd June, in the midst of a state of emergency decreed by the government, the Tribunal of Constitutional Guarantees declared the law unconstitutional.

The indigenous movement, led by CONAIE then began a dialogue with the government with the aim of reformulating the law. After several days of demonstrations and dialogue a new version of the law was accepted which came into force on the 3rd August and whose main components are as follows:

- that the indigenous peoples' maintenance of their traditional ways of life be recognised;
- that the agrarian reform, initiated piecemeal in 1964, should be continued based on four grounds for expropriation: the existence of precarious employment; threats to the natural resources; that lands have been unexploited for more than two years; and that the land is subject to strong demographic pressures;
- that water continues to be a national resource for public use and cannot be expropriated;
- that technical training be authorised, credits made available and there be equality of opportunity for commercialisation by the indigenous organisations.

In view of the disadvantages to them from political decision-making within State bodies, the indigenous movement of Ecuador decided to organise itself to participate in the general elections of the 19 May 1996. Allied with other popular sectors, it formed the 'New Country' Pachakutik Plurinational Movement standing for the majority of the elected positions. This decision has led to a huge challenge, because, while it is up against very powerful political and economic sectors, it is legitimating the rights of the indigenous peoples to be elected as civil authorities and demonstrates that they are capable of directing the destinies of their own people.

PERU

In Peru, since the terrible massacre of *Ashaninka* families in Tahuatinsuyo, Mazamaria, Peruvian society has expressed its solidarity with the suffering this people has endured over the last ten years in a situation of extreme violence. However, no one in government has made an effort to get to the roots of the real problem of the Amazon peoples who have been impoverished and oppressed by the uncontrolled invasion of their territories or linked the violent acts taking place in the Central Rainforest with the policies of colonisation carried out through Special Projects of large scale rural settlement.

The liberal policies of the present government continue to create a series of measures which allow new abuses of the indigenous peoples' collective rights and threaten a return to violence in the

Amazon, thus endangering the newly initiated and still fragile peace process in this tumultuous region. The majority of the highland regions are affected by extreme poverty exacerbated by adjustment policies (under funding, fall in the price of agricultural produce, competition from imported foodstuffs). This does not improve the prospect of uncontrolled migration towards the rainforest and, once the situation has calmed down, new waves of migration will gather momentum mainly directed towards the areas once most affected by the violence.

To make matters worse, the government has taken legal steps which will seriously compromise the future of the indigenous Amazon peoples through controls proposed in the Letter of Intention to the IMF. Law No. 26505. It is an 'about turn' on land policy and opts for major investment while ignoring the rights acquired by the indigenous population. The law and the proposed regulation, which will be announced when it comes into force, can be defined as deregulating and an open invitation to national and international investors to acquire indigenous lands, especially those which have not yet been titled. As well as ignoring the special relation which ties indigenous peoples with their territories, they are proposing a series of measures, many of them unconstitutional, which endanger the security and future of these peoples (but now territories are big business).

The ability to declare forest lands under concession (a large part of the lands included in the demarcation plans) as abandoned through non-compliance with the concession contract is an act of discrimination with unforeseen consequences. The original concept of 'abandon' has been expressly eradicated from the new legislation. But while the Law ensures investors complete freedom to use the land exactly as they want, the indigenous peoples are obliged to use their ancestral territories according to certain rules and under threat of dispossession, a measure which only affects them.

This provision is even more contradictory in that it forces an institution, which is set up to carry out cultural and agricultural work, to abide by a contract which explicitly forbids it to do this. On the other hand, its unconstitutional character is quite clear in the context of Article 62 of the Magna Carta. But as it is applied after only a simple visual inspection with summary proceedings and no real possibility of opposing it, the injustice is made clear. We are dealing with a veiled act of expropriation which could put the subsistence of the indigenous population in grave danger.

Many other legal proposals threaten the indigenous communities, which in a display of cynicism, become legislation and part of the common proceedings under the assumption that there is equality between parties. Moreover, if the territorial guarantees are reduced to a minimum then the possibility of restitution of lands as yet untitled is practically non-existent. The government is proposing to draw up a map of eroded lands which, if there is no opposition, will be registered in its name and publicly auctioned. Yet again, these proceedings are an insult to indigenous peoples' justice. The fact that map with lands is advertised peremptorily in the newspapers implies a total lack of respect for indigenous peoples' rights as they could find themselves taken by surprise at any time by an unknown owner of their ancestral lands.

This colonial behaviour towards the indigenous peoples of Peru is in a rebound to the ratification of ILO Convention 169 (Legislative Resolution No. 26253). All the economic, social and cultural rights of indigenous peoples are being threatened and generate insecurity over an issue so important as territories, territories which provide indigenous peoples with their medicines, workshops, schools, sources of materials and markets.

Hydrocarbon and Oil Industry

Furthermore, today the Amazon is facing a new threat which is putting the land and the cultural life of many of the indigenous peoples and other local people under threat. The Peruvian government has launched an aggressive promotion of the hydrocarbon industry and authorised greater facilities for the development of oil activities including exploration and exploitation operations on the lands where the indigenous peoples live without laying down any cultural or environmental guarantees and with no respect for the rights which, in compliance with ILO Convention 169, allow for consultation with the indigenous peoples before licences are authorised.

In the last few years the privatisation process of Petroperu has begun, as recommended by multilateral agencies such as the IMF and the World Bank, and the free market model of competition has been implemented with the promotion of foreign private investment in the exploration, exploitation, transport, refining and commercialisation activities of hydrocarbons. To facilitate this legal stability, certain measures have been set in place in the sector as

well as exoneration from taxes on the importation of goods and consumables, on the repatriation of utilities, on interest, the deregulation of the consumer goods market, abolition of labour norms, an increase in the extent of concessions, facilitation of the transport and distribution of infrastructure, etc.

To date, because of the demand by the indigenous organisations, the only thing they have received from Ministry of Energy and Mines in a few cases is an invitation to listen to the presentation of the Environmental Impact Assessment Studies which the companies offer. But the objective of this invitation is only to comply with the simple formality; they do not distribute the document in advance as they ought to to allow technicians and indigenous leaders to familiarise themselves with it and give it their considered opinion.

In fact, practically all the rainforest has begun to be divided into lots with the aim of hydrocarbon exploration and exploitation. And, secure that the government will protect foreign investments, companies are anxiously competing with each other to obtain operation licenses.

The lots which are now being exploited are causing serious social and ecological deterioration of the Amazon. For example, the National Office for Evaluation of Natural Resources (ONERN) determined that the area of the rivers Pastaza, Tigre, Corrientes and Marañon, some approximately 4 million hectares in the Northern Peruvian Amazon, is one of the 'critical environmental zones' most endangered in the country. Oil activities have brought grave consequences for the indigenous peoples and other local populations.

In the rivers of the rainforest, salt levels have been raised by the dumping of waste into streams which destroy the flora and fauna on contact as well as contaminating the rivers from which the communities take their water for domestic use. The heavy metals and organic matter which are also in the streams are accumulating in the food chain of the fish and over time lead to gastro-intestinal diseases, as is happening among the *Quichua* communities who live on the banks of the Tigre river where the oil company Occidental has been ejecting its liquid waste for more than 20 years from exploitation wells which have been operating in the region.

There are also reports of diseases unknown to indigenous traditional medicine, as in the case of the uncontacted *Kugapakori Nahua* peoples in the Urubamba valley. In April 1984, during an exploratory phase near the river Camisea, the subsidiary companies of Shell almost caused their extermination from an epidemic of flu.

There is scientific evidence that the contamination of the rivers Corrientes, Samiria, Cocha Pasto, Capahuari, Trompetillo, Tigre, Amazonas, Cocha Monatana, Pastaza and Marañon is directly affecting the indigenous communities in the areas: *Urarinas*, *Muratos*, *Cocamillas* and *Quichuas* who since time immemorial have acquired most of their protein from fishing. In the Pastaza, Corrientes and Tigre rivers there are days when the indigenous peoples have to leave the water to settle in containers so that the green oily film comes to the surface and can be thrown away before using the water that remains.

Roads, airports and base camps are being built as islands of comfort and luxury in the rainforest and for this the oil companies invade and relocate communities with no respect for the property of the indigenous communities. Furthermore, these roads promote spontaneous colonisation with all its well known consequences.

Over the last two years more than three million hectares (130 km²) have been allocated to the oil companies for prospecting and the exploitation of hydrocarbons. To date there are 29 lots under contract which comprise a total area of 13 million hectares. Some lots continue some are still under negotiation and others are already defined as areas of study.

The problem is huge and for this reason 19 indigenous organisations are on alert. It is a global problem which makes us believe that it will dominate events in the Peruvian Amazon for years to come. The loosening of control which one can see happening is becoming a relentless and profound questioning of the collective rights of the indigenous peoples, the majority of whom are recorded as living in conditions of extreme poverty and have among the lowest social indices. The process of modernisation has also collided with indigenous peoples and the exercise of their own citizenship. Many indigenous people do not have civil documents and there are no programmes to change this over and above what the indigenous organisations themselves are doing.

With regard to education, at the margin of the general marginalisation of all Amazonia, the indigenous peoples are being pressured into accepting teachers from other regions with no knowledge of the language or local culture and little respect for the indigenous way of life. From this perspective, education is no longer a means of development and becomes a disgrace and an act of cultural subjection. The educational results are limited, resulting in a negative perception of indigenous students' capacity.

To complete this panorama, we should mention the case of the Ashaninka people, one of the peoples most beaten down by the violence.

According to information in the journal *Voz Indigena Ashaninka* more than 3,800 persons have been murdered or disappeared. Fifty communities have been devastated and abandoned. Fifteen thousand people (a third of the total population) have been displaced from their places of origin. Twenty five thousand have been affected to different degrees. In the incomplete Ashaninka self-census, 689 families are confirmed as still displaced which is a total of 2,884 persons and at least 374 children have lost both parents. The situation of those 'recovered' (who were detained by Sendero Luminoso) is calamitous. Many of the population suffer from psychological traumas, tuberculosis, acute malnutrition, dehydration, anaemia and other diseases. The lives of the Ashaninka people have in many ways suffered huge convulsions and minimum levels of subsistence are still far off.

The government has been providing assistance and survival rations but the seriousness of the situation has outstripped all these palliative measures. At present, Ashaninka organisations are concentrating their efforts on the return of the displaced and the recuperation of self-sufficient production. To do this, their main demand is territorial security which has been threatened by the new invasion processes. Many of the abandoned communities have been occupied by cocaine growers and other migrant colonists with the knowledge (and at times the consent and even help) of local officials. The hurriedly concluded methods with which they announce titles of possession for the colonists have further stimulated the process of occupation of indigenous lands. Applications for reserves, such as that of their traditional territory of Sira, have not been resolved which adds to their relentless occupation.

The present contract for lot 66 to the French company ELF and associates for a million hectares of the most fragile Ashaninka territory (the Ene, Perene, Pangoa and Pichis river areas) opens a new chapter of difficulties for this people who have never been free from oppression in recent years.

In this the International Decade for the Indigenous Peoples of the World, supported by the Peruvian government, the prospects are not very encouraging.

BOLIVIA

The struggle for land and territory in Bolivia continues though with no significant changes in that the territories offered by the previous government have still not been physically demarcated.

The Law of Popular Participation approved by the National Government in 1994, which polarised popular organisations, has offered more possibilities for indigenous peoples' participation in the social and political life of the country. Consequently, all organisations affiliated to the Bolivian Indigenous Confederation (CIDOB) decided to participate directly in the municipal elections in December 1995. However, a severe limitation on popular organisations' participation in the elections, especially the indigenous and campesino organisations, has been their inability to run as independent organisations. This has been serious obstacles in the electoral process because the political parties persist in their traditional style of politics: authoritarianism, paternalism and corruption. Another serious problem has been that not all indigenous people can vote because the majority do not have identity documents. The procedure for obtaining documentation has been slow and is still not completed. According to figures from the indigenous leadership, of the 200,000 indigenous people living in the Department of Santa Cruz, only half of those eligible to vote have identity cards. But in spite of these difficulties, indigenous participation in the elections has been positive, and in Santa Cruz two indigenous mayors were elected and some 20 municipal councils.

These new municipal responsibilities constitute an important challenge for the indigenous leadership, given that they have no experience in managing public affairs.

Meanwhile, territory continues to be the main indigenous demand. CIDOB has demanded that property titles for 64 indigenous communities in Santa Cruz and Beni be handed over but to date there has been no response.

Almost all the indigenous peoples of Bolivia have constant problems with cattle and timber barons some of whom invade and occupy indigenous lands which have been legally recognised.

The Guarani People's Assembly signed an agreement with the government calling for a 'Plan for Action' aimed at solving territorial problems.

BRAZIL

After a year of uncertainty for the indigenous peoples of Brazil the government announced its changes to Decree 22/91 at the beginning of 1996. This decree sets down the administrative procedures for demarcating indigenous territories. The Minister of Justice, Nelson Jobim, made several public declarations at different meetings with indigenous and indigenist bodies in which he defended the urgent need to change the decree because it was unconstitutional.

The minister based his argument on a Direct Act of Unconstitutionality (ADIN) lodged by the Sattin Agropecuaria e Imoveis SA company against the Sete Cerros Indigenous Area which belongs to the *Guarani-Kaoiwa* indigenous peoples, in the state of Mato Grosso do Sul. The Supreme Court was asked to rule that Decree 22/91 was unconstitutional, invoking a reduction in protection because of the lack of a legal means of challenging it. Minister Jobim used his authority to debate the issue and wrote articles in the press affirming that Decree 22/91, such as it was, did not guarantee the legitimacy of land demarcation because it did not take into account the supposed owners of the lands which were declared indigenous.

The minister's arguments were rejected by highly respected lawyers in Brazil, such as professor Dalmo de Abreu Dallari, who, together with the Minister for the Public, stressed the inadequacy of the measure being taken by the Brazilian executive power. In a thesis supported by CIMI (Indigenist Missionary Council) and other indigenist organisations, the lawyer maintained that the challenge is only to the administrative process and not part of the demarcation process which alone confers the right of the indigenous peoples to their lands, a right enshrined in the Brazilian constitution. The professor, supported by CIMI, emphasised that the Union's administrative procedure merely confirms traditional occupation. Both the professor, the Republic's solicitors and renowned Brazilian lawyers claimed that the new decree 1,772/96, published in January, is unconstitutional because it validates ownership titles to indigenous lands which the Brazilian constitution considers void.

This is not the first time that the Brazilian government has used tricks to insert contradictions or used other threats. In 1990 and 1991, President Fernando Collor de Mello tried this tactic during the debate and elaboration of Decree 22. The insertion of a contra-

diction was no more than a facet of neo-liberal indigenist policy aimed to satisfy private interests. "It is a gift to illegal invaders, timber barons and clandestine miners", denounced Dallari.

Different national and international support organisations, indigenist organisations and all the indigenous organisations throughout the country demonstrated against the change to Decree 22/91 but the protests were ignored. In this period there was a rearticulation of the Forum for the Defense of Indigenous Rights, bringing together support organisations with the indigenous peoples and federal deputies claiming the same treatment for other reservations.

The Indigenous Peoples' Struggles

While the National Congress and the Brazilian government were debating how to control indigenous areas, indigenous peoples were carrying out their own demarcation and throwing invaders off their lands. One of the more serious incidents happened in the Maloca de Caraparu where the military police threw the indigenous *Macuxi* (*Roraima*) out and destroyed their houses. In December they suffered from more aggression which resulted in one of the most violent years for the *Macuxi*. According to reports from the *Roraima* Indigenous Council (CIR), *Roraima* state is the national champion of institutionalised violence. Over the last eight years, 12 indigenous people from the *Raposa/Serra do Sol* Indigenous Area have been murdered and no one has been charged.

But there has also been a victory. In May, after different denunciations by the CIR, Judge Renato Prates revoked the authorisation given to the Brazilian army to occupy the *Raposa/Serra do Sol* Indigenous Area. The army was accused of abusing their authority against the indigenous people. For almost three months they patrolled the area on the pretext of reducing conflict in the region.

The *Yanomami*, *Macuxi* (*Roraima*), *Guajajara*, *Krikati*, *Guaja* (*Maranon*), *Kaiapo* (*Para*), *Xucuru* from *Ororuba* (*Pernambuco*) and others have also been under constant pressure. The *Aikewar* (*Para*) saw almost 80 per cent of their forests destroyed by fire. In August, the *Ava-Guarani* from *Parana* and in November, the *Guarani* from *Rio Grande do Sul*, demarcated their lands themselves. The case is with the courts. In September, FUNAI located an isolated indigenous group of some six people in the *Corumbiara* region in *Rondonia* state, in the same place where the most violent massacre of rural workers in the country took place last August.

The Lack of Assistance

The lack of an indigenist policy and FUNAI's submissive stance clearly indicate the negligence of Fernando Henrique Cardoso's government towards the indigenous peoples. This is reflected in the total abandonment of the communities, the absence of demarcation and the lack of health and education facilities.

As a result of this planned lack of sanitary facilities in 1995 the death rate in indigenous communities increased reaching 250 cases. Of these, 102 were a result of malaria. There were 14 murders in the same period.

Health was the main reason for concern for the *Yanomami* in 1995. According to the CIR, statistics from the Yanomami District Health Officer of the National Health Foundation, indicated an increase in the mortality coefficient among the Yanomami population. In the first three months of 1995 there were 39 deaths and in the last seven, 2,220 deaths. Cases of oncocercosis were alarming. Between the months of October and December 1995, the Pro-Yanomami Commission (CCPY) and the National Health Foundation (FNS) carried out a pilot project for the control of oncocercosis in 14 Yanomami communities in the Toototobi and Balawau region where it is rife. According to the CCPY 432 out of 539 persons were treated (excluding pregnant women and children). Of those examined, 66.2 per cent were carriers of 'river blindness'. The doctors from the project concluded that to control oncocercosis in the region a permanent global programme of health support for the area was needed.

The Yanomami also suffered from the threat of having their territory decreed invalid through an initiative taken by federal parliamentarians, but which happily did not succeed. In an other assault on indigenous rights, the same members of parliament took advantage of the current constitutional reform to present their changes in the chapter in the Constitution relating to indigenous peoples. One of these attempts was an amendment to stop the demarcation of indigenous lands along the border strip and asked for the decisions over demarcation to be moved to the Legislative Executive, where anti-indigenous interests are greatest.

In September, the Brazilian senate approved bilateral agreements between Brazil and Germany for the use of money for environmental projects. Approximately 30 million Marks are earmarked for demarcating indigenous areas in the Brazilian Amazon

within the Pilot Programme for the Demarcation of Indigenous Lands. Since the publication of Decree 1,775/96, all demarcation has been paralysed and 12 indigenous areas which are part of the Pilot Programme have found their boundaries contested.

PARAGUAY

1995 was marked by poverty for the indigenous peoples of Paraguay. This was a result of not only the precarious conditions in which they live, the destruction of their habitat and relentless pursuit by 'owners' of the lands on which they live, invasions by landless campesinos but also because of problems of malnutrition, tuberculosis and chronic parasite infestations, a deficient and almost complete lack of medical and dental attention in the communities, flooding by rivers, lack of running water, deforestation and natural disasters, as well as many other reasons.

With reference to the indigenous peoples of the Chaco, at least the Boqueron government's announcement at the beginning of the year of the creation of a secretary for indigenous affairs and environment was encouraging. The office will look after the welfare of the indigenous communities in the region in terms of providing running water, distributing seeds and foodstuffs, among other things. 55 per cent of the 29,000 inhabitants of the department of Boqueron belong to different indigenous groups.

Throughout the first half of the year, the flooding of the Paraguay river made the situation difficult for the riverine people. The newspapers described the situation in 14 communities in the Alto Paraguay and 9 in the department of Concepcion as dramatic. Some 3,000 indigenous people were seriously affected but only one of the communities received help from the National Emergency Committee. The flooding created serious problems and the flood-water destroyed crops, houses and left the indigenous people with no possibility of hunting.

Over this period other incidents aggravated the situation in several indigenous communities. They were subject to constant incidents, invasions, murders and robberies by police officials, ranchers, campesinos and/or people from outside the area. The following were some of the most significant cases:

- The *Mbya Guarani* lands in Ypau were invaded and nothing was done at the government level. The problem affected members of the National Indigenous Institute (INDI) because, according to denunciations by lumberers from the region, the perpetrators had permission from INDI to take wood. On several previous occasions campesinos with support from political officials and high government officials had invaded land. The relevant authorities have done nothing about this situation.
- The *Mbya* community of Amambay-Culantrillo (Department of Caaguazu) was invaded several times by campesinos who said they had authorisation from the Institute of Rural Welfare (IBR) to be there and proceeded to fell the forest. The denunciations made against them state that they also fired at the houses to frighten the community and force them to abandon the lands. In spite of interventions by the National Police to move the campesinos on, they continued to harass and clear the area under the indifferent gaze of the relevant authorities.
- Indigenous *Ava Guarani* from Corpus Christi (Department of Canindeyu) denounced police officers who demolished and burned 15 houses as part of a campaign of intimidation to force them off the land they occupy. This new attack on the *Ava Guarani* is one more in a long series of attacks from which they suffered throughout 1994. And no measures were taken to protect them from abuse of police power or persecution from Brazilians, the supposed owners of the reclaimed lands.
- *Pai Tavytera* leaders from the area of Mbaracay, Capitan Bado District (Amambay), denounced the murder of 62-year old Victorino Barrios on 21 February 1995, to the National Congress. According to reports of the testimonies, two men on horseback fired at the man, then attacked him with a machete and dragged him into the forest where he was left. For months now the indigenous people from this community have been suffering from a campaign of hostage-taking by the Brazilian 'owners' of the lands who want to force the indigenous people to abandon their traditional territory. According to the leaders, these owners are morally responsible for the murders. After hearing about the incident, INDI decided to suspend negotiations with the owners and demanded the expropriation of 1,000

hectares for the *Pai Tavytera* community. However, it is also important that the appropriate authorities investigate and punish those responsible for the crime.

- Part of the *Kayawe Atoq Kelasma* community of the *Enxet* people was settled on the Quebracho farm. But the farm was sold and the new owner, Carlos Campo Riera, fired all the indigenous workers without any compensation and then threw them out. Immediately afterwards he burned all the indigenous houses on his farm.
- The *Enxet* communities of Keylyepapopyet and Lamexay in the Chaco have denounced the permanent violation of the regulation which prohibits innovations being carried out on the lands of the ranchers Jorge Raul Abente and Pelayo Abente. This violation comprised the opening up of roads, erecting new fencing, constructing corrals for cattle, the building of dikes, etc. These acts were duly pointed out by the State Fiscal General himself in mid-1995 but he has not done enough to stop these innovations which seriously affect the communities' interests. Similarly, the State Fiscal General also verified that the regulation prohibiting innovations on lands claimed by the *Maktlawaiya* community by the owner of the lands, Eliodoro Cohene were being violated. The latter has cleared large areas of the land which the indigenous people have applied for; in this case the Fiscal has still not made a pronouncement.

Other problems highlight the impotence of the *Enxet* communities of *Yake Axa*, *Yesamathala* and *Esmeralda*, which lodged claims for 15,000, 3,7539 and 4,000 hectares respectively, faced with long delays in the administrative process. Deliberate delays in carrying out the ocular inspection, which is a necessary step in the negotiation of lands, illustrate the Institute of Rural Welfare's veiled complicity with the ranchers who are the sole beneficiaries from, in some cases, the paralysation of the requested inspections and, in others, a delay of nearly three years. Similarly, in October 1995, Parliament rejected a petition for land expropriation, putting Paraguayan-Japanese cooperation before the constitutional rights of the *Petrero Guarani* communities. The former are in possession of the lands and titles today in the name of JICA.

Education

In terms of education, there have been some moves by indigenous peoples themselves to improve education within indigenous communities, particularly the training of indigenous teachers. They demanded a budget for the reform of indigenous education and the establishment of a department of education and an Indigenous Education Council with the participation of indigenous people and indigenistas in important decisions concerning educational reform. Other demands presented by indigenous teachers to the Ministry of Education were designing programmes for and by each ethnic group, respect for the culture of each people and schooling which takes the traditional education system into account.

It is notable that in Copenhagen the Director General of UNESCO, Frederico Mayer, referred to the situation of the indigenous peoples of Paraguay in the following terms:

"I am worried about the Ministry of Education's delay in implementing an indigenous education reform. This gives the impression that in certain official spheres the solemn principles of the rights of the indigenous peoples promulgated in the Paraguayan National Constitution have still not been taken to heart."

The current education system dates from 1957 and is totally obsolete. Paraguayan experiences of an indigenous education which takes traditional education into account and supports the indigenous culture in its bilingual texts have only been on a very small scale and always thanks to private initiatives, and at times the fruits of efforts by missionaries or indigenistas. The state has not taken one single initiative in this area.

The process of constituting and consolidating larger inter and intra ethnic organisational spaces has been a very important process for some indigenous peoples. For example, there have been a series of meetings of indigenous leaders from different organisations and coordinations to analyse and debate issues of communal interest. Some of these have been European Union projects, electrification of the Chaco, Hidrovia and the creation of the Indigenous Development Fund. These undertakings are to be implemented in a region where the majority of the population is indigenous - and with the exception of the Indigenous Fund - those responsible nationally and internationally continue to marginalise those directly affected and do not provide space for analysis or official debate.

Meanwhile, the leaders have taken action which has had repercussions in the press and public opinion. At different opportunities leaders and representatives of the Enxet, Toba Qom and *Nivacle* have organised visits, meetings and demonstrations outside the National Congress to claim their territorial rights and to demand that INDI's requests related to legalisation of indigenous lands are not cut out.

Other Recent Developments

The support given to the indigenous peoples of Paraguay by indigenist and European ecological organisations on land and human rights issues has had a big impact in the national and international press. These organisations have voiced their concern to the Paraguayan government, particularly concerning Enxet and *Ayoreo-Totobiegosode* land claims. Similarly, they provided support and cooperation so that the Enxet representative, Marcelino Lopez, could participate in the Working Group on Indigenous Populations at the UN in Geneva. His participation was well publicised in the local media.

Concerning the Sustainable Development Project for the Paraguayan Chaco, the publication of a note sent by the British Minister, Baroness Chalker, to the British Conservative Member of Parliament, Jacques Arnold, was decisive. This note indicated that several member states were opposed to going further than the preparatory studies to be financed in the initial phase of the project, at least until preconditions are met, that is until the Paraguayan government resolves the indigenous peoples' land claims before the beginning of the second operative stage of the project. Nevertheless, the indigenous communities have still not been consulted on the issue or shown the text of the project agreement signed between the Paraguayan government and the EU.

After months of waiting, President Wasmosy finally signed the decree which incorporated an adviser and other supplicant of the Paraguayan Indigenous Institute (INDI), nominated to the position by the Private Indigenist Organisations Forum (FEPI) onto the Council. This act was extremely significant for the official state indigenist policy which follows a line calling for renovation, a policy which the local press continually says inefficient and corrupt.

Private organisations have been working to ensure that INDI orients its work to the historically unfulfilled parameters of the

Paraguayan legislation, which is very positive towards the indigenous peoples. Nevertheless, the complex reality of INDI and the situation in the country as a whole are not the most propitious for change. INDI has been, and continues to be, an institution in the clutches of the governing party's political clientelism which provides work for its political supporters who are not committed to indigenous peoples and are totally ignorant of the issues. To this is also the Directive Council's party allegiances; the negative influence of the officials' unions on a policy of intimidation of INDI, as well as the presence of urban indigenous people who consider that they receive salaries for simply being indigenous - all these affect the process so that few advances are made. However, in a positive move, the president of INDI has sought support from technical organisations, negotiating the transition process like a politician. This is how a national plan for the indigenous communities was conceived, which sets down the formal bases for the restructuring of the institution. Similarly, the institutions grouped together in FEPI have coordinated their work and, with the support of the State Fiscal General and the Christian churches in the country, have presented a budget for inclusion in the State Expenses Law for funds to resolve land claims which have been pending since 1981, the year in which INDI was created.

The almost US\$50,000,000 which INDI asked from Parliament to pay the compensation claims arising from titling indigenous lands was at odds with central government's budget of US\$7,500,000 for the same item. Parliament finally agreed a budget of approximately US\$15,000,000, committing itself orally to increasing the amount gradually until 1998.

This was a very fruitful period for land claims and INDI acquired 98,000 of the 600,000 hectares reclaimed by the Ayoreo Totobiegosode in the Chaco region; 35,000 of the 163,000 hectares reclaimed by the Enxet people and lands for the *Tomarajo* people. In the Western region, 995 hectares were reclaimed for the Pai Tavytera; some 2,467 hectares for the Ava Guarani and 192 hectares for the Myba, many of these after years of struggling to legalise poor quality areas of their traditional territories.

There are some doubts to the suitability of some of the land acquisitions and in some cases the price paid was higher than what the FEPI considered just. For this reason it is a matter of urgency that responsible government bodies oversee the correct use of the

National budget and carry out monitoring and control which will ensure a national and transparent management of the funds.

ARGENTINA

The recognition of indigenous rights in the new national Constitution of 1994 guarantees, among other things, "respect for the identity (of indigenous peoples)...and communal possession and property of the lands which they traditionally occupy" (Article 75, inc. 17). This marks the beginning of a new phase in the indigenous peoples' arduous road to achieving recognition and respect. Already denial of the existence of an important indigenous population of some half a million persons in Argentina is inconceivable, as had been the case until very recently. The media is aware of the difficult conditions in which the indigenous peoples live and the different claims made by indigenous communities; they are already making newspaper, radio and television news.

In spite of this basic step forward in public awareness, the political response to specific claims shows an alarming lack of understanding. A typical example of this lack of comprehension was the so-called 'Cascos Blancos' programme carried out in the *Wichi* and *Chorote* communities of Pilcomayo Salteno area last year. It was supposedly a pilot programme in the 'fight against hunger and poverty', under the responsibility of President Carlos Menem himself and aimed at using the 'Indians' to pilot a new social assistance model intended to be exported to other parts of the world where there are socio-economic emergencies. In practice, it did nothing more than distribute some clothes and foreign food, hurriedly plant some gardens to show off at the closing ceremony presided over by the Presidents of Argentina, Bolivia and Paraguay and to offer some medical attention over the space of a few days. As a spokesperson for the programme stated, "it was concerned with combatting hunger and poverty by means of introducing new cultural practices because only through the assimilation of 'sanitised' communities is it thought they will be able to improve their subsistence". Evidently, this official was not aware that the new National Constitution guarantees respect for indigenous peoples' own identities, while the officials turned a deaf ear to what the indigenous peoples themselves had to say through their Association of Aboriginal Communities 'Thaka Honhat' which demanded, not these

superficial measures designed to give fleeting support, but titles to their lands.

The almost 6,000 indigenous people who belong to this Association are continuing a long struggle for the recognition of their property rights to some 400,000 hectares of legal lands (within the Legal Lots 55 and 14) in the far north of the Province of Salta. Successive provincial governments have refused to take the necessary steps to recognise the rights of 33 communities, members of the Association, to the lands which they traditionally occupy. These communities live in a critical situation due to the occupation of their lands since the beginning of this century by cattle ranchers who let their cattle wander freely, thus unleashing a process of environmental devastation. This is the reason for the destruction of a large part of the natural resources on which the indigenous peoples traditionally depend for their subsistence. Recently this has increased the tension between the two groups, leading to threats against indigenous peoples while the cattle ranchers continue to fence off lands and deny the indigenous peoples access to them.

The situation of these communities has become even more precarious since the construction of an international bridge over the Pilcomayo river close to some of the largest communities in the area, Nop'ok 'Wet, (La Paz in Spanish). Plans for building a border town ignore the preexistence of the indigenous peoples of the area and access routes pass right through the territory being reclaimed by Thaka Honhat. This project has to be seen within the framework of plans for regional integration, especially of the Mercosur countries, and in this case it is proposed to unite not only Northwest Argentina with Paraguay but also Brazil with Chile. In spite of support from many national and international institutions the indigenous peoples' demand for their lands, and despite two reports to the UN Commission of Human Rights denouncing the critical situation facing the indigenous peoples, the Salta Government is still reluctant to fulfill its legal obligations.

The indigenous communities along the banks of the Pilcomayo river in the provinces of Salta and Formosa, are at the present time also faced with another threat to their survival. Over the course of several decades the Pilcomayo river has been changing its channel because of the enormous quantities of sediment which it brings down from the Andes mountains each year and deposits on the plains of the Chaco. With the silting up of the river bed, the river has

been moving several kilometres each year, forming swamps from the flood water. In an attempt to stop this process, the governments of Paraguay and Argentina devised a project to divert the river water into two channels, one on each side which, in theory, would also carry the sediments and deposit them far from the river channel. Last year almost all the water flowed through the Paraguay side, leaving the communities of Formosa without water and without fish. Now, with support from the European Union and the Plata Basin Financial Fund, the two governments propose to construct an intercepting dike some 25 kilometres long, located some 40 kms below the actual channels. The consequences of this work for the indigenous communities situated on the banks of the river, not only in Formosa and Salta but also in Paraguay and Bolivia (amounting to some 15,000 persons) are unknown. The majority of the communities are most concerned about the effects on the migration of the fish which are one of their main sources of subsistence. In spite of repeated petitions by the region's indigenous organisations that they be consulted, it is clear to all that the authorities are totally ignorant of the National Constitution which ensures the indigenous peoples' "participation in developments related to their natural resources and other interests which affect them" (Article 75, inc.17). On the contrary, the national gendarme has orders to monitor the activities of the indigenous organisations throughout the area and they are allowing rumours to spread that the 'Indians' from the three bordering countries are wanting to create a separate state - a totally false accusation.

It should be mentioned that the need among the different indigenous peoples of the three countries to work together has only arisen recently precisely because of international projects which are affecting all the inhabitants of the Pilcomayo river. Over and above the Nop'ok 'Wet bridge, the canals and the intercepting dike were all carried out without consulting the indigenous peoples affected and now there are proposals to build a dam across the Pilcomayo 15 kms. northeast of the Villa Montes village in Bolivia. It will be 160m high and inundate 36,850 hectares. It is argued that this dam will stabilise the Pilcomayo channel, reducing the sedimentation, but the economic motives are electricity generation and irrigation for intensive cultivation in each of the three countries. In fact, it would dislocate 22 *Guarani* communities from the catchment area (in Bolivia) and drain all water from the channel for

several years, most probably also the fish on which many *Wichi*, *Toba*, *Chorote* and *Nivakle* communities who live along the river in Bolivia, Argentina and Paraguay depend. Alerted to the dangers of this project, indigenous representatives from the three countries met in Yacuiba, Bolivia, in November 1995 to hear the technical reports and to state their worries.

The kind of reaction referred to above, childish, Machiavellian, is repeated all around the country. In the south where the *Mapuches* have a much stronger tradition of organising themselves within the Argentinean state, stronger than that of the *Chaco* peoples, the case of the Pulmari Interstate Corporation in the province of Neuquen has been subject to the same political attitude which denies the indigenous peoples the rights established in the National Constitution. This Corporation was created some seven years ago to administer 11,000 hectares of State land for the benefit of the 6 Mapuche communities which live there. But because of a complete lack of benefits, the lack of real participation in the running of the Corporation, its publicly recognised corruption and the fact that the lands are really the traditional lands of the Mapuche, the indigenous peoples peacefully occupied the buildings in May last year. Subsequently, several indigenous leaders were charged with illegally taking over the buildings, including leaders from the Coordination of Mapuche Organisations - Tain Kinegatuam - which supported the occupation. In December, the Federal Judge ordered the National Gendarme to remove 'temporary occupants' and during the first months of 1996 this has fuelled a public debate in which the Coordination has been accused of encouraging the formation of a state within the state. In reality, what the communities are asking for is the recognition of their right to their lands, control of their natural resources and the right to manage their own internal affairs. Evidently, there is an unfounded fear of a separatist movement, giving rise to comparisons with Chiapas and questioning the Coordination's international links.

This fear was well expressed by a Neuquen legislator in his evidence to a commission of the Provincial Legislature which was studying the Pulmari case. He said "The time has arrived to develop a real policy of integration and containment for the Mapuches in the medium and long term". Following this line, it has been proposed to implement a 'special' education system with the aim of accentuating a feeling of being Argentinean among Mapuche chil-

dren. Evidently, the authorities do not realise that it is precisely these sensitive and repressive attitudes which force the indigenous organisations to turn to international bodies in search of help. The outcome of this case was that through efforts made by the Mapuche themselves at the end of March a commission of international observers arrived to familiarise themselves with the dispute over the Pulmari lands and with another two cases of ecological damage and possession of natural resources which affect the two Mapuche communities in Neuquen.

There is a general concern at the international level for the situation of the indigenous peoples of Argentina which came to a head last February in an urgent European Parliamentary resolution which called upon the Argentinean state authorities to find mechanisms which will lead to a resolution of the territorial disputes between the State and the indigenous communities.

Over and above the repressive response, social assistance was simply stopped with the aim of cooling off areas of conflict and producing conformity. And so, in Pulmari, a Malawian project is being developed but with no indigenous participation. In the north, in the Department Ramon Lista, Formosa province, an \$8 million project is about to be implemented with 64 per cent of the money coming from the European Union in the area affected by the problems with the Pilcomayo river. Certainly this project considers important factors such as how to improve the availability of the water, but the project has been designed in an office a long way away, without the participation of the affected communities who have already voiced their disapproval of it and have fought for an alternative proposal.

CHILE

The Chilean state is characterised by the nature of its institutions which are uniform, dominating and unilateral in their approach to the indigenous peoples and their rights. On the whole, they have tried to deny the existence of indigenous peoples. The military regime from 1973 to 1990 portrays the Chilean state very eloquently, a regime which decreed Law 2568 for the dividing up of communal lands and very clearly stated: "the lands which are divided no longer remain indigenous nor do their occupants". Moreover, a member or occupant of a community only has to ask for the lands to be divided up for this to be carried out. This legal

process was also called the “liquidation of the communities” and was one of many laws which had a negative impact on the indigenous peoples, illustrative of the repressive and homogenising character of the Chilean state and its legal procedures.

In Chile, constitutional recognition of indigenous peoples and their rights is beyond any government logic, while the right to participate in decision-making is reserved for a political elite, reinforced in the political constitution of 1980s. This constitution was established by a military regime with an ideology in which there were no cultural differences or rights for indigenous peoples. The constitution signalled that “in Chile there are only Chileans and the official language is Spanish”. The recognition of the indigenous peoples was vetoed, a situation which has existed from the first political constitutions which gave birth to the Chilean state. Nevertheless, this reality is challenged when the same governments which rejected the existence of indigenous peoples also pass laws and decrees to divide up indigenous lands or move indigenous peoples off land under the pretext of progress, a term which is changed to suit the historical political reality of the time. Today this terminology has been substituted with the concept of development and modernism.

If we look for historical antecedents for laws which have recognised the rights of the indigenous peoples since the construction of the Chilean state, we find them very scarce. Similarly, there were very few indigenist laws passed in the last three decades. There is only Law 17729 and recently Law 19253 approved in 1993 by the government of political reconciliation. We will analyse some of the most important aspects of the latter in terms of its aims and because it is in force today.

The Free Trade Agreement - NAFTA and Indigenous Peoples

The Chilean government saw 1995 as a decisive year for its entry into the Free Trade Agreement (NAFTA). This decision does not appear to have had anything to do with the indigenous peoples and their rights. Nevertheless, after an in-depth analysis we can see that, in effect, the multilateral economic agreements being promoted by the governments have a negative impact on the rights of indigenous peoples in legal, economic, political and cultural terms.

The multilateral economic agreements are, by their nature and their aims, a new form of colonialism for the indigenous peoples.

However, these agreements are not of a violent nature or applied by force but these very characteristics make it more difficult to assess their immediate impacts, and as such are more effective than any violent plundering. After becoming part of NAFTA, national laws began to be modified as they were adjusted to the interests of NAFTA. From an internal point of view, national laws gradually begin to lose their strength and finally the convention which regulates NAFTA will prevail. The most clear example is the case of Mexico where the government had to modify the political constitution in relation to land rights, because communal lands became liable to be divided up. This change was in line with the demands of the economic agreements which impose neo-liberal policies. Faced with changes which weaken national laws, we are entering into open contradiction with the rights aspired to by indigenous peoples. In the legal field, many indigenous peoples are increasingly mobilising for the recognition of their rights. If these economic agreements continue to undermine national laws and constitutions, then all constitutional recognition which is achieved in the future may lose its force with negative results for indigenous peoples.

The indigenous peoples are affirming their ancestral rights to the natural resources within their territories. The economic agreements directly affect these legitimate rights because they are characterised by the accumulation of wealth based in the exploitation of natural resources.

A *Mapuche* Conference was held in Temuco with the aim of identifying the nature and aims of these multilateral economic agreements, as well as their impact on the Mapuche culture. After establishing their implications for the future of indigenous peoples, the indigenous peoples began a national and international campaign for the inclusion of a clause guaranteeing the rights of the indigenous peoples in the NAFTA.

At the international level, a series of meetings were held with US and Canadian senators. Given that this was possible in countries which are prime movers behind NAFTA, it was noticeable that in Chile neither the Chilean people nor the indigenous peoples have any participation. In fact, NAFTA is only considered in terms of the interests of big business and the government. The meeting served to disseminate knowledge about the existence of the indigenous peoples, their lack of participation, the non-conformity of NAFTA and the lack of guarantees for indigenous rights.

Threats of Removal and Cultural Extermination

In April, the community of Juan Currin, in the commune of Temuco, province of Cautin, began to organise themselves to prevent the implementation of a court order for their removal. Faced with this threat, they held a series of meetings with different regional government bodies, had talks with the governor, the mayor of the IX Region and finally with Conadi (Conadi was created by the Indigenous Law as the National Corporation for Indigenous Development). The reason for this lobbying was to halt the eviction of indigenous people from the last land left to them as a result of continual illegal land sequestration, the reestablishing of their cemetery where their immediate family lay and for recognition of the lands as belonging to the community of Juan Currin. The most important objective at this point was to prevent their eviction. Conadi's first responsibility was to attend to this, according to its constitution based in Indigenist law 19253. Faced with indecision on the part of Conadi to find a solution to the eviction, the community decided to pressure Conadi by occupying its headquarters. The occupation lasted three days and on the fourth day the Director of Conadi asked for support from the police to remove them. They moved in at 5 am and 14 persons were detained, among them seven children aged between 3 and 11 years. The threat of eviction continues to hang over the community. In this case, the interests of a local businessman who had usurped the community's lands were being compromised. On the other hand, the government unilaterally declared the community's territory an urban area, ignorant of the character of the Mapuche community, its lands and its owners.

European Union and New Zealand Transnational Forestry Companies Occupy Mapuche Lands

In May 1995, seven Mapuche communities from the commune of Collipulli, province of Malleco, blocked access to Simpson Paper forestry company in a coordinated action after it had acquired lands and arrived with high technology machinery to carry out the forestation of the lands. The communities coordinated a blockade against the company because the lands under dispute had been awarded by the Chilean state to the Mapuche at the beginning of the 20th century and which had been overrun by force and violence by individuals not belonging to the community. When the company heard of the community's decision it asked for back up from the

police in order to change the participants' minds. However, faced with the Mapuche's firm decision, a period of dialogue between the company representatives and the communities was set up. Afterwards, the communities agreed with regional administration that they should apply to Conadi to facilitate the paper work and look for funds with which to buy the disputed lands.

In June, five communities from the same commune and province, entered into a serious conflict over land with Minico, a forestry company of New Zealand origin and finance. The communities blocked the company from taking possession and foresting the lands. This action met with the same response as the former, and the police were brought in. However, faced with the impossibility of moving the Mapuche, the company withdrew its machinery but later brought in a busload of non-indigenous people to begin the forestation, a move which the communities also rejected. The communities brought the case to the Mayor of the IX Region, who directed them again to Conadi to apply for the funding which the State offered as a formula for solving the land conflicts. In both cases, the state body, Conadi, has left the communities in a situation where they have the possibility of buying their lands.

Conadi's Symbolic Elections

In May, Conadi held symbolic elections to gain acceptance from the indigenous peoples. Conadi was created by the Indigenous Law as the National Corporation for Indigenous Development (CONADI). The elections showed clearly the ideological and political subordination to which the indigenous peoples had been subject through indigenous legislation 19253. According to this Law, the President of the Republic names the director and two subdirectors of Conadi. The key requirement for these jobs is that the postholders must enjoy the complete confidence of the President of the Republic; the nomination is a party political decision. This is the very arbitrary way in which the Chilean government establishes relations with the indigenous peoples; it completely ignores rights of participation in decision making and rights to autonomy and self-determination.

The Law recognises the possibility of establishing a counterpart. And with this aim the government organised elections to constitute a Conadi Council where the number of voters is not a determining issue, whereas partisan negotiations are. Conadi, as an extension of the Chilean state's control over the indigenous peoples, has turned

into the best institutional instrument for indigenous subordination.

The government, through Conadi, continues to commit economic resources for the purchase of lands through the Land Fund which was established by the Indigenous Law. In this system a subsidiary is authorised by the state to support an indigenous person or a community to formulate their petition to Conadi. This formula is the most efficient way for Mapuches from the same community to buy land. The purchase of the lands between a Chilean landowner and an indigenous person has not been easy because everything rests with the goodwill of the person selling. Moreover, there is open rejection of any indigenous person, and a lack of willingness to enter into relations with indigenous people interested in buying the very lands which the seller has usurped.

Meeting of the Presidents on Mapuche Territory

A Presidential Summit of Latin America state governments was held from the 14-16 October 1995 in the city of Bariloche, Argentina. The themes discussed were: Latin American integration, education, the Mexican crisis and Cuba. Given that the conference was carried out on Mapuche territory today occupied by the Argentinean state, the Council of All the Lands and the coordination of Mapuche organisations of Argentina, Tain Kineguetaum, met together in Bariloche with the intention of presenting their point of view on the political and economic agreements which the governments were adopting at the regional level. The Mapuche organisations agreed to present a document. But unable to do this because of a huge political fence, they broadcast a declaration which stated:

“We express our concern to the consecutive meetings being held on the continent in which a series of decisions as being concluded which directly affect the rights, culture and future of the Indigenous Peoples. Any multilateral political and economic agreement referring to integration, development and social justice promoted by the States ought to include the Indigenous Peoples and their rights. Justice, liberty, democracy and participation with regard to the Indigenous Peoples at a continental level continues to be a challenge still to be resolved by the governments which have not shown sufficient openness with Indigenous Peoples, their institutions continue to be uninformed by a real and effective advance in the recognition of indigenous rights”.

Two Roads to be Built on Mapuche Lands

During 1995 it was announced that two roads would cross Mapuche lands. The coastal road is already being built and aims to unite the cities of Concepcion and Valdivia, that is, the VIII, IX and X Regions. At present, the road building has entered *Lafqueche* communities of the Isle of Huapi-Mapuche del Mar. This territory is the most densely inhabited Mapuche area and the communities speak and maintain Mapudugun - the Language of the Earth - and have a thriving Mapuche architecture. To ensure that the road continues its course the regional authorities, together with Conadi, have spent a lot of time convincing the communities that the road will bring them benefits. In December all the Ministerial Secretaries of the region directed their efforts to suggest that the communities are grouped together in a shanty town. Faced with this threat, the communities have begun to organise themselves to reject the proposals.

At the end of 1995, another project was made public, known as the Temuco By Pass which consists of the construction of a road which by-passes the centre of Temuco, the capital town with largest the Mapuche presence in the country. The 22 communities which will be affected led a public demonstration on the 5 December against the project.

The reasons which the government cite in favour of the roads is that they will contribute to regional tourism, to development and modernism. On this issue the communities have very serious doubts concerning the negative implications which modernism has had for the development of the Mapuche culture. The Maquehue airport, which is located in the heart of Mapuche communities, was built in its time under the pretext of progress. However, the Mapuche communities have not been beneficiaries of this progress and development; on the contrary, it has increased the usurpation of land and economic poverty.

The road ought not to be continued being built because the Indigenous Law of the Chilean state declares that the few lands which remain to the communities are inalienable. From the moment that these two roads cross Mapuche lands they will be in clear violation of the indigenous law. The final uncertainty will be whether the Indigenous Law or the economic interests based in the roads prevails.

Sentence Against 140 Mapuche for Seizing Land

The Mapuche communities which had tried to recover seized lands, were sentenced by the Ministry in Vista and then confirmed by the Court of Appeal in Temuco. Firmly convinced that they had not committed any crime, the communities appealed to the Supreme Courts.

The case was heard on the 19 March in the Supreme Court which again confirmed the charge of 541 days for illicit association and a fine of 10 living salaries (US\$150) for each of those who seized lands. Those affected presented a denunciation to the Inter-american Commission for Human Rights. This is the first indigenous case in Chile to be taken to an international tribunal concerning a denunciation against the government for a violation of indigenous rights.

Notes:

1. Lorene Flaming, *An Economic Analysis of the Timber Industry in Guyana: Prospects for Strengthening State Capacity and Private Incentives for Sustainable Forest Management*. Environment Department, World Bank, Washington, 25 September 1995.
2. David Froom and Larry Sanders, *Lean and Mean: the forest labyrinth of Ken Buchanan*. Report for the Canadian Paperworkers Union, 25 February 1992.

part of France however somewhat far removed. Also the 15,000 inhabitants of Wallis/Futuna are French citizens, ruled locally by a French administrator, heading a council consisting of himself and three kings, from each of the three kingdoms of the two islands.

Rapanui is a Chilean province, Pitcairn Island a British colony and Norfolk Islands part of Australia.

Northern Marianas is a US Commonwealth, Midway, Wake, Johnston and other island groups are unincorporated territories directly under US government administration. Marshall Islands and the Federated States of Micronesia are semi-autonomous in free association with the United States. Hawaii is, from a Pacific point of view, also incorporated into the US. Belau is now an independent nation and, since December 1994, the 185th member state of the United Nations. It took fourteen votes (including on the constitutions) to achieve independence from and a compact of free association with the United States, because of a nuclear free provision in the Belau constitution.

Cook Islands and Niue are self-governing in free association with New Zealand. This form for free association is different from the above, because a change in the local constitution is sufficient to sever the relations with the former colonial power. Also many *Maori* consider themselves part of a nation eligible for decolonization. At a recent hui (gathering) of more than 1500 *Maori* people from throughout Aotearoa (New Zealand), representatives asked for constitutional changes based on *Maori* status as an independent people subject to colonization.

In general, Pacific Island nations under decolonization or recently decolonized are facing serious economical crises as the funding that comes with the (partial) withdrawal of the colonial powers are being gradually reduced. Alternatives such as logging, mining, tourism and fishing industries most often seem to benefit the foreign investors and deplete the resources of the islands.

The question of control over land and types of land tenure continue to be one of major importance to most Pacific Island nations. In Aotearoa, individual settlements relating to the Waitangi Treaty are depleting the funds and setting bad precedence for future 'settlements' by excluding conservation lands (one third of the country) from the agreements. Most tribal claims include of course large areas of conservation lands. In the meantime, *Maori* continue to reoccupy their ancestral lands, and discuss *Maori* rights and sovereignty.

This is echoed in Tahiti. The French nuclear tests' 'Grande Finale' in 1995-96 in Moruroa and Fangataufa of almost 200 tests since 1966 has

directed the world's attention to the situation of the people in Tahiti. Forty-five of the nuclear devices were exploded in the air, the rest in boreholes drilled under the coral atoll or into the lagoon. Scientists predict leakage of radioactive waste from the underground test sites to the surrounding waters and air. Even though health records on Tahitians exposed to radiation are kept secret, it is known that epidemic-like outbreaks in surrounding communities have already resulted from the testing, with symptoms including damage to the nervous system, paralysis, impaired vision and increased cancer rates, particularly among Tahitians. Eating of fish has been prohibited, but as a civilian worker testified in 1990: "It's still forbidden to fish at Moruroa, but you can't stop Polynesians from eating fish" (quoted from *Ka Mana o Ka Āina* 1995).

The tragedy of nuclear radiation exposure in the Pacific is clearly documented by the people of the Marshall Islands. The radiation exposure experienced by the people of Bikini, Rongelap, Uterik and other atolls has brought great suffering and death to many. Severe health problems continue to plague these people generations later. Thyroid tumors and many kinds of cancer, including leukemia, miscarriages, and birth defects, resulting from nuclear radiation exposure, are everyday experiences in the lives of the Marshallese people as a result of atmospheric testing by the US from 1946 to 1958. The recent findings of Japanese doctors that forty per cent of the Rongelap Islanders may have cancer has greatly alarmed the people of the Marshall Islands and increased the number of claims filed before the Nuclear Claims Tribunal, but have not prevented the prime minister from proposing to use their 'radioactive atolls' (which cannot be used for any other purpose for 'ten thousand years') as an international nuclear dump thereby raising big money for the government. The local councils and islanders have overwhelmingly rejected the suggestion.

The question of human rights of the indigenous peoples of the Pacific has been actualized by the French nuclear testing, but also by the patenting by US government agencies of human T-cell lines of the *Hagahai* (people of the Madang Province of Papua New Guinea) and of a woman from the Marovo Lagoon and a man from Guadalcanal Province of Solomon Islands (see *Indigenous Affairs* 1995(4):8-13).

In examination of the situation in the Pacific, as many other places, rights of indigenous peoples blend with rights of nations. But important influential nationstates, member states of the United Nations, are reluctant to acknowledge the need for decolonization within the (often arbitrary) borders of the nation states, relegating this matter to internal affairs

and not considering it an international concern needing a UN Committee's attention. This is related to the reluctance to accept collective rights for indigenous groups as peoples, as it is becoming still more clear in the deliberations of the special open-ended working group under the Human Rights Commission to elaborate the Draft Declaration of the Rights of the Indigenous Peoples, which had its first meeting in November 1995.

HAWAI'I

For many *Kānaka Maoli* (the indigenous people of Hawai'i), 1995-96 has been a year marked by the dealings of the state-created Hawai'i Sovereignty Elections Council (HSEC) whether for or against its project. In spite of delays and strong opposition among *Kānaka Maoli*, many of them leaders in the sovereignty movement, the members of the council, mostly appointed by the Governor, are moving ahead to send out ballots to the voters (people who claim Hawaiian ancestry) with the question: "Shall the Hawaiian people elect delegates to propose a Native Hawaiian government?" A broad-based Coalition to Stop the State-Sponsored Plebiscite strongly encourage a boycott of the "native Hawaiian vote", which after criticism stressing the international legal implications now is the term used by the HSEC instead of "plebiscite" (see *The Indigenous World* 1994-95:101-02). But according to well respected international lawyers, this change of name does not change the character of the vote: It is a referendum which can be interpreted in international law to mean that the *Kānaka Maoli* voluntarily have relinquished their right to sovereignty. This right was for the first time acknowledged by the United States government in the Apology Resolution of 1993 (see *The Indigenous World* 1993-94:78-81). A well-known international organization is coming to Hawai'i in June 1996, to investigate the legality of the vote.

In the meantime opponents of the vote are seeking other ways of moving towards sovereignty on a people's basis. A consensus building and long-term effort in education and planning, and a coming together of many different groups, has been initiated by the largest group of the Hawaiian rights movement, Ka Lāhui Hawai'i. The process is called 'The People's Puwahu' ('All Together') and is bringing together people from all parts of the *Kānaka Maoli* community in open dialogue. The meetings are taking place in different localities - no small achievement, considering the costs of traveling between the islands (today almost exclusively done by air) and have so far been addressing important questions of land, water, natural and cultural resources, *Kānaka Maoli* spirituality and cultural rights.

The Department of Hawaiian Homeland, which administers about 200,000 acres of land supposedly for the benefit of native Hawaiians, has finally after more than seventy years finished a land inventory and has begun the process of regaining lands 'lost' over time. There is still a lot to be done, since in all the years of the program's existence only about seventeen percent of the land has been awarded to the beneficiaries. The rest has been leased out for nominal rents to mostly non-Hawaiians. The state of Hawai'i has also approved payment of six hundred million dollars over twenty years to settle claims for breaches of the Hawaiian Homes trust. Where these funds are going to come from is not yet settled. Also the federal government has acknowledged some trust responsibilities and is negotiating reparations. Considering that the living expenses in Hawai'i, not least the housing, are some of the highest in the United States, the only way for many *Kānaka Maoli* families to get a place to live is to wait for a homestead lot. Unfortunately, many have died while they were still on the waiting list.

In January 1996, the Hawaiian Homes Program was confronted with a tragic protest against many years of neglect in quality of housing. In front of numerous officials and homesteaders, Kahale Smith of Anahola Homestead, Kaua'i, set his house and himself on fire, rather than being evicted by the Department of Hawaiian Home Land. His death testifies to the desperate situation of many *Kānaka Maoli*.

Quite a few indigenous Hawaiians solve the problem of high prices by living on the beach in tents or little houses. One such group of people live at the mouth of Mākua Valley at the west end of O'ahu. They were served eviction notice by April 15, 1996. The threatened eviction was later postponed to June 15, in order to let the children finish the school year. Mākua Valley ('ceded' lands, see below) was seized by the US military under the martial law of the second world war. In spite of official state protests, it took many years before the federal authorities finally negotiated a lease contract. The valley has been used for bombing practices and other military manoeuvres since then. The people of Mākua says "We are living on ceded lands. The state of Hawai'i is responsible to the Native Hawaiian People for the ceded lands they hold in trust. We just want to live in peace and dignity, as stewards, as keepers of the land, as our ancestors" (News Release from the Mākua Council, April 1996).

At Honokōhau at Hawai'i Island, another group is threatened by eviction. The Pai 'Ohana (family) has been living on and taking care of their ancestral land and sea of Honokōhauiki since before the Westerners knew Hawai'i existed. They are the living descendants of the original

inhabitants, a fishing family with an intimate relationship, knowledge and responsibility to the area. The members of the Pai 'Ohana generously share their knowledge in cultural programs and gatherings, but are not wanted on the land by the National Park Service, administering the Kaloko-Honokōhau National Historic Park for the federal government. Eviction notices have been served and withdrawn, and many local groups are supporting the family in their continued stay on the land.

One of the strong supporters of people in land struggles is the Ahupua'a Action Alliance, a unique alliance consisting of about fifty local environmental and Kānaka Maoli groups which have come together to protect Hawai'i's coastal, marine and watershed ecosystem, and associated Kānaka Maoli rights and cultural traditions, from the environmental crisis facing Hawai'i. The Ahupua'a Action Alliance is a strong proponent of a bill now pending in the legislature inserting wording securing cultural impact statements in the law regarding environmental impact statements. This bill has recently been vetoed by the Governor of Hawai'i, perhaps in an effort to control the implications of a recent State Supreme Court ruling which affirmed native Hawaiian rights and the state and county governments constitutional, statutory, and common law obligations to protect and preserve the traditional and customary practices of native Hawaiians. The ruling held that the right of native Hawaiians to practice traditional activities on privately owned land has always been accommodated in law in Hawai'i. The authorities were directed to consider native Hawaiian rights in the processing of permits needed for development projects. This ruling is a major challenge to the Western concept of ownership, among legal experts popularly described as 'a bundle of rights'. In the case of Hawai'i, based on law virtually unchanged for hundred and fifty years, the bundle does not include the right to exclude others (that is: native Hawaiians) from privately owned land. This is a major challenge to the legal and political system which seems ready to fight it.

Another ruling, much appreciated by indigenous Hawaiians, is putting a stop to the sale of public lands. Public lands in Hawai'i come from lands 'ceded' to the United States by the self-proclaimed 'Republic of Hawai'i' when it achieved the desired annexation to the United States almost a hundred years ago. The 'Republic' was an illegal entity which came into existence after a group of mostly Western (American) businessmen overtook the Hawaiian monarchy with the help of United States troops. The 'new government' refused to return the power to the Hawaiian Queen, when the American president later labeled their action a lawless

occupation and armed invasion. The 'ceded lands' were the Hawaiian Government and Crown Land. With the Organic Act of 1900, making Hawai'i a Territory of the United States, these lands were to be held as a 'public trust' among four other purposes for 'the betterment of the conditions of native Hawaiians'. Twenty per cent of the revenues of the 'ceded' lands goes into funding the Hawai'i state parallel to Bureau of Indian Affairs (BIA): Office of Hawaiian Affairs (OHA). OHA, unfortunately, has the same dismal statistics as the BIA, using the majority of its funding for administrative purposes.

Kānaka Maoli claim the 'ceded' lands which are held in trust for them. Some, all of it, others, one-fifth, according to interpretations of the law. Were they in fact to gain control over the 'ceded' and the Hawaiian Homes Land, they would become a very rich indigenous nation. The challenge from these claims might be one reason for the rush with which the state seems to be trying to settle the questions of indigenous rights for the future.

The Head of state of the 'Independent and Sovereign Nation State of Hawai'i' (one of the larger groups in the sovereignty movement), Pu'uhonua Kanahēle, was indicted and arrested on almost two years old charges for harbouring a federal fugitive. The general opinion among Kānaka Maoli was that this move was a warning to the sovereignty movement from the state and federal agencies, and Kanahēle received support from a wide range of society.

Land struggles and protests against environmentally and culturally inappropriate development projects continue, while the general economic crisis hits native Hawaiian programs and language teaching hard. Local initiatives such as taro farming have to compete with urban development over limited resources such as water. Tunnels have been built many years ago which are diverting the water from the taro-producing valleys of the windward sides of the islands to the leeward sides sugar and pineapple plantations. Building on this 'established practice' developers claim the water for golf courses and flushing toilets, now that the plantations are going out of business. The Waiāhōle contested hearing which has been going on for months is illustrating this point.

AUSTRALIA

Indigenous Social Justice

The past year in indigenous Australia has been one of agenda-setting. It began with publication of three major reports in March and April 1995 by indigenous-controlled bodies with official status as advisors to the national government¹. Those reports responded to the prime minister's commitment to an 'indigenous social justice package' which would complement the rights recognition and land acquisition policies which followed the landmark *Mabo* decision of Australia's highest court in 1992.

The Council for Aboriginal Reconciliation made up of well-known indigenous and non-indigenous persons was established by a former prime minister in 1991 with all-party support to encourage social understanding and political accommodation between races. Publishing the first of the three social justice reports, *Going Forward*, it strongly emphasised national consultation processes, constitutional reform, and 'the value of one or more documents to formalise the position' of Aborigines and Torres Strait Islanders in Australia's political and legal framework, as well as recommendations on many other subjects².

The next report came from a high-level indigenous committee set up by the Aboriginal and Torres Strait Islander Commission (ATSIC), Australia's mixed federal indigenous administration and regionally elected indigenous representative structure. *Recognition, Rights and Reform* made detailed recommendations for immediate work on the big policy items like constitutional reform, and soon won \$3 million (Australian dollars) from the national budget to begin such work.

The final report, *Indigenous Social Justice*, from the national indigenous peoples' ombudsman, Mick Dodson, made fewer recommendations but moved right into the substantive questions of constitutional reform, 'regional agreements', funding of indigenous communities, and international indigenous cooperation with specific chapters on each. The agenda which the three reports put forward is sufficiently new to most Australians that this third report's attempt to provide a travellers' guide into the new world of indigenous policy has proven useful, judging by its widespread use in conference kits and reading lists.

These reports began with a discussion paper prepared jointly by the three bodies³ for use in two national rounds of indigenous

community consultations. Then a series of joint workshops of the three bodies was held with invited experts to consider the community meeting reports and further study papers. There has probably never been such an authentic or thorough case of national policy development by indigenous people anywhere, nor one which led so directly from community opinion to the decision-makers of government.

The New Agenda

The social justice reports had six key items, *Constitutional reform* to enable *Aborigines* and *Islanders* to make a political compact or 'treaty' or other constitutional outcome with non-indigenous Australians, was the basic theme - a negotiated political process to overcome indigenous grievance and enable peoples to live together in peace. With non-indigenous Australia today full of surging national pride and assertiveness in the arts, international affairs, economic change and domestic politics, there is considerable support for 'reconciliation' with indigenous peoples as a national duty (although little understanding of what is involved).

Land rights remain in dispute with the national Native Title Act of 1993 creating indigenous disappointment and continuing white backlash. *Marine rights* have not yet made headway, although the national Coastal Policy of 1995 promises indigenous participation in policy development. Work has begun on an indigenous fisheries strategy. Land and sea rights are fundamental issues for all indigenous peoples, and the most immediate social and economic concerns of the indigenous people across most of the continent, so progress on these will be the test of all government policy.

Recognising and funding community self-government is a major issue, not only for cultural autonomy, but because state and territory governments fail so dismally to deliver basic services to 'first world' standards that this was the major grievance in community hearings. With most governments unwilling to increase spending beyond token amounts or to recognise that non-indigenous control is much of the problem, one cannot be optimistic for change soon. A few voices urge Greenland and North Norway as models for Australian community betterment policies, to no avail.

Regional agreements like those in Alaska, Greenland, and Northern Canada where Inuit and Indian peoples are taking control of land and sea territories, public services, economic development,

environmental protection, and their collective future have attracted much interest⁴. In North Queensland two of these are emerging, one on Cape York where Aborigines have defused white sheep-farmers' anger and won environmentalist support, and another south of the Gulf of Carpentaria where 4000 Waanyi are negotiating with the world's largest mining company, CRARTZ, for the Century zinc project to benefit the Waanyi in return for support. Regional agreements in North America 'empower' indigenous peoples within nation-states, their value and strength lying in their negotiated legal status and political structures. As yet the Australian versions lack those critical features, for which reason many Aborigines fear them as a new white deception.

Finally, *Torres Strait* is recognised by all national political parties as deserving unique regional arrangements. However, when the question of self-government was broached during the prime minister's visit in September 1995, he appeared to make any progress dependent on economic development. Without clear legal rights to sea and islands, and control of regional policy-making, Islanders have no basis on which to initiate or benefit from development, or protect marine productivity.

This new agenda challenges Australia, and some indigenous people, because it shifts past focus on immediate material benefits and public services to negotiation processes, rights, and indigenous powers and structures of self-government. Lacking the immediacy of basic needs like clean water and schools, it is easy for governments to deflect interest with their small hand-outs to impoverished and unemployed indigenous people who are desperate. Such archaic and tragic colonial manipulation further poisons indigenous-white relations. Many Aborigines and Islanders are counting on world news media coming to the Olympic Games in Sydney in the year 2000 to drive home to Australians that their treatment of indigenous peoples is unacceptable in an affluent liberal democracy. They believe that then, speaking to the world directly, they will arouse the world to bring home to Australians and their governments the need for change.

Past and Present

These central 'social justice' issues are not always the ones which receive most public attention. That honour goes to the Hindmarsh Island bridge fiasco. The protection of indigenous sacred sites is a

continuing practical problem (and where much Australian practice has much to teach other countries). Using its powers to protect Aboriginal heritage, the federal government stopped a bridge and marina being built near Adelaide when these were opposed by local Aboriginal women. The area has special significance for them and their fertility, the women reluctantly explained. This became a row between the state and federal governments, between Aboriginal women when some denied such beliefs, between others who said the beliefs were invented to stop the project, and among and between non-indigenous anthropologists and local historians who disputed each other's credibility as experts. The courts and an official inquiry have now rejected the Aboriginal beliefs, although a new federal inquiry is underway. The confusion, claim and counter-claim, and flippant talk of some involved has fed public and official scepticism of indigenous culture and beliefs. It would be hard to imagine a better subject for contemporary post-colonial scholarly analysis, so the inevitable books may some day create understanding and respect for Aboriginal society's cultural dilemmas with secret beliefs, but the episode has been an Aboriginal disaster so far.

One new book has made a major contribution to Australian and world understanding of colonial relations. In *Fate of a Free People*, historian Henry Reynolds has re-opened the notorious question of the extermination of the *Tasmanian Aborigines*⁵. His convincing account of the bumbling of various white officials and of the organisation and determined resistance of the Aborigines, is a readable and classic study. He shows that the Aborigines did not quite disappear, although defrauded of their future, lands, and most of their lives by the failure of British authorities to honour a treaty negotiated with them.

In his books and assistance to indigenous claimants, Professor Reynolds has contributed greatly to growing awareness that Australia did not escape the imperial intentions and policies which saw New Zealand, Canada, and the USA make treaties with local peoples a basis for co-existence. However flawed, unequal, or dishonoured those early political settlements, they have provided a model or symbol for political accommodation in recent years. Now Australia, too, is seeking to come to terms with its past - often passionately in classrooms and legislatures where it is asked if the continent was 'settled' or 'invaded'. Many thoughtful Australians

fear a USA-style racial divide bringing violence and civic breakdown unless indigenous grievances and needs are quickly addressed by governments.

Northern Territory

The biggest immediate issue may be the future of the Northern Territory. The white population, much of which comes and goes every few years, controls the government through a mostly Darwin-based small business circle which had held power for more than 20 years. Half the territory is owned by Aborigines under a national land rights law which established the claims procedure. The NT government has strong ideological opposition to indigenous rights. Aboriginal people who were massacred or forcibly abused in living memory often think they have no hope for change, a despair and lack of experience with legal and political levers which the craftier NT government supporters claim as Aboriginal support for their political control and agendas⁶.

Before each 3-yearly national election, a strange natural phenomenon occurs in Darwin. Suddenly chirpy politicians and new documents promote the benefits and joys of the NT becoming a full Australian state. They show distress that the NT lacks 'equality'; that is, lacks the inequality entrenched in the constitutions of the other states which in the 1890s wrote the Australian Constitution, notably the power to control Aboriginal lands. Always hoping that a congenial government may be elected in Canberra, Darwin's politicians prepare to rush in and grab statehood and the national land rights law before new eager-to-please ministers have time to realise the consequences. In Canada in 1979 the Yukon similarly ambushed the new Clark government, an event which helped defeat that government soon after.

In the NT case, a takeover of Aboriginal lands without the consent of those people would be an outrage. There is already an officially supported 1990s movement in Australia to negotiate constitutional change with Aborigines, so an NT state constitution written by whites on 1890s lines, despite a few concessions added from time to time to quiet white consciences in the south, is unacceptable. A new Australian government which fails this test will invite the very accusations of racism and return to the past which it can least afford, at home or among its powerful Asian neighbours and trade partners.

Beginning Again

In February 1996 the first real national indigenous constitutional conference took place. ATSIC invited 80 politically active indigenous persons to Adelaide, and brought in four experts in constitutional politics and law. In her televised opening remarks ATSIC chairperson Lois O'Donoghue said the Australian government's indigenous policy was 'to throw money at problems it scarcely believed can be resolved'. This may be the most concise and correct analysis ever made. It is also the reason why indigenous peoples and many non-indigenous officials, interest groups, and researchers are looking to change frameworks for indigenous policy. The conference stressed that 'constitutional' change refers not only to the national Constitution which is hard to amend, but the national network of governing arrangements and basic laws. Quite simply, the old frameworks and policy assumptions are proven failures.

A new government in Canberra from March 1996 will have some work in devising policy because it has been committed to a view that social and economic programs are 'the answer'. It has dismissed rights recognition and structural change as 'politically correct' gads associated with suspect elites close to the Labour government. There are two problems here. One is that social programs have already failed to achieve fundamental change in indigenous disadvantage and despair. Secondly, the coalition government's two parties, out of power for 13 years, are making the classic mistake in such cases of seeing the social and organisational landscapes and sensibilities of modern times as creations of their political enemies.

So, 1996 will be a difficult transition period for indigenous policy. Although the new government has members and friends who are sympathetic and progressive on indigenous issues, they are not its dominant faction. The contemporary consensus among developed European countries in Europe, North America and New Zealand that cultural autonomy, self-government, and institutionalised (including constitutionalised) recognition of indigenous peoples is the basis for policy has not penetrated Australia or most of its political circles. Even many of those who say quietly that 'of course' something must be done, think only in terms of some pretty words in the Constitution's preamble saying the Aborigines were here first. That is what the English word 'Aborigine' means, after all, so it is not a breakthrough. ('Australian' in the early years of white settlement was a word used only for indigenous persons.).

The new government will learn that indigenous people are not a mere collection of individual wants and economic motives. They are also distinct cultural communities whose conduct, hopes and actions are patterned in ways different from those of Australia's Western European majority. They are now, as they once were, active political communities seeking group well-being and affirming identity together. These global notions are still thought 'radical' across northern, central and western Australia.

Australia, more than many countries, will continue to require information, scrutiny, and support from abroad in order to make progress in indigenous policy. The ombudsman Mick Dodson in the third of the social justice reports puts the matter simply:

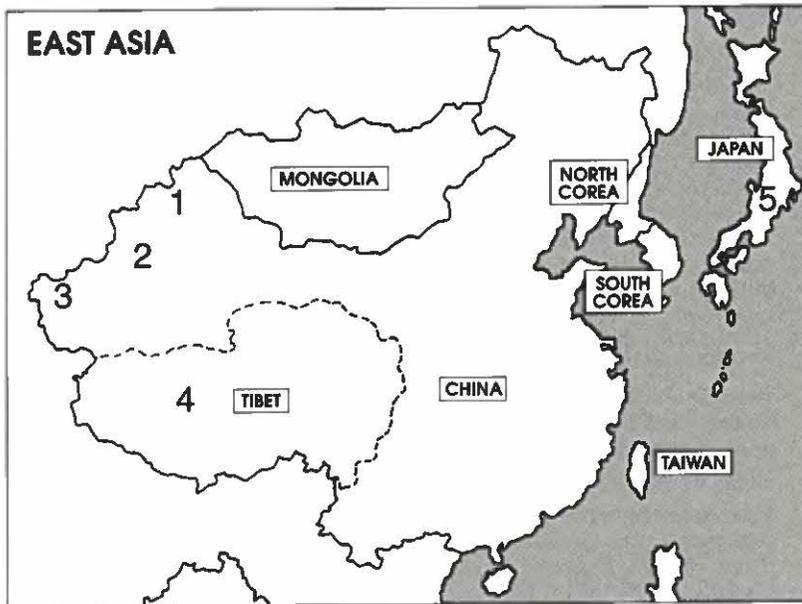
Indigenous peoples throughout the world have contemporary grievances and all have suffered dispossession of territory, denigration of culture, marginalisation, assimilation, and social ills. In many countries today the lives of indigenous people are at risk from brutal governments and brutal colonisers. If we were to dwell only on the many problems remaining, we would be immobilised by despair. What we must do instead is build on positive measures which have begun to emerge in some countries. Nobody would suggest that any country has solved indigenous problems, but at least there are examples now appearing of general policies, specific initiatives, or unforeseen outcomes which return self-worth and decision-making to peoples previously marginalised⁷."

Australia's indigenous leaders frequently note that overseas contacts have helped bring their country and its governments into the contemporary world of human rights standards. They also are increasingly drawing on overseas precedents and experience, both good and bad, to devise better outcomes at home. Progress is not easy. Some officials in the national administration are even trying to re-package traditional Australian neglect and assimilationism as a uniquely caring and 'inclusive' policy, a refusal to exclude their indigenous brothers and sisters, mischievously depicting indigenous autonomy and self-government ideas from abroad as cruel rejection.

In the four years since *Mabo*, a handful of political leaders and officials around Australia, together with a growing band of indigenous leaders, have fought a brave fight to reform Australia's old racist policies. Much more indigenous effort, public education and white political will are needed to succeed.

Notes:

1. *Going Forward: Social Justice for the First Australians*, A Submission to the Commonwealth Government from the Council for Aboriginal Reconciliation, Canberra, 1995; *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures*, Native Title Social Justice Committee, Aboriginal and Torres Strait Islander Commission, Canberra, 1995; *Indigenous Social Justice, Vol. 1, Strategies and Recommendations*, Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sydney, 1995. See also Jull P. 1996, "An Aboriginal Policy for the Millennium: The Three Social Justice Reports", *Australian Indigenous Law Reporter*, Vol. 1 No.1, pp.1-13.
2. Recommendation 12, *Going Forward*.
3. *Towards Social Justice? An Issues Paper*, Commencing the Process of Consultation by ATSIC [Aboriginal and Torres Strait Islander Commission], Council for Aboriginal Reconciliation, and Aboriginal and Torres Strait Islander Social Justice Commissioner, Canberra, 1994.
4. This Australia term refers to Alaskan and Canadian regional claims settlements and Greenland home rules. See Richardson BJ, Craig D & Broer B, 1995, *Regional agreements for indigenous lands and cultures in Canada*, A Discussion Paper, Australian National University North Australia Research Unit, Darwin; Harris A (ed), 1995, *A good ideas waiting to happen: Regional Agreements in Australia*, Proceedings from the Cairns Workshop July 1994, Cape York Land Council, Cairns, Qld.; ATSIC, 1995, *ATSIC Regional Agreements Seminar, Cairns, 29-31 May 1995*, Proceedings, Aboriginal and Torres Strait Islander Commission (ATSIC), Commonwealth of Australia, Canberra.
5. Published in 1995 by Penguin, Melbourne.
6. See also Harald Eidheim's discussion of Norwegian political 'entrepreneurs' in *Aspects of the Lappish Minority Situation*, Universitetsforlaget, Oslo, 1971.
7. Page 42, *Indigenous Social Justice, Volume 1*.



1. Kazakh
2. Ulghur
3. Kyrgyz
4. Tibetan
5. Ainu

EAST ASIA

CHINA

With the exception of Tibet and Xinjiang, issues relating to the indigenous peoples were not very prominent in the Chinese or foreign press headlines in 1995. However, on the national level, there were some issues that may result in serious repercussions for the indigenous peoples in the future. This was caused by the increasingly tense relationship between China and the United States.

Besides the 'standard' squabbles over human rights and trade, there were two issues that infuriated the Chinese leadership. One was the granting of visa of the Taiwanese president, Lee Teng-hui, to join a reunion at his Alma Mater, Cornell University. The other issue was that President Clinton had an unofficial 'chat' with the Dalai Lama during his visit to the US in September.

These incidents, along with other issues such as the rising regional tension in connection with the Chinese claims in the South China Sea and the jittery atmosphere before the Chinese takeover of Hong Kong, have contributed to an increasing feeling of uneasiness not only within the Chinese leadership, but also among the populace in general.

The official Chinese policy of opening up to the world notwithstanding, there is a renewed fear - with roots back to the last century - that efforts to build a unified nation-state is being threatened by the increased foreign presence in China. This finds its expression in increased nationalist sentiments, both official and popular, and such a nationalism will neither be conducive to democratization nor to increased autonomy for the indigenous peoples. On the contrary, such sentiments are likely to result in more restricted policies, if they are developed along their present lines.

The case of Tibet will be treated separately. Both in Tibet and in Xinjiang, there were official celebrations in connection with the 35th anniversary of the establishment of the Tibetan Autonomous Region and the 40th anniversary of the establishment of the Xin-

jiang Uygur Autonomous Region respectively. Both in Lhasa and Ürümqi, the stress was on 'patriotism, unity and progress'.

In Ürümqi, the capital of Xinjiang, official celebrations on the 1st of October were headed by Jiang Chunyun, a recently appointed Vice-Premier, by the Uygur Abulat Abdurixit, governor of Xinjiang, and by the Chinese Wang Lequan, Party secretary of Xinjiang. The speeches stressed that China, unlike many other countries, had mostly avoided ethnic conflicts, but that the struggle against separatist forces were likely to continue for a long period.

During the period before the anniversary, Chinese officials in Xinjiang had warned that 'hostile forces at home and abroad' and 'former Chinese citizens' were stirring up trouble in the region. This referred primarily to circles within *Kazakh*, *Kyrgyz* and *Ulghur* (*Uygur*) communities in the former Soviet Central Asian states of Kazakhstan and Kyrgyzstan.

The establishment of the new independent republics in Central Asia led to a new situation for the Chinese policy-makers with regard to Xinjiang, and the relation to China will always be a major policy issue for the new states. The preferred strategies of both parties (the Chinese and the others) seems to be an attempt at striking a balance between control and openness. In the new states, there is considerable sympathy for the situation for their ethnic cousins across the border in Xinjiang, and also a notable fear that China will come to dominate Central Asia in the future. Today, Xinjiang borders with no less than eight neighbouring countries.

Kazakhstan has around 50,000 *Kazakhs* who fled from the policies of collectivization in Xinjiang at the beginning of the 1960s. On September 12, the Kazakh President Nazarbaev met with Chairman Jiang Zemin in Beijing where, among other things, they discussed the status of the *Kazakhs* who fled and the situation for the more than one million *Kazakhs* who live in Xinjiang (and some even as far east as Qinghai). According to Itar-Tass, the two leaders "came out against fomenting national separatism on their territories and will seek to turn the border between them into a border of friendship and mutual confidence".

Another agreement that was reached during the meeting was to construct an oil pipeline from Western Kazakhstan to the eastern coast of China. This monumental pipeline, as well as another even longer planned pipeline from Turkmenistan through Uzbekistan and Kazakhstan and eastwards, are Japanese ventures with Chinese participation. All of them will have to pass through Xinjiang, where

the intense Chinese prospecting and tapping of oil from the Tarim basin already has been met with resentment from the *Uygur* communities.

The other trans-border issue involved the *Uygurs*. Altogether about 20,000 *Uygurs* fled from Xinjiang across the Soviet border along with the *Kazakhs* in 1959, 1962 and 1974. While the *Uygurs* are the dominant nationality in Xinjiang (about eight million), they have always been a small group in the former Soviet Union, (about 200,000 in the 1989 census). However, their position in the former Soviet regions has been rather privileged because of their superior trading skills.

The *Uygurs* of Kyrgyzstan, who number about 40,000, organized themselves in 1993 in an association called Ittipak, which means 'Union'. They have lobbied successfully to improve their status in Kyrgyzstan, but their efforts to increase trade relations with Xinjiang and work towards closer relationships with the *Uygurs* in Xinjiang prompted the prosecutor's office in Kyrgyzstan to issue a warning in January 1995 that their activity could "arouse doubts about the friendly relations of the Kyrgyz and Chinese people".

Many *Mongols* were arrested in December 1995 in a series of demonstrations in Hohhot, the capital of The Autonomous Region of Inner Mongolia. The first demonstrations took place in front of a popular ethnic Mongolian bookstore, whose owner had been arrested with other members of the Southern Mongolian Democracy Alliance, whose aim is to establish an independent Mongolian nation in Inner Mongolia. On December 30, 27 people were detained in a rally which featured portraits of Genghis Khan, the great Mongolian Empire builder.

TIBET

In terms of international law the Tibetan nation is not an indigenous people and the Tibetan Government-in-Exile has chosen not to use this label. Tibet was an independent state at the time of the Chinese invasion in 1949/50. Legally, the country therefore remains independent today because China used force when it occupied Tibet which is a violation of international law. The Tibetans are thus only included in this publication because they fit a wider definition of indigenous peoples as subject to colonisation and having the right to self-determination.

The head of the Tibetan Government-in-Exile, His Holiness the Dalai Lama, has consistently stressed the need to find a negotiated solution to the problems of Tibet and has avoided making demands for full Tibetan independence. Instead, to initiate a dialogue with the Chinese government, he has suggested a solution whereby a future Tibet would exercise internal self-government within the Chinese state. China has rejected these overtures and claims the Dalai Lama is working for full independence.

China Abducts Six Year Old Panchen Lama

1995 brought a severe blow to any efforts to initiate negotiations between the Chinese government and the Dalai Lama. When the Dalai Lama on 14 May recognised a six year old boy in Tibet, Gedhun Choekyi Nyima, as the eleventh incarnation of the Panchen Lama, the second highest Tibetan Buddhist leader, the Chinese government reacted very strongly. High-ranking lamas traditionally command significant political authority and the late (tenth) Panchen Lama, holding high posts in the Chinese political structure, had provided an important source of legitimacy for Chinese rule in Tibet. China has now intensified its existing campaign against what they name 'the Dalai clique', forced people to attend meetings where they were compelled to denounce the Dalai Lama, arrested more than 50 Tibetans who had dared to speak out against the Chinese campaign and abducted the young Panchen Lama as well as his parents. The boy and his family have reportedly been taken to Beijing and put under house arrest.

On 8 December 1995, another six year old Tibetan boy was installed by the Chinese authorities as their Panchen Lama candidate. By choosing to go against the religious authority of the Dalai Lama and by enforcing its will on the Tibetan people in this religious matter, the atheist Chinese government has created an explosive situation in Tibet where people have been outraged by its moves. Any early reconciliation between the Chinese government and the Dalai Lama now seems difficult to envisage.

Radicalisation of Chinese Policy

A radicalisation of Chinese policy toward Tibet has taken place in 1995. Political persecution and surveillance reached a new high as dissidence increased. By the end of the year, personal details of more than 700 political prisoners were known to human rights

monitors. This is the highest number of Tibetans imprisoned for political reasons since the end of the Cultural Revolution in the 1970s. In 1995 alone, 218 political arrests are known to have happened, according to the Tibetan Government-in-Exile.

Torture and ill-treatment continue to be used during interrogation and imprisonment. Four young political prisoners died in 1995 as a result of torture and ill-treatment while in police custody. Several others have died shortly after being released from prison.

In a major crackdown against the independence movement, several Buddhist monasteries were raided by soldiers and more than 88 monks and nuns expelled. Throughout the 1980s and the beginning of the 1990s, Tibetans have made many efforts to rebuilt some of the 6,259 monasteries that were partly or completely destroyed from 1949 to 1979. Now, the Chinese authorities have decided to stop further reconstruction and have imposed a limit on the number of monks and nuns. In the beginning of 1996, a nunnery and a monastery were closed in Ngamring county due to political reasons.

New Tendencies Toward Violent Resistance

Non-violent opposition in the form of peaceful demonstrations and slogan writing campaigns for Tibetan independence has persisted despite intensified surveillance and political imprisonment as a result of the introduction in September 1994 of new security regulations, identifying people engaged in 'separatist' activities as the first target of surveillance and repression.

1995 saw the first known politically motivated bombings in Tibet since 1985. Between June and August, five attempts at sabotage are reported to have taken place in the capital Lhasa. They were all directed not at people but at Chinese installations in Lhasa in the run-up to the celebrations on 1 September last year of the 30th anniversary of the founding of the Tibet Autonomous Region. Two of the bombs detonated at a monument in western Lhasa dedicated to the workers who built two roads linking Tibet to China. Another bomb reportedly killed a Chinese worker as it detonated in a fuel dump in the same part of the city. According to the independent British information service, Tibet Information Network, there is no evidence so far as to who carried out the alleged attacks, and none of the incidents have been confirmed, nor have they been reported by the official media.

On 18 January, a bomb is reported to have exploded and seriously injured one person at the house of Sengchen Lobsang Gyaltzen, a pro-Chinese Tibetan lama who in July was appointed as abbot of the Panchen Lama's monastery, Tashilhunpo.

Sympathy but no Action

The international community seems increasingly preoccupied with the booming economy in China and hesitant when it comes to criticising China for its repression in Tibet. Most governments, having effectively de-linked trade and rights, are reluctant to raise the case of Tibet in multilateral fora fearing negative repercussions to the development of business relations with China. Aware of its own rising economic and a political power, China is becoming both more and more aggressive and successful in its efforts to censure criticism and to prevent damage to its economic and political relations due to its policy in Tibet, especially in international fora.

Passages on the Dalai Lama were thus deleted in a publication released by the UN on the occasion of its 50 year anniversary. At the Fourth World Conference on Women held by the UN in Beijing in September 1995, representatives of Tibetan women living in exile who managed to participate were followed, filmed and harassed by Chinese security personnel. None of the eight Tibet organisations that were initially registered for accreditation were approved in the end despite fulfilling the formal requirements.

Non-governmental organisations (NGOs) lobbying at the UN are now facing the intimidation governments have already succumbed to. At the February 1996 meeting of the UN Committee on NGOs, China led a coalition of nations in questioning the right of NGOs with consultative status to 'infringe upon the sovereignty' of member states by questioning their human rights record. As a result, the status of several NGOs may now be reviewed. In particular organisations that have supported the Tibetan struggle, such as Human Rights Advocates and Pax Christi, have been specifically targeted.

Tibetans look to the annual Commission on Human Rights, which takes place in Geneva, as the best hope for multilateral support for their cause. In 1995 the European Union, the United States and other members of the Commission successfully brought forward a resolution condemning human rights violations in China and Tibet. That cooperative effort resulted in near passage of the resolution - losing by only one vote.

Tibet supporters and Chinese democracy activists hoped that 1996 could be the year in which their efforts would finally result in the passage of a resolution on China and Tibet in the Commission on Human Rights. However, by February 1996 it appeared that although the United States would likely co-sponsor the China resolution with the European Union, tensions resulting from the US/China trade war and the status of Taiwan could de-rail the active lobbying necessary to ensure success of the resolution.

While the UN and several governments seem to be giving up pressuring China on Tibet, several parliaments have adopted resolutions that address the issue in still clearer language. The European Parliament on 13 July reaffirmed "the illegal nature of the invasion and occupation of Tibet by the People's Republic of China; whereas, before the invasion by China in 1950, Tibet was recognized de facto by many countries and whereas it is an occupied territory according to the principles laid down by international law and the resolutions of the United Nations".

JAPAN

The *Ainu* people have suffered plundering, violence, and oppression by the Japanese government, and they are now struggling for the rehabilitation of their rights based on ILO Convention No.169 of 1989 to become emancipated from the assimilation policy of the Japanese government.

The *Ainu* people are still under the 'Hokkaido Aboriginal Protection Act' (Kyu-Dojin Hogo hou) legislated in 1899, which discriminates against the *Ainu* and violates their human rights. In 1984, they began the movement to abolish this Act and establish a new set of legislation for the *Ainu*. Yokomichi Takahiro, the former Hokkaido governor, agreed to the *Ainu*'s proposal to have a discussion on the new legislation among 10 members of the council established in October 1984. As a result, on March 22, 1988, Morimoto Masao, the chairman of the council submitted a report that a new legislation should be instituted in cooperation with the Japanese Government to recognize the *Ainu* people as an indigenous ethnic group with its own religion, language and culture. Mr. Yokomichi brought this subject before the Hokkaido Assembly in July 1988, at which time the statement to institute a new legislation for the *Ainu* people was adopted and issued unanimously. In December 1989, the Japanese Government set up an investigation com-

mittee with members of 10 governmental sections, but this committee was not positive toward a new legislation.

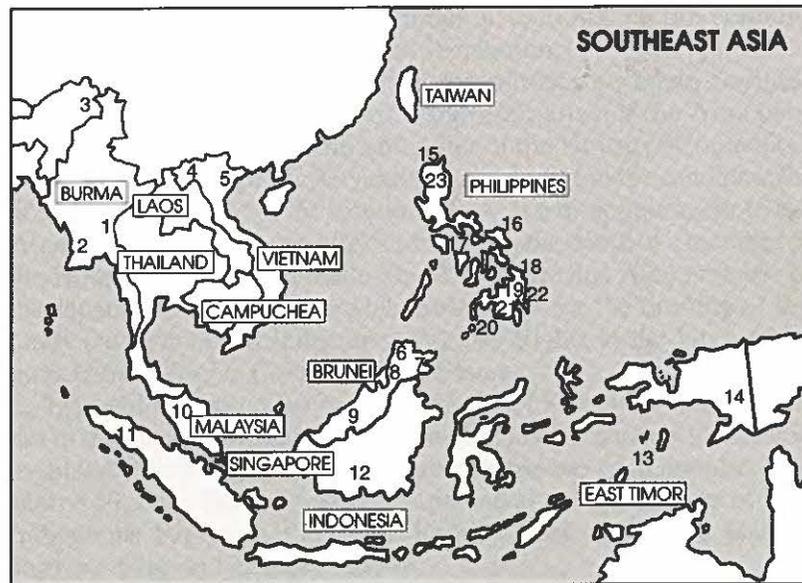
Vexed at the reluctance of the committee, the Japan Socialist Party supported Kayano Sigeru, a representative of the Ainu people, as a candidate to become a member of the House of Councillors in July 1992. Although Mr. Kayano was number 11 in the candidate list of the Party, he failed in the election. This was a disappointment to the Ainu people but two years after, in July 1994, the death of a member of the House of Councillors made Mr. Kayano the first Ainu member of the Japanese National Diet, while he worked for the drafting of the Draft Declaration on Indigenous Peoples Rights at the United Nations Human Rights Commission in Geneva.

Igarashi Kousou, who became the Chief Secretary of the Cabinet in the same year, stated that he would institute a new legislation by himself and organized a private conference of 7 members on March 30, 1995. The details were reported at the symposium of 'The Indigenous Rights of the Ainu People' held at Dousin Hall in Sapporo City on February 5, 1996.

The Prime Minister, Hashimoto Ryutarou, answered representatives' questions about the new legislation for the Ainu at the National Diet on 5th January, 1996 and promised that he would respond to the report from the conference. In March 1996 the foundation toward the recognition of the Ainu people as an indigenous ethnic group was laid, but no one can predict if the Japanese government will actually grant the rights claimed by the indigenous Ainu people.

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|-------------------|----------------------------|
| 1. Karenni | 13. Tanimbar of Yamdena |
| 2. Arakan | 14. Amungme, Comoro, Dani |
| 3. Naga | 15. Ibaloi |
| 4. H'Mong | 16. Bugkalot |
| 5. Tay-Nung | 17. Ati |
| 6. Rungu | 18. Manobo |
| 7. Dusun | 19. Higaonon |
| 8. Murut | 20. Subanen |
| 9. Penan | 21. T'boli B'laan |
| 10. Orang Asli | 22. Ata-Manobo (Taloingod) |
| 11. Langkat Malay | 23. Ifugao |
| 12. Dayak | |

SOUTHEAST ASIA

BURMA

The ruling State Law and Order Restoration Council's (SLORC) practice of selling off the natural resources within indigenous territories to multinational corporations and other big companies in the form of concessions or logging timber directly by its own forces has frequently caused bloody clashes between the SLORC army and the indigenous peoples' movements. This is a common experience of those indigenous peoples who entered into a cease-fire with the SLORC during 1992-1996. Their dreams of working out political solutions through negotiations have been badly shattered. Such bitter experience is forcing the indigenous peoples - *Kachin, Wa, Palaung, Lahu, Pao, Karenni*, etc. - who made truce with the SLORC, to form a common front against SLORC.

Karenni

The Karenni National Progressive Party (KNPP) and the SLORC made truce agreement on March 21, 1995. But within 4 months, the SLORC army launched a military attack on the Karenni army whose position had been exposed. The cease-fire agreement envisaged that both the parties will pull back their troops and refrain from deploying their army and launching military operations into each others known areas of control, so as to enable the parties to enter into political negotiation.

While the Karennis were preparing for the political dialogue and pulled back their troops from the front, the SLORC was quietly moving its army in violation of the truce agreement and by early June 1995 more than two thousand of its troops had taken up position inside Karenni area. The KNPP pointed out this and demanded the SLORC to immediately halt their deployment. The SLORC first denied the troop movement but later on July 3, 1995 it claimed that mobilization of its army in Karenni areas was against aggressive acts of foreign countries. It took only 11 more days to expose the true character of SLORC.

Taking full advantage of the peace situation, the SLORC army had taken up strategic positions and on July 14, 1995 launched a full scale military attack on the KNPP positions and occupied most of them. This was followed by wide scale logging of timber in the area by SLORC. Based on this military achievement the SLORC asserted in the November 21, 1995 talk with KNPP that the March 21, 1995 agreement was an agreement to surrender by the KNPP and that KNPP must evacuate from its positions. This means KNPP should surrender the livelihood of the Karenni people to the SLORC. As anticipated the Karennis strongly rejected this unfounded claim and refused to comply with the demand for evacuation. SLORC has intensified its offensive, the KNPP on its part is putting up guerrilla resistance.

With this the violations of human rights in the Karenni area are increasing daily. Every month, hundreds of villagers are conscripted by SLORC as porters and sent to the front line to carry ammunition and food supplies. Often, they are even used as human shields for the advance troops. Hundreds of villages have been relocated. Recently, in the first week of May this year, 14 villages between Pon and Salween rivers were relocated at Ywathit in the west. Some families escaped to the Thai border. On May 31, 1996 villagers from another 124 villages in the same area were ordered to leave within June 1996 with a warning that any one found in their village after the month of June will be considered an enemy and will be shot. Other villagers from surrounding villages were looted by the troops. Some of the regiments involved in those atrocities are 102, 530, 531.

Arakan

Arakan Coastal Region, the homeland of the *Rakhaing* people, is the western most state of Burma. Once a highly flourishing land and a core area of the world's rice-bowl, its population today live in abject poverty. Thousands of young people are leaving the place every month in search of livelihood in foreign countries. Having had no access to learning or vocational training, most of them have ended up in the far away mining areas where they are entirely at the 'mercy' of thugs on the payroll of their employers.

The feudal-time looting and destruction of the region by the Burmans from Rangoon was resumed as soon as the British left Burma. All the overseas trade was shifted from the Arakan seaport to Rangoon port and Arakan was deprived of the sea outlet to

export its rice and their important products. The SLORC aggravated the hardship by instigating Muslim-Buddhist riots in the region. The state-sponsored communal riots which the poverty stricken population used as outlets for their pent-up frustration and anger brought an additional wave of savagery. SLORC followed it up with open attack on the *Rohingyas* (Muslims) and fully exploited the situation to its advantage. This was enough for the staunchly Buddhist Arakanese youth to immediately join the SLORC Army in thousands. Once recruited, they are sent away to the frontline areas in the east and north. On the other hand, the SLORC enlarged the strength of its army in Arakan and stationed two regiments composed of mostly unmarried Burman men who are given incentives to marry Arakan girls.

This is being done to weaken the national resistance movement of the Rakhaing people as well as to get easy access to the resources - human power, forests, etc. Already many villages in the townships of Kyauktaw, Rathodaung, Buthidaung and Maungdaw have been forcibly relocated. The SLORC army has also been imposing labour conscription on most of the villages in northern Arakan to work as porters, or at the Asia Highway construction sites and for construction of military barracks.

Long before the Burmans, the Rakhaings/Arakanese had already established a strong kingdom and its association with Burma is a very recent one. It was destroyed in 1784 by the Mandalay kingdom (Burman) and subsequently annexed. But before long Arakan was made over to the British East India Company and the Burman kingdom itself came under the British in 1885.

The Rakhaings/Arakanese with their distinct culture and history could not be reconciled to the one-Burma-nation culture, concept and approach of the newly independent government in Rangoon. And when these were forced upon them, they revolted in 1948 asserting their right to self-determination. Their movement for self-determination has seen many ups and downs - including splits within the movement. However, their attempt to unify the movement has been making progress and today four groups have merged to form the National United Party of Arakan (NUPA) and with this, only two groups remain, the other one being the Arakanese Liberation Party (ALP).

In conclusion, it should be pointed out that it is a serious mistake to treat SLORC as a government of any party. The experience of

the various peoples in Burma has born out beyond any thread of doubt that the sole purpose of its existence is to loot the land and its peoples.

THAILAND

In Thailand, the forest crisis has developed into a crisis of the forest people. After decades of uncontrolled logging and extensive deforestation for upland cash crops, the country's forest cover is down to an alarming 26 per cent. The consequences were painfully felt in the form of massive flooding and landslides in the South during the rainy season of 1988, after which a total logging ban was declared for the whole country. Subsequently, a comprehensive Forestry Sector Master Plan was drawn up, which foresees a drastic expansion of conservation areas. Virtually all of the remaining natural forests will be covered by the Protected Area System (PAS), mainly serving biodiversity conservation and watershed protection functions. PAS is being expanded from the present 35 million to 88 million rai (14.08 million hectares), or 28 per cent of the total land area, over which the state will retain full control. Of the remaining, now mostly deforested, state forest lands, roughly 7 million are assigned for agriculture and 52 million rai for forestry and agroforestry purposes. These lands will be either alienated to individuals or leased on a long term and transferable base to individuals, communities or corporations in a land reform program.

As part of the zoning, all upland villages are being classified according to their 'potential for permanency', with the consequence that a total of 12,360 villages all over Thailand - many of them indigenous communities - face the threat to be moved out from the planned PAS areas. As experience has shown, relocated communities undergo severe hardship, mainly because agricultural land provided to them in compensation is insufficient and of low quality, and other local sources of income are not available, forcing many villagers to migrate elsewhere.

Forest Conservation, Relocation Plans and the Indigenous People's Response

The new community forestry law currently under drafting contributes little to the solution of the forest crisis and the forest peoples' problems. Although a large part of the forest communities live in

the conservation areas, community forestry is only foreseen to be implemented in the 52 million rai of the classified forest land outside the PAS. And the state remains the legal owner of community forest land.

Concerned NGOs and academic institutes (the Local Development Foundation, Project for Ecological Recovery, NGO Coordinating Committee on Rural Development, Action Research for Forest Communities) have come up with an alternative proposal for a community forestry law, which represents a much stronger tool for protecting the forest communities' rights while at the same time providing a solution for the forestry crisis. There is growing evidence drawn from the last two decades of experiences in forest management and biodiversity conservation programs that a sustainable use of forests and the protection of natural habitats can best be accomplished with the participation of the local people living in or near the respective areas. Peoples' participation and cooperation can however only be secured if they are given clear rights to use and manage land and forest resources.

Thailand's indigenous peoples agree with the government on the necessity to conserve the remaining forests and the country's biological heritage. However, they do not agree with the way this should be accomplished. They want to stay where they and their ancestors have lived long before legislative acts to protect the forests were promulgated, and to find ways for a peaceful coexistence of peoples and forests.

In fact, many of Thailand's indigenous peoples have traditionally practised conservation and thereby maintained a rich and varied environment under the guidance of their traditions, passed down from their ancestors. Although today scientific rationality and the forces of the market economy have eroded the influence of these traditions, the indigenous peoples of Thailand still believe in the potentiality of their traditional wisdom to live in harmony with nature, as their ancestors did in the past. And they are willing to make compromises and to cooperate with the government in conservation programs.

In 1993, the Network of Farmers of the North (NFN) was founded, a loose association of local peoples' organisations having evolved from a regional network. At present, the NFN encompasses 89 villages from 9 provinces in the North of Thailand, but membership is steadily growing. All of these member villages are located in proposed conservation areas and are threatened with

expulsion from their lands. A total of 2277 - mostly indigenous - communities in the North find themselves in this situation. Most of the Network's member communities are indigenous, but they were also joined by lowlanders' communities which face the same threat.

The NFN does not demand that the communities should be given full control over all the forest areas. The NFN agrees with the necessity to create conservation areas, but demands that the forest communities' settlement area, their farm land and a community forest be excluded. They demand titles for the settlement area and the land used for permanent agriculture, and clear use rights for swidden land and the community forest. This would allow them to design their own resource management plan and to cooperate with the government in protecting those areas of their former community territory which will be turned into conservation areas.

From April 27th to May 3rd 1995, the NFN organized a protest march which was joined by several thousand villagers. Starting from Chiang Mai the villagers walked to Lamphun, where NFN representatives submitted their demands to the former Minister of Agriculture and Cooperatives, Prachub Chayasarn. Their petition demanded:

1. For the already relocated communities:
 - a) the allocation of enough land and a proper compensation of financial losses,
 - b) the granting of continued use rights of established plantings in their former settlement area,
 - c) the provision of adequate water and electricity supply in the relocation sites;
2. That relocations be stopped and that the settlement area, agricultural and community forest land of each of the villages situated in conservation areas be delineated and excluded from the protected area. Titles should be given for the former two and use rights to the latter;
3. That titling and alienation of community land to outsiders be stopped immediately, and already alienated land be returned to the respective communities;
4. That the alternative community forestry law proposed by concerned individuals and NGOs be studied and adopted;

5. That a committee, composed of representatives of the villagers, NGOs, academics, provincial governments and the parliament, be set up and authorized by the Prime Minister to find and implement solutions for the forest communities' problems in relation with the conservation program.

The Minister reacted positively to these demands, and founded the proposed committee on 9th May. Authorization was however not yet granted by the Prime Minister. But only shortly afterwards irregularities uncovered in relation with the ongoing land reform program forced the government to step back and call for new elections, which were won by the Chart Thai Party under Banharn Silpa-archa.

The promising dialogue and the envisioned cooperation between NGOs, academics and the government within the committee set up by the former Minister of Agriculture and Cooperation was therefore abruptly interrupted before it could gain momentum. So far, the newly elected government of Prime Minister Banharn Silpa-archa has not yet come up with a clear policy on the conservation and relocation problem, and the new Minister of Agriculture and Cooperatives, Montree Phongpanich, does not seem to be much concerned with the issue. On the other hand, the Prime Minister at least expressed his concern and support for a community oriented approach in forestry and conservation in public. In Early November this year he has ordered the reclassification of 100,000 rai (16,000 hectares) of mature forests which the former government had earmarked for commercial forestry in the land reform program which brought about its downfall. And the revised version of the Royal Forestry Department's Forestry Sector Master Plan of 1995 takes a softer stand with respect to communities living in areas covered by the PAS. Actually, the Royal Forestry Department itself is split into a conservative and a more progressive faction, the latter strongly favouring and supporting a community forestry approach in the management of conservation areas. Consequently, implementation of the Master Plan on the provincial and district level varies considerably, with some of the RFD officials taking side with the forest communities, while others seem to be determined to push through the relocation program. Still, the range of freedom concerned foresters have in implementing the Forestry Master Plan (which actually allows for several options in dealing with forest communities) on the local level depends on the

attitude of their seniors, and therefore, of course, ultimately on the position taken by the Minister of Agriculture and Cooperatives.

The NFN is now attempting to restore the dialogue with the new government, in order to convince it to continue with the initiatives taken by the former Minister of Agriculture and Cooperation, to reorient the forestry policy by approving a community forestry law which includes the suggestions made in the NGO version. The NFN has convinced the Parliamentary Committee for Legal Rights to undertake investigations on the harsh measures taken against some of the communities living in the area covered by the planned extension of the Suthep Pui National Park. The NFN itself is presently doing similar investigations in all of its 89 member communities and will present the results to the Parliamentary Commission. A meeting has already been agreed upon with the new Minister of Agriculture and Cooperatives, in which they hope to convince him to let the committee established under his predecessor resume its work and to get the necessary authorization from the Prime Minister. However, the NFN is not very optimistic, as the new Minister of Agriculture and Cooperatives has so far shown very little interest in the issue. Therefore, the NFN attempts to directly seek the support of the Prime Minister. They intend to submit to him the petition already presented to the former Minister of Agriculture and Cooperatives during a personal meeting, which they hope will take place in 1996.

Citizenship and Indigenous Peoples' Rights

A precondition for any local level negotiation between the government and indigenous peoples is their recognition as Thai citizens. Without citizenship all attempts to obtain legal titles or other forms of land rights are futile. An official survey made 10 years ago put the share of indigenous peoples in possession of a citizenship card at 60 per cent. However, well informed people working among the indigenous peoples in the North of Thailand doubt the accuracy of these findings and estimate the actual figure to lie between 25 and 30 per cent. Therefore, the cabinet's decision of October 3, 1995, to grant the status of 'legal immigrants' to the members of the so called 'hilltribe' communities marks some progress in Thailand's minority policy. However, the granting of citizenship is tied to the provision that the applicants have not lived less than 15 years in Thailand or less than 10 years without interruption in the same district and that they pursue an 'honest profession', i.e. in particular

that they are not involved in the production or trafficking of drugs. Above all the provision concerning place and duration of residence in Thailand poses the problem of having to present proof which has to be accepted by the responsible authorities, a difficult task for many indigenous peoples and a provision which creates ample room for bureaucratic arbitrariness.

VIETNAM

The social and economic integration of the ethnic minorities/indigenous peoples has been the stated policy of the Government since the creation of the Socialist Government of Vietnam. The strategic location of the minority people in the border areas, the low density of their population in the fertile Central Highlands, and the fact that they include more than 13 per cent of the entire population make them critical both for national security and for the development of the country. The Government has pursued its policies at both the political, administrative and economic levels with perseverance but also with very mixed results. Since the beginning of the Reform Period in 1986, usually referred to as the Doi Moi or Renovation period, the policies have increasingly been viewed as ineffective and have come under severe criticism both within the Communist Party but also externally by the international donor community.

The Ethnic Minority Situation

As a result of increased activity by the international NGOs but also more recently by the World Bank, Asian Development Bank, UNDP and UNICEF more general and detailed information on the ethnic minorities has become available. The demographic data shows that the ethnic people have increased from 13.1 per cent to 13.56 per cent of the population between 1989 and 1995 due to relatively higher growth rates for all ethnic groups as compared with the Kinh. Family size is bigger, and infant mortality rates are higher while life expectancy is considerably lower. The densest concentration of ethnic people is in Northern Mountain Zone which includes eleven provinces and the Central Highland Zone which cover four provinces. The ethnic population in these two zones (which incorporates 75 per cent of the total ethnic population in Vietnam) includes about 60 per cent and 34 per cent of the total population

respectively. The ethnic population in the rural areas is even bigger with 70 per cent and 43 per cent respectively. A striking fact is that in these areas the ethnic minorities are, in fact, not a minority but a majority of the population.

Organised migration has been a regular feature of Government policy since reunification. Since 1974, 920,000 people have moved into the Northern Mountainous Zone, however, spontaneous migration has become more prevalent after the relaxation of rules on internal movement. The main focus both for minority movements and Kinh migration has been the Central Highlands and in particular DaCLac province: *H'Mong* from the resource-poor province of Cao Bang in the North, *Tay-Nung* groups from the involuntary resettlement caused by the construction of the Hoa Binh Dam. Recent data, not yet verified, seem to indicate that spontaneous migration has slowed down considerably over the last two years.

The ethnic families are mostly subsistence farmers living below the poverty line both in relative and absolute terms. A World Bank study based on the Vietnam Living Standards Survey puts 59 per cent and 50 per cent of the total population below the poverty line in the Northern Mountainous Zone and the Central Highlands respectively. Their poverty is the result of their geographical isolation, their poor resource base and the degradation of their environment which diminishes their food security and exposes them to increased production risks.

Their isolation is exacerbated by language differences which makes it difficult to access the commercial and the labour markets and benefit from government services and public schooling. In addition to their geographical isolation they are also culturally isolated, and find it difficult to express their views and position and are often left in passive silence. Their production methods are centred on swidden farming with fallow periods which are getting increasingly shorter because of population pressure and shortage of land. With declining soil fertility they are increasingly unable to produce sufficient food and have to apply alternative strategies to survive. Diversification of production, wage labour, selling of assets or making do with fewer meals are the opportunities offered, but they are not equal choices. Although diversification is the obvious favoured solution, it requires access to credit, and credit requires collateral.

Health problems of the ethnic people remain severe. Studies undertaken in the Northern Mountain Zone report high prevalence

of malaria, dysentery, malnutrition, acute respiratory infections and female health problems as being most common. Other problems include iodine deficiency, bubonic plague and leprosy. The health services infrastructure differs greatly across provincial boundaries with better capacity in the Central Highlands than in the Northern Mountainous Zone. The main impediment to an improvement remains, however, bridging the cultural and physical gap between the ethnic people and the health personnel. Although it is tempting to explain the health problems of the ethnic people by referring to their ethnicity it is more likely that they are caused by their remote location and the fact that many of the ethnic minorities do not speak Vietnamese.

The question of language poses special problems for ethnic minority children. The language of instruction and teaching material is Vietnamese, a problem that is often compounded by the fact that several ethnic minorities have been moved to the same areas so that several ethnic languages are spoken in the same classroom. Government policy permits the use of ethnic language teaching and reform of up to 20 per cent of the curriculum to suit local needs, but this is very rarely done. The Government has recognised these shortcomings and is currently making efforts to redress the situation. In connection with a large World Bank loan the Ministry of Education is preparing primers in a number of ethnic languages. A multi-grade teaching programme initiated by UNICEF is another example.

Closely connected with the initial lack of proficiency in Vietnamese among the children is the lack of ethnic minority language skills among the teaching staff. The problem is recognised by the Government and a number of measures including incentives to Kinh teachers and ethnic minority students who want to become teachers have been introduced. However, efforts are often sporadic and the problem is not given enough resources and is not a priority.

Current Government Policies

The oldest of the Government programmes is the Fixed Cultivation and Resettlement Programme which was started in 1968 in order to settle migrating ethnic farmers in permanent settlements, terminate the shifting cultivation and provide adequate access to social and economic services. The assumption was, for many years, that provision of health stations, schools, water supplies and access to markets would be a decisive factor in convincing the ethnic people to remain in the areas allocated to them. The programme was

centrally planned and executed with little concern for the wishes and aspirations of the minorities or basic respect for their beliefs, skills, knowledge and customary laws, but is still in operation although with a different focus and absorbed in larger programmes. The economic reforms, however, strongly influence Party thinking.

The first and most important indication that a change was under way was Resolution 22 which was issued by the Party in November 1989 and confirmed the importance of the ethnic minorities for the development of the Nation, the development potential of the mountainous regions and their strategic importance but also contained a strong criticism of earlier policies in particular in the economic area. The resolution maintained that the creation of New Economic Zones (NEZ), State Farms and Co-operatives have contributed to the increasing poverty of the ethnic people rather than assisting in alleviating it. This resolution was followed by Decision 72 of the Council of Ministers in April 1990 to guide the overall economic reforms in the mountainous areas by assisting the transition to the market economic and the reinstatement of the family as the driving force in the reforms. This decision continues to play an important role in policy debates since it introduces the necessity to focus on the generation of income rather than the creation of self-sufficiency in food-production. However the guidelines were woefully short on concrete measures to assist the transition and did little to change the situation for the ethnic people.

In September 1993 the Government organised a national conference in order to review the implementation of the resolutions and, as a result, two landmark decisions were made. The first was Instruction 525 of November 1993 which included detailed instructions for the acceleration of development of the uplands and the ethnic minority areas. Secondly, a large-scale development programme, 327 Regreening of the Barren Hills, was launched. These two decisions form the cornerstones of the current policies and have already had a decisive influence on the life of the minorities. Unfortunately, the rapid increase in Government activities has resulted in a certain amount of confusion because of lack of clear definition of targets and lack of co-ordination between the various policies and programmes.

Critical Issues in Government Policies

The main issue in Government policies is the strong paternalistic although often benevolent attitude which pervades both the poli-

cies and the people who administer them. This attitude is not only reserved for ethnic minorities but also for other minority groups such as 'victims of social diseases'. During 1995, however, the Government participated in a number of international conferences which challenged this attitude and may have a lasting effect on its policies. A large Vietnamese delegation participated in the Social Summit in Copenhagen and its resolutions were pursued very vigorously both in the internal debate but also reflected in discussions with the donor community. The World Bank, UNDP, UNICEF and SIDA commissioned large studies on the poverty problem and included separate chapters on the specific problems of the ethnic people in their final reports. A senior member of the Council of Nationalities and an ethnic *Hmong* for the first time also participated in the UN Working Group on Indigenous Populations in August and started a dialogue with other members of the Working Group and the UN system. Another serious issue is that Government programmes are poorly targeted and tend to overlap. Essentially, they classify target groups based on the following criteria:

- Poverty status assessed by local officials
- Elevation of the area above sea level
- Agricultural system and settlement pattern

Ethnic minorities may qualify for assistance in accordance with all three criteria. However, most programmes combine assistance to ethnic people with Kinh who live in mountainous areas. Since Kinh live close to the urban centres and have more political clout, the ethnic people most often find themselves at a disadvantage in the competition for scarce resources. If they receive assistance this assistance is often programmed as welfare handouts like the Essential Commodity Subsidy Programme which tend to make them passive recipients of welfare. Efforts by the international donor community to introduce a more equitable classification system based on the UN Human Development Index is currently under discussion.

Apart from these issues, conflicts over land tenure remains the most serious threat to the survival of the ethnic groups. While the swidden cultivation system is no longer a viable and sustainable production system because population density has reached levels which makes it redundant, changes to their farming system makes it imperative to secure their holdings for prolonged periods that

make investments profitable. Unfortunately, studies of the effect of the current policies seem to point in the other direction. Land use rights, particularly in the Central Highlands are granted not to individuals but to larger bodies such as the clan and are not confined to land alone. This view clashes with Government legislation and land allocation practice. The swidden cultivation practices require that land lies fallow for prolonged periods. However such land is often classified as barren or idle and its use is restricted. The solution to this problem remains the biggest challenge to the ethnic people and the Vietnamese Government.

MALAYSIA

In Malaysia, the main challenges faced by indigenous peoples continue to be getting governments to recognise rights over land, rights to decide about the kind of development taking place, and rights to education and a way of life, as well as demanding for equal access to basic facilities. The Indigenous Peoples Workshop, an annual gathering of indigenous representatives from Sabah, Sarawak and Peninsular Malaysia, discussed these issues and worked out a plan of action for the coming year. The workshop, which convened in Sabah in August 1995, formalised the Indigenous Peoples Network of Malaysia comprising nine indigenous organisations - formal and adhoc - and supported by three NGOs.

The Network members have been actively supporting each other through joint activities, campaigns and lobbying. Local campaigns in the form of small workshops to organise peoples' opinions on the land laws and their own *adat* was started in Sabah. This is in preparation for the launching of a campaign at the national level through a conference in August 1996 aimed at encouraging the people's struggle to assert their rights. The campaign is taking place on specific issues in the three regions - Sabah and Sarawak in East Malaysia and Peninsular Malaysia.

In Sabah, which is located in the northern part of Borneo Island, there are 39 different ethnic groups, making up 50 per cent of Sabah's total population of two million (this includes 506,900 non-Malaysian citizens, predominantly from Philippines and Indonesia). The law affecting indigenous or native customary land, which was first introduced by the British, is defective and in many instances, directly in conflict with the traditional land *adat*. Policies to



Performing the bamboo dance during the World International Day of the Indigenous Peoples 1995, Malaysia. Photo: PACOS

open up and grant land to government agencies and corporations for oil palm and tree plantations, building of dams, industrial areas and mining also continue to threaten or cause many indigenous communities to lose their traditional or customary land.

Many indigenous communities have also lost their land or suffered from the effects of logging when about 3,593,809 hectares or 48.8 per cent of Sabah's total forest area was gazetted as Forest and Park Reserves. Most forest reserves are intended for logging and communities were never informed that their customary land had been included in these reserve areas until logging companies came to log the area. Apart from forest reserves, logging is also allowed in 'stateland forests' (3,777,458 hectares). And once gazetted as a forest reserve, titling land within the reserve will not be accepted until the concession period (between 5 to 25 years) is over. Experiences in Tawau in the east coast of Sabah have shown that land does not revert back to the communities after an area is de-gazetted from a forest reserve. Instead it is alienated to other government agencies or sold to corporations for oil palm plantations.

Malaysia's 'Vision 2020' earmarked Sabah and Sarawak as the milking cow - the resource base - for raw materials, especially oil

palm and timber. As such, large tracts of land have been alienated to the Sabah Land Development Board (SLDB), the Federal Land Development Authority (FELDA) or sold to private companies for opening up oil palm plantations. Twelve per cent of the total land area has already been allocated for plantations, which includes customary lands of indigenous peoples. Non-recognition of indigenous peoples' rights to land have caused many to lose land with little or no compensation and lives have been disrupted due to resettlement.

The Sabah Forest Development Authority (SAFODA) is another government agency opening up plantations of *Acacia Mangium* and other fast growing tree species in various parts of the Sabah - the biggest of which is in the Bengkoka Peninsular covering 150,000 hectares of land. It almost covers the whole area and most of the *Rungus* people are now faced not only with limited land for planting hill padi - their staple food - and other crops necessary for survival but are also faced with many constraints due to hazards from the fire-prone tree plantations.

The government's policy to privatise its numerous agencies has led to criticisms from many indigenous communities and institutions. For example, when the Sabah Forest Industries (SFI) was privatised in 1994, the 288,623 hectares of land previously alienated to it under Section 28 of the Sabah Land Ordinance, 1930 became private property of individuals. The land was acquired for 'public purpose' - a tree plantation for a pulp and paper project.

Many indigenous communities consider it important to secure their ownership over their customary land by obtaining a title. Many ask for individual titles because communities are not informed of the provision for communal titles. However, many indigenous communities have since learnt that having a title does not guarantee security of tenure as titled land can be acquired under a compulsory order. The *Dusun* community of Tampasak/Babagon on the west coast found this when their land was acquired compulsorily for a dam. Lack of recognition over their traditional land and its importance to their way of life makes compensation a thorny issue. The villagers are still claiming from the government just compensation for their customary land and desecrated graves and demanding that it fulfil its pledge to improve housing, farmlands and basic facilities in the resettlement area.

Only a few communities have managed to 'stall' companies or agencies (projects are often revived later after they have been

cancelled) from acquiring their traditional land. One such case is the proposed oil palm plantation in Dalit, in the interior district of Keningau and home of the *Murut* and *Lun Dayeh* communities. In 1992, the Sabah Land Development Board renewed its plan to open up about 20,000 hectares of land - 5,000 hectares of customary land and another 15,000 hectares of Forest Reserve after the project was rejected in 1989. After a long struggle, the SLDB lost its bid to acquire the land in the four-times logged-over Forest Reserve area. The communities now have to prove the importance of their subsistence economy and seriousness in conserving the forest to stop the government from initiating another project that will dislocate their people.

In Sarawak, the estimated 10,000 *Penans* continue to face threats to their lives due to logging. Most of the *Penans* are now semi-settled and only 400 remain as nomadic hunter/gatherers. Because their life is intricately connected to the forests, it is imperative for them to stop the logging company. The last major blockade in Sungai Sebatu was dismantled by para-military and police personnel together with logging company workers in September 1993. A fact-finding mission in March 1995 uncovered continued threats and intimidation, rape and other assaults by para-military personnel. Gangsters were also reported to be hired by the logging company to kill people who oppose logging. The communities reported that the flying doctor service has been stopped (most of areas are only accessible by air and partly by road and on foot) but this was denied by the government.

The peoples struggle against the Bakun Dam project which was scrapped but revived in 1993 reached its peak in 1995 where forest clearing in the proposed reservoir area was stepped up in preparation for the dam construction. A local company, Ekran, has been awarded the dam project, estimated to flood 700 square kilometres affecting 8,000 indigenous communities (*Kenyah, Kayan, Penan* and *Ukit*). The Bakun Action Committee is actively campaigning against the dam construction and raising awareness of communities who are still not clear about the impact of the dam.

In Peninsular Malaysia, the status of *Orang Asli* land remains precarious. The total area of *Orang Asli* reserves actually declined by 2,764 hectares between 1990 and 1994 - from 20,667 to 17,903 hectares respectively. In these areas not gazetted as reserves, it has been difficult for some communities to resist pressures to move. The source of these pressures is varied: the government (as in the

case of Sepang in Selangor where the *Temuans* were resettled to make way for the new international airport), corporations (as in the case of *Stulang Laut* in Johore where the *Orang Laut* were relocated to make way for a business complex), and even individuals (as in several fringe areas where locals as well as foreign migrant workers are staking out Orang Asli lands for their own).

The last category is exemplified by the on-going Jeli case, where nine *Jahai* men are being charged for the death of three non-Orang Asli landgrabbers. They had gone to the *Jahai* settlement with three others and demanded that the Orang Asli vacate the place immediately. The three died in an ensuing scuffle when the *Jahai* came to rescue their headman who was being stabbed.

When one of the non-Orang Asli man involved in the scuffle was asked in court the reason for going to the settlement, he replied "to work my land". And asked for evidence of his ownership to the land, he said "I began to work on it so it is mine. The Orang Asli cannot own it as they do not have houses on it, only thatch huts". Nevertheless, the case continues with eight lawyers defending the *Jahai* accused, who are presently on bail. Thus far, the Jeli case appears to be in the Orang Asli's favour. Through this case and a few other court cases, as well as published materials, the issues of land rights and land loss are now beginning to emerge.

INDONESIA

Despite the fact that Indonesia bases its state ideology on 'Pancasila' (the five basic principles) which is rooted in the cultural riches of the Indonesian multi-ethnic society, the present state government does not recognise the existence of indigenous peoples. The argument is classic: that all Indonesians are indigenous. This view is a simplification based on the translation of the word indigenous, which in Indonesian is *asli* (original, the opposite of *asing*, which means foreigner). Compared to a country like the US, this argument is absolutely right. However, the term indigenous actually contains a broader concept: it has a political, cultural-historical, social, economic and religious dimension. Considering these facts, and to avoid a misleading interpretation, we in Indonesia translate 'indigenous peoples' as *masyarakat adat*.

Indonesian State Minister of Environment, Sarwono Kusumaatmadja, changed the term 'Indigenous Peoples Year 1993' into 'Tra-

ditional People's Year'. He also used the term 'vulnerable population groups' instead of indigenous peoples. The other terms that are normally used by the Government of Indonesia are *suku terasing* (alienated tribes), *masyarakat terasing* (alienated communities), *peladang berpindah* (shifting cultivators), *perambah hutan* (forest destroyer/squatters), *masyarakat primitif* (primitive communities). For the indigenous peoples, such terms are perceived as social and cultural discrimination and intimidation. The use of such terms legitimates the government's policy on indigenous peoples. Because they are seen as 'primitive', 'alienated', 'forest destroyers', shifting cultivators, they have to be modernised. They are seen as having no rights of ownership, no cultural heritage, no social and political organisation.

In terms of implementing this policy, then, the indigenous peoples are victims of development and the modernisation process. This policy and its implementation is partly caused by the Proposal for Action of the First UN Development Decade 1960-1970, which states that: "The problem of underdeveloped countries is not just growth, but development...Development is growth plus change. Change, in turn, is social and cultural as well as economic, and qualitative as well as quantitative..."

Following this view, the economic exploitation, cultural and social domination of underdeveloped countries or communities are considered valid if this is for economic, cultural and social change.

West Papua and Freeport

Amungme means the first people, one of the hundreds of ethnic groups in West Papua (Irian Jaya). Their language is called Amungkal. They are primarily a mountain people, though some of them dwell in lowlands. For them land has an extremely unifying and deep meaning in their lives.

"Land is a place where we live. It is land which gives life to us. Land is also where the souls of our ancestors live, and it is the strength of our life. Land is our mother who gave birth, fed us, cared for us, educated us and raised us so as to make the Amungme tribe be as it is now."

The 14,000 Amungme have been the object of exploitation and oppression by the government through the huge mining company, Freeport Indonesia Company (FIC,) since 1967. The current data

shows that the FIC has a total exploration and mine area of 2.6 million hectares covering the territory of the *Amungme*, *Comoro* and *Dani* peoples. The ore extracted throughout the FIC is over 100,000 dry metric tons per day.

The conflicts between Freeport-Government of Indonesia, on one hand, and the local people on the other, became hot news in 1995. The Indonesian Human Rights Commission and Bishop Monsignor Munninghoff (Catholic Bishop of Jayapura Diocese) agreed on the facts that 16 civilians had been killed and four disappeared in 1995. However, Australia's delegation led by Ambassador Alan Taylor concluded that 22 had been killed and 4 disappeared (*Inside Indonesia*, December 1995). Furthermore, the Indonesian Commission on Human Rights made four recommendations: (1) that action be taken against the military responsible; (2) that compensation be given; (3) that the local government and the military and Freeport clarify their relationship and lines of responsibility; and (4) that the 'security approach' and practice of stigmatising people such as Gerakan Pengacau Keamanan (the Breaking Security Movement /OPM - Papua Independent Organisation) be reviewed.

The report of the Commission does not pinpoint the direct involvement of Freeport in the case. Realising this fact, five leading NGOs in Indonesia, WALHI (Indonesian Forum on Environment), LPPS (Institute of Social Research and Development, Bishop Conference of Indonesia), LBHI (Indonesian Legal Aid Foundation), INFID (International NGO for Indonesian Development) and ELSAM (Institute for Policy Research and Advocacy), reminded the Commission that the Munninghoff Report stated that some abuses occurred on Freeport property using their facilities.

Krio Dayak Burnt out Timber Base-Camp

Dayak is a collective name for the Indigenous peoples of Kalimantan, who consists of 450 ethnolinguistic groups. The total Dayak population of Kalimantan is about 3 million. The total population of the Indonesian part of the island is 7,5 million. The arrival of capitalist development projects in Kalimantan since 1970 have been breaking the peacefulness of the Dayak, as well as degrading the environment of the oldest rainforest in the world. The most severe conflicts are between Industrial Tree Development Projects and the local Dayak people in several distinct areas.

On August 11, 1994, 1,600 people from nine villages in Sandai sub-district, Ketapang District, West Kalimantan, went on a dem-

onstration to protest against the Lingga Tejawana, an Industrial Tree Plantation Company operated nearby. The demonstration started at about 9.00 in the morning. On the previous day a bridge situated near Randau village had been burnt down by the protestors to break the transportation channel to Base-Camp IX, where the protest was taking place. The protestors wanted to negotiate with the project site manager. However, he was not there. The people were then confronted with the deputy site manager who acted very arrogantly and harassed the people, and in response the people started to burn down property of the company. The company's total losses are estimated to be Rp5 billion (US\$2.3 million), including 10 base-camps, 6 tractors, 4 zonders, 2 lorries, 3 cars, 2 graders, 30 chain-saws, 7 diesel machines, one bridge and ten hectares of plantation.

The event is the most spectacular action ever against the Industrial Tree Plantation Project in West Kalimantan. The *bupati* (District Head) went to the location the next day. There was no agreement achieved in the dialogue. The people wanted their land to be returned, and they wanted the company to do the land reclamation process before returning it to the people. "Return our ancestral land," then became a battle cry of the people.

This action reflects the local Dayak people's resistance to top-down development aggression. It was also in reaction to the ignorance of indigenous peoples' property rights. The *Krio*, *Pawan* and *Jekak Dayak* had never been consulted by Lingga Tejawana on its plan to open the Industrial Tree Plantation Project. When people complained because the company was destroying their fruit trees, the company replied that those fruits were not planted by the people. Moreover, the site manager told the local people that the Dayak are stupid. "Their brains are not in their heads, but in their knees".

In addition to such cultural intimidation, the company put up written notices on the people's land, such as '*hutan ini milik negara*' (the forest belongs to the state); '*dalarang berladang di areal HTP*' (no farming on the Industrial Tree Plantation location); and '*boleh berladang asal tidak ditanam karet*' (farming is allowed but no planting rubber). The company also felled the primary forest, barricaded off the water supplies and resources.

The people from the nine villages asked the company to compensate them for their cultural, social, religious and natural losses



The Krio Dayak of Sandai sub-district burning down the industrial tree plantation base-camp to preserve their forest and ancestral land, Indonesia. Photo: Stepanus Djuweng

to as much as Rp5 billion. The local government and the company refused to pay compensation. Instead, the government sent an extension team to persuade the people to surrender their lands. At the same time, the local military commander also sent troops to the area. The local people were told that the troops were not to intimidate the people, but for conducting war exercises to prepare themselves for a military mission in East Timor.

The people, facilitated by WALHI (Indonesian Forum on Environment), then went to Jakarta to express their concerns to the high level Indonesian officials. Now Lingga Tejawana has stopped its operations and has no clear status.

Bakati Dayak Protest Against the PT Nityasa Idola (NSI)

The Belimbing case stems from the same problem. The *Bakati Dayak* in Belimbing village were never properly consulted by the Nityasa Idola (NSI) when the company started its 120 hectare planting experimentation, located 5 kms from Belimbing, in Ledo sub-district, Sambas District, West Kalimantan. The company in-

tends to open 120,000 hectares of Pulp-Industrial Tree Plantation.

The local people had, as stated in their letter to President Soeharto dated October 11, 1995, asked the company to stop the activities, since the project would occupy the local peoples farm lands, reserve forest, fruit tree garden and sacred lands. The company replied that they had secured approval from the village via the village head and ten other community members. The people then wrote letters to the local House of Representatives, District Head of Sambas and other local government agencies.

On November 1, 1995, about 300 people went to the base-camp of the NSI. They wanted to negotiate with Mr. Suhanda, the site manager. Unfortunately, Mr. Suhanda had gone to town while at the base-camps the people were confronted with some 30 security personnel. The people waited for Suhanda at the front yard of the base-camp. The crowd began to get impatient. The elders then performed a ritual ceremony asking for strength in defending their *adat* (traditional) lands. At about 10 o'clock, Mr. Suhanda appeared at the site. He was accompanied by the sub-district head, the sub-district military commander and the sub-district police commander. The people shouted at Suhanda, asking him to stop the activities of the company. At the same time they asked him to sign a statement saying that he would stop the project activities. Under such pressure, Suhanda wrote a memo and signed it. The people rejected the document. They wanted a formal statement. The dialogue was halted and Suhanda, Security Officers and personnel and sub-district head then left the site. The people then burnt down the company cafeteria.

Today, the NSI have left Belimbing village, and the people have burned down all the property. An official record of the provincial office of the Forestry Department stated, "The activities of Nityasa Idola is temporarily stopped" without further explanation.

The Empurang Dayak and the ADB-Financed Industrial Tree Plantation Project

In November 1996, the Asian Development Bank (ADB) approved a technical grant at US\$ 330,000 to the Government of Indonesia to prepare a feasibility study on Industrial Tree Plantation projects in Indonesia. The study was done by Groome Poyry LT of New Zealand and Finland in cooperation with Ifdeco Indonesia. The study recommended, among other things, the development of a

12,000 hectare Industrial Tree Plantation in Sanggau District, West Kalimantan. To finance the project the ADB then approved a loan to the Government of Indonesia (Loan No. 1000-INO: Timber Plantation Development Project).

By 1990, Inhutani III (State-owned company) had started its activities in two sub-districts: Jangkang and Mukok sub-districts. In the long term the project will expand to cover an area of 300,000 hectares. This part belongs to Gudang Garam in cooperation with the Finnish company ENZO. In 2003, a pulp and paper mill will be developed in Subah, near the banks of the river Kapuas. This will be a serious threat to the ecosystem of the longest river in Indonesia.

When the part that is financed by the ABD was about to start, the local government and Inhutani III launched an extension programme to persuade the local Dayak communities to participate. As usual, the extension team promised that the project would bring various advantages to the local people. They promised that the local people will be compensated Rp37,000 (US\$ 15) for every hectare of land that they contributed to the project. The other promises were: the creation of thousands of jobs, public facilities provided such as roads, places of worship, village secretariats, and after six years of harvest the people would receive more money than they have ever had before. It was also said that whatever the people wanted, they could apply for it to Inhutani III. By September 1992 none of the promises had been fulfilled.

The Inhutani III started to construct a base-camp near Empurang village and the local villagers were not informed. The villagers then took action by burning the base-camp. Another protest was carried out by the people of Boyok village because the company failed to fulfil their promise.

In attempts to persuade the people to accept the project, Inhutani III set up a task-force. The task-force consists of officials, village heads and several villagers. The main duty of the task-force is to influence the people to surrender their lands. A record made by one local NGO shows that Inhutani pays monthly basic incentives to the members of the task-force. The amount of incentives paid depends on the formal position of the members. The same record also mentions that in Empurang only 35 per cent of the households still retain their lands and farm on their lands. The other 65 per cent have lost their lands and therefore they have nothing to farm.

In some villages the people are reoccupying their lands. The

reoccupying of this land is facing a serious problem. The Inhutani has set up 'security officials' and the people are not strong enough to claim their landrights.

The Tanimbar versus Liem Sioe Liong

Liem Siou Liong, the most powerful Indonesian tycoon, is logging a 164,000 hectare concession on Yamdena Island through his company, Alam Nusa Segar. Yamdena is the indigenous territory of the *Tanimbar*, one of the indigenous peoples in Maluku province. The Tanimbar's struggle to save their forest and environment is still going on after several years. On September 14, 1992, a dozen Tanimbar people burnt down company property and destroyed company equipment. Following this, 30 people were arrested and held for several months.

Aside from struggling to save the forest from logging, the Tanimbar people of Yamdena are also struggling to stop deforestation being carried out by a plantation company. Some 30,000 hectares of the island has been set aside for the development of the plantation by the state-owned company PTP-45.

Land Re-occupancy in North Sumatra

In North Sumatra, the *Langkat Malay* are making attempts to reoccupy their 250,000 hectares of land. The land historically belongs to 15,000 families Langkat Malay families. In 1821, the Dutch Colonial Government took the land from the people to develop the plantation project, on the agreement that the land would be given back to the people in 1953. However, the national government of Indonesia did not do so. In an attempt to claim their land, the local people formed 'Badan Perjuangan Rakyat Penunggu Indonesia' (BPRI). In 1995, the BPRI was offered 10,000 hectares of the land by the local authority. Temporarily, the BPRI seems to have agreed the offer.

EAST TIMOR

East Timor was invaded by its neighbour Indonesia on 7 December, 1975. Since then, at least 200,000 people, almost one-third of the population, have died as a result of war, starvation and disease. But Indonesia's annexation of the former Portuguese colony has never been recognised by the United Nations, and in East Timor itself there is still resistance against the Indonesian occupation.

The Responsibility of the Western World

The military government in Jakarta has often declared that the indigenous movement has been eliminated and that the armed struggle is over. But on every occasion subsequent events have denied these declarations as wishful thinking.

For Indonesia, the legal and political question about East Timor was settled in 1976 when the former Portuguese colony was annexed as Indonesia's 27th province. Since then, all events in East Timor have been an internal matter of no concern to the rest of the world, according to the generals in Jakarta. But the people of East Timor refuse to obey. They fight the bloody and illegal occupation in every way, at home as well as abroad. In spite of the overwhelming force of the Indonesians, the resistance continues, more than twenty years after the invasion. A new generation of East Timorese, that has never experienced anything but the Indonesian occupation, is in the forefront, even though the odds are against them.

Indonesia's invasion of the former Portuguese colony was a product of the cold war. Indonesia was seen as a 'bulwark' against communism in Asia. For this reason the generals in Jakarta were allowed to commit one crime after another, at home as well as abroad. Now the cold war is long gone, but this has had virtually no effect on the East Timor conflict. The generals in Jakarta still act as they have always done. Only now they are playing a new card, economic growth, which gives the West an opportunity to make huge profits.

Indonesia could not have occupied East Timor for more than twenty years without political, economic and military support from the great Western powers. Indonesia conducts its war with money and arms from the West. It follows that the Western states have a direct responsibility for the massacre of East Timor. Western support for Indonesia's brutal military dictatorship is a disgrace for nations which claim to represent noble principles such as freedom, democracy and respect for human rights.

Religious Contradictions

For historical reasons, the Catholic Church is important in East Timor. Portugal sent missionaries to the colonies, and in time many East Timorese converted to their faith. Following the invasion of 1975, the church became the only legal organisation not governed from Jakarta. This made even more people join it, because it was and still is the only legal way to demonstrate a protest against the

Indonesian occupation. Indonesia forces the East Timorese to speak Indonesian. But the church uses *tetum*, the most dominant language in the territory, thereby demonstrating its solidarity with the resistance movement.

Carlos Filipe Ximenes Belo has been the Catholic bishop of the former Portuguese colony since 1983. He is one of the few persons in this country who can openly criticize the Indonesians without being jailed or murdered for it. Recently, the bishop has warned against growing religious contradictions in the territory. He feels that the Indonesian authorities are consciously promoting this conflict.

Most East Timorese are Catholics, while most Indonesians are Muslims. More than 100,000 Indonesians have moved to East Timor since the invasion. This is a part of the government's population policy, known as *transmigrasi*, which aims to move people from densely populated areas such as Java to sparsely populated areas in the outer islands. With regard to East Timor, the government in Jakarta also has a plan to change the demographic composition of the population and many East Timorese fear that they will become a minority in their own country.

Bishop Belo was nominated for the Nobel Peace Prize in both 1994 and 1995. Although he did not get it, the mere fact that he was nominated is a sign that the question of East Timor is becoming more and more well known in the rest of the world.

The World Court and the Timor Gap

On 30 June 1995, the International Court of Justice at the Hague, known as the World Court, decided - in a 14 to 2 vote - that it could not rule on Portugal's case against Australia disputing the legality of the Timor Gap Treaty.

Portugal had brought a case against Australia concerning the 1989 treaty, which allows joint Australian-Indonesian oil exploration off the coast of East Timor, on the grounds that Indonesia's occupation is illegal and has never been recognised by the United Nations. This verdict was a disappointment to Portugal, to East Timor and its supporters, but according to the British Coalition for East Timor (BCET) it is not bad news at all:

First, it is necessary to remember that the 'victory' of Australia is a purely technical matter. The court concluded that Australia's part in the treaty could not be ruled upon without a decision upon the legality of Indonesia's occupation. The court insists it is unable to make that decision, as Indonesia does not recognise the authority

of the court in any proceeding, and that "it could not make such a determination ... in the absence of [Indonesia's] consent." More importantly, the court's decision contained a section stressing East Timor's right to self-determination, and referring specifically to the United Nations resolutions on the occupation. This section was not legally necessary, suggesting that many of the judges might have found against Australia, if their own rules of procedure had allowed.

It is ironic, says BCET, that Indonesia can be exempted from judgement on the legality of its actions simply by refusing to recognise the jurisdiction of the World Court, but this verdict is in no way a vindication of Australia's position, nor does it suggest that drilling in the Timor Gap under the 1989 treaty is in any way right or justified.

Political Prisoners in Indonesia

On 17 August 1995, the Indonesian authorities announced that they had reduced the prison terms of 26,000 prisoners, including Xanana Gusmao, the leader of East Timor's resistance movement CNRM. This was in commemoration of the 50 year anniversary of Indonesia's independence, proclaimed at the end of World War II in 1945.

Justice Minister Oetojo Oesman was quoted by newspapers as saying that the reduction varied from three months to nine months each, depending on the length of the term of sentence. He refused however to answer a question on the reduction given to Xanana Gusmao. He was also not willing to answer a question on how many political prisoners have benefitted from the reduction, saying only that 'most' of the country's 139 political prisoners were given reductions.

Xanana was captured in November 1992. In May 1993, he was sentenced by an Indonesian court to life imprisonment for his role as leader of CNRM, but three months later President Suharto intervened and reduced the sentence to 20 years.

In August 1995, the total number of prisoners in Indonesia was 29,397, and 87 per cent of them were included in the reduction of prison terms. Justice Minister Oetojo Oesman also said that seven prisoners, including two political prisoners who were sentenced to death, would soon be executed. But he refrained from disclosing their names.

When asked by journalists whether the soon-to-be-executed political prisoners were Sergeant Major Bungkus and Colonel Latief Cakraningrat, who were involved in an unsuccessful coup in 1965 and had been imprisoned for nearly 30 years, he said: "It is

possible. Maybe." (Other reports indicate that Sergeant Major Marsudi, not Latief, was selected for a speedy execution.)

Amnesty International estimated in 1995 that Indonesia had executed at least 22 political prisoners in the previous decade. In most cases, execution took place after the prisoners had served many years in prison.

A Resolution on Violations of Human Rights

On 21 September 1995, the European Parliament adopted a resolution on violations of human rights in Indonesia and East Timor. The parliament:

- Condemns in the strongest terms the Indonesian military oppression in East Timor and expresses its sympathy for the victims and their families.
- Calls for fundamental rights, including religious freedoms, to be respected in East Timor.
- Expresses its support for the people of East Timor in their struggle for the right to self-determination.
- Calls on the international community and in particular the Member States [of the European Union] to call an immediate halt to arms sales and any kind of military assistance to Indonesia and to suspend all economic cooperation while Timor remains occupied.

The resolution also mentions the recent decision of the Indonesian authorities to implement the death sentences imposed on the two Indonesian officers, Sergeant Major Bungkus and Sergeant Major Marsudi, both aged 67, who have been detained since 1965. The parliament is shocked over this decision and calls on the Indonesian government to annul the death sentences, to release all political prisoners and to grant an amnesty to all 24 prisoners still held in connection with the events of 1965. The wording of this resolution is surprisingly clear and strong considering that it comes from a branch of the European Union. Unfortunately, it has little chance of being implemented. Decisive power in the European Union lies with the Commission and the Council of Ministers, and they have no plans to interrupt the profitable contact with Indonesia. Human rights are important, but economic interests seem to be even more important.

New Disturbances in East Timor

In September 1995, riots broke out in Maliana, site of a prison where an official made anti-Catholic remarks. The riots quickly spread throughout the country. Some muslim homes, vehicles and shops belonging to Indonesian migrants were burned as well as a mosque. Demonstrations also broke out in other places (the capital Dili and Viqueque). Soon after, the Comorro Market in Dili was burnt down. In the following month, riots broke out in Dili as groups of young people blockaded various parts of the town following clashes with pro-integration Timorese. Police were said to have fired indiscriminately on crowds, breaking into homes, and generally terrifying people. According to the local police commander, at least two people were killed, 20 injured and over 200 temporarily detained. House to house searches for participants in the unrest continued into November. Many of those detained and released reported being tortured. Videotape later smuggled out of East Timor showed victims of torture, including some among the recently detained. Others, primarily young people, were said to have fled the city fearing for their safety. According to Amnesty International, "independent sources allege that the military provoked the unrest in September and the subsequent rioting in Dili in October through the use of agents provocateurs."

Twenty Years of Occupation

On 7 December 1995, a group of 115 East Timorese arranged a sit-in demonstration in the Russian and Dutch embassies in Jakarta in order to mark the 20 year anniversary of the Indonesian invasion. But pro-Indonesian demonstrators stormed the Dutch embassy and hit a number of people, including the ambassador, Mr. Brouwer, on the head with sticks.

Later, Indonesian riot troops entered the embassy compound, after which the East Timorese left. Their fate was uncertain, but one of them, named Putu, told the French news agency AFP that he and 54 others had been detained and "kicked, beaten and burnt with cigarettes" during a 24 hour long police interrogation.

"Asylum is the only hope for us," Putu said, adding: "We do not feel safe, and we are still being hunted by the authorities."

THE PHILIPPINES

Although the situation of Filipino indigenous peoples remains as precarious and as bad as ever, 1995 was a watershed year for organizing. Indigenous leaders and peoples organizations made the most of existing conditions and maximized whatever opportunities there were to assert their rights. The year also marked the emergence of spontaneous groups not led by an alternative movement or an ideological-political centre. These groups organized themselves mainly on the basis of defense of their ancestral domains and on the assertion of their identity.

Armed Conflict

Violence, particularly violence against indigenous communities has always been a regular feature of most administrations in the Philippines. Indigenous communities, the Islamic Moro groups and upland farmer peoples have usually been the victims of war and armed conflict raging in the countryside. Thus, when peace talks between the government and all other warring factions began, most Filipinos hoped for an end to decades of war and the beginnings of peace.

The Government of the Republic of the Philippines did conclude a peace agreement with the RAM or the right-wing military rebels last year. However, separate talks with the MNLF (Moro National Liberation Front - the most important and numerically strongest of the Muslim rebel groups fighting for independence or autonomy in the Southern Philippines) and the CPP-NPA (the Communist Party of the Philippines and their armed wing the New People's Army) are still bogged down in technicalities.

Moro factions, such as the MILF, have not joined the peace talks but are willing to abide by the agreements entered into by the MNLF. However, skirmishes continue to take place between MILF rebels and the military.

In 1996, there have been bombings of Christian churches in Zamboanga and the razing of villages in Cotabato in Muslim areas or near to Muslim communities. The military is quick to blame the Moro rebels. But everyone is in agreement that these acts are creating a climate of hate among different religious groups. These are being perpetrated to incite another Muslim-Christian war reminiscent of the 1970s.

The MILF has been reported to be recruiting non-Muslim tribal people into their fold. Reports from the T'boli area in South Cotabato indicate active recruitment of *T'boli B'laan* peoples into the MILF in what is known as the Balik-Islam (Return to Islam) campaign. Most of the affected Muslim and Christian communities are tired of war and would like to have peace. They don't want a repeat of the dreadful conditions of the past. The peace movement is growing, particularly in Mindanao. It is characterized by members from all peoples, religions and sectors on the island.

Militarization

Military operations of the large scale variety seen during the Marcos regime and to a certain extent during the Aquino Administration were not as evident over last year. Human rights groups which criticizing the record of the Ramos regime conceded that it has perfected the 'soft approach' in counter-insurgency operations. However, human rights violations, especially in interior areas, occur as a matter of course during military operations against rebels.

In Northern Luzon, plans for the Abulug-Gened Dam in 'rebel-influenced' Apayao kicked off with the deployment of two Philippine Army battalions and the reactivation and expansion of the paramilitary Civilian Armed Forces Geographical Unit (CAFGU). The CAFGU has been tagged as the military branch responsible for most of the documented cases of human rights abuses.

From the 18-19 August, units of the military's 401st Brigade (members of the 58th IB) bombed Balalaan, Barangay San Juan, Bayugan Town, Agusan del Sur in northeast Mindanao. Bombing sorties were carried out by warplanes, helicopters and shelling done with howitzers. After it was all over, 8 *Manobos* including children, were dead. The military had suspected the village of being 'rebel-influenced'. Four children who were wounded and orphaned by the incident were abducted and detained by the military. The rest of the residents, some 90 families, evacuated to safety. The military tried to cover up the incident. They claimed that the blasting was accidental and that the children they seized were the children of soldiers. To prevent the people from filing charges, they were given some medical assistance and cash. An agreement was made whereby they were forced to accept around P66,000 pesos in damages. It was a rum deal for the community. Most of the Lumads in the surrounding areas who heard about this cried tears of rage.

Another case in point is the evacuation of 32 *Banwaon* and *Talaandig* families in La Paz and San Luis towns in Agusan del Sur. Their villages were bombed from September 12-16, 1995. An average of 4 bombs were dropped daily in an operation that the military said was meant to flush out New People's Army guerillas. The operation, however, coincided with the decision of a logging company to resume activity in this area.

In Surigao del Sur, 11 barangays (smallest administrative unit) in 4 towns were subjected to aerial bombardments and ground operations from August 11 to September 2 1995 by the 29th and 67th IB of the Philippine army. Accompanied by 'food blockades', the series of operations wreaked havoc on more than 147 *Manobo* families who were forced to evacuate to other places. One *Manobo* youth was killed on suspicion that he was an New People's Army supporter. The bombings were claimed to be part of counter-insurgency operations but local residents reported the acceleration of logging operations after the military offensives. Earlier, the indigenous communities of Tandag, Lanuza and San Miguel had applied for ancestral domains claims. Logging concessionaires in the province had registered their opposition to their claims.

In Capiz, Panay Island, the 3rd Infantry Division of the Philippines army told the indigenous *Sulod* residents to leave their barangays. The Psychological Operations Unit of the 3rd Infantry Division simply arrived at their villages. The barangay officials were called post-haste and it was announced that there would be firing, shelling and bombing of the area. The people were ordered to evacuate without any assurance that they could return after the military exercises.

The Army commander, Gen. Jose Lapuz, denied that the *Sulod* were indigenous peoples and called them squatters. Military exercises included the shelling of Mt. Pula in March 1995 which resulted in fear and panic among indigenous peoples in Tapaz-Jamindan border causing the evacuation of 188 families in three days.

However not all armed conflicts resulted in the defeat or evacuation of the people. The area of Lantad in Balingasag, Misamis Oriental has been a hotbed of rebel activity since the 1980s. Many of its young people joined the New People's Army (NPA) rebels becoming part of the 'Pulang Bagani' (Red Warriors) units. Because of this, military operations had been conducted against the people again and again. Several times people evacuated their ho-

mes. Most of the residents there only returned to the area three years ago after evacuating it. Upon their return the military tried to control the area such that they have permanent psychological-war personnel stationed there.

In March 1996 the *Higaonon datus* of the Misamis area held a *dumalundong* or a meeting of indigenous leaders and their warriors. From the start, the military tried to coopt the meeting and control the rites by offering to finance and give food for the *dumalundong*. Also the NPA tried to intervene and to set the agenda. Although tensions are high because of the incident, it has shown just how the Higaonon in Lantad have become more independent and assertive. They actually told the military not to interfere and criticized the NPA for their methods.

Dams

Government and corporate intrusion into the indigenous peoples' ancestral domains continues unabated. Under the banner of 'Philippines 2000', the Ramos administration continues to allow 'flagship' development projects and investments in indigenous areas.

Two dams are to be built by the government in Northern Luzon amidst protests and resistance from indigenous groups. One of these is the P10.6B Casecan MultiPurpose Irrigation and Power Project (CMIPP) in Nueva Vizcaya. This involves a BOT (Build Operate and Transfer) scheme which will install a 25km mountain tunnel from Nueva Vizcaya to Nueva Ecija. BOT is a contractual arrangement between the government and private companies, according to which the company is supposed to build the facility in question, operate it for a certain time, and after that sell it to the government which will run it as a state enterprise. The area is in the ancestral domain of the indigenous *Bugkalots*. An underground hydro-electric power plant will be built which will generate 140 megawatts to feed the Luzon grid. When completed the project is expected to irrigate 50,000 hectares of farmland in Pampanga, Nueva Ecija, Tarlac and Bulacan but not in the areas most affected by the project. President Ramos himself has promised that the people will not be displaced by the project. However, protesters have petitioned for an immediate stop to the project. Many of the protesters are from the Cordilleras who settled in the province in the 1950s after they were displaced by government's early hydro-power projects.

The DENR (Department of Environment and Natural Resources) for its part is issuing as many CADCS (Certificate of Ancestral Domain Claims) as possible and at an increased pace. This is to make people more comfortable with the project. They believe that the issuance of CADCs will assure the people that their rights to their ancestral domains are a priority of the Ramos regime.

Meanwhile in the Cordillera, in the Benguet Pangasinan border, the *Ibalois* are up in arms against the projected P22B San Roque Multi-purpose dam project. It is one of the administration's flagship projects in power generation. It will tap the powerful Agno river and is projected to irrigate 70,000 hectares of land. The 365 megawatt hydroelectric plant will be constructed in Barangay San Roque which lies at the border of two provinces.

The National Power Corporation (NAPOCOR) plans to declare 49,000 hectares of the municipality of Itogon's 49,800 hectare total land area as part of the dam's watershed. This will affect Itogon's barangays including Gumatdang, Loacan, Poblacion, Tuding, Ucab and Virac.

The Industrial Forest Management Agreement

The Industrial Forest Management Agreement or the IFMA being peddled by the DENR, theoretically awards a reforestation project to any corporate body of the private sector. These can be people's organisations and communities. But on the whole most applicants and most people given IFMAs especially in Mindanao are corporations and big businessmen.

Lumads in Mindanao continue to decry the DENR's bias towards big business as opposed to the indigenous peoples. A number of Mindanao Lumads have started to delineate and survey their ancestral domains through the DENR's Department Administrative Order No. 2 (DAO 2) which calls for the issuance of CADCs. Even when they go through the DENR processes, the Lumads complain that the DENR is going slow on the issuance of CADCs while fast-tracking the issuance of IFMAs to corporations.

In 1994 and throughout 1995, NGOs discovered that the former DENR Secretary signed over to a foreign corporation more than 6,000 hectares of the Agusan Marsh National Park in Bunawan, Agusan del Sur to the Taiwanese Forever Fertility Development Corporation as an IFMA. The said corporation was going to plant edible bamboo in the area and harvest bamboo shoots to be proc-

essed and canned for export. Planting the exotic bamboo species calls for the cutting down of indigenous vegetation in the area. Agusan Marsh is the only peat-bog type swamp of its kind in the Philippines.

The DENR of the new Caraga region (of which the province of Agusan del Sur is a part) has a notorious reputation for corruption and its bias towards big businessmen and loggers is legendary. Just this February, members of a *Manobo* people's organisation barricaded the regional office of the DENR in Prosperidad, Agusan del Sur, to protest against the DENR's slowness in processing their CADC claims while making it easy for a well-known Chinese businessman in Butuan City to get an IFMA.

In South Central Mindanao, a fact-finding mission went into the Kalamansig area in Sultan Kudarat in Cotabato in September 1995. Here, an 11,000 hectare IFMA was released to the prominent Mr. Victor Consunji. The IFMA has deprived the *Manobo* people there of their ancestral domains. Residents have complained of harassment surveillance and threats from Consunji security guards. Armed men have been roaming the area and stopping them planting their crops.

ALSONs (Alcantara and Sons) took and transformed more than 13,000 hectares of prime agricultural land on *Ata-Manobo* territory into plantations of falcatta and acacia mangium. The people's crops and fruit trees were cut down forcibly and without consultation. The *Ata Manobo* were then prohibited from ever planting within the area again. In 1994, company officials threatened the people with violence. They said that their communities would be bombed and their leaders killed. Military patrols by regular army units reinforced pressure on the villages.

Early in 1995, a fact-finding mission was prevented from entering the communities in Talaingod town in Davao del Norte province. The area was part of the 13,000 hectares which the IFMA granted to ALSONs. The *Talaingod Manobo* tribesmen had ambushed some of the ALSONs employees after they declared a *pangayao* or a tribal war against the company. The *pangayao* was declared to assert their ancestral claims in opposition to the ALSONs take over of their area.

Mining

Foreign mining companies all over the Philippines have become bolder since the Mining Act of 1995 which offers them very generous incentives for mineral exploration and exploitation. Among

these is the Western Mining Corporation of Australia. The *B'laans* of South Cotabato have accused the Western Mining Corporation of plotting with government to take over their ancestral domain near Mt. Matutum. NGOs and peoples' organisations are saying that the "environmental and social holocaust the operation would cause is irreversible and will cause permanent damage".

Western Mining Corporation Philippines or WMCP was granted an FTAA (Foreign Technical Assistance Agreement) through the Mining Act of 1995. This FTAA accords the company the right to large-scale exploration, development and utilization of minerals for a period of 25-50 years on a total land area of 99,400 hectares covering the boundaries of South Cotabato, Sarangani, Sultan Kudarat, Davao del Sur and North Cotabato.

The FTAA, together with the option agreement with the Tampakan Group of Companies, technically gives Western Mining a total 109,400 hectares of land for exploration and exploitation. It also has three pending FTAA's in areas contiguous to its current FTAA which will cover approximately 400,000 hectares.

WMCP has come up with a package of benefits as part of the social acceptability component of the company. *B'laan* critics say that these are nothing more than promises to encourage *B'laans* to accept the company.

Passage of the Mining Act has also created a surfeit of applications for mining concessions all over the country especially in the Zamboanga peninsula and the Cordillera. Among these are the New Crest Exploration Philippines Inc. (NEPI) whose Foreign Technical Assistance Agreement (FTAA) covers 13 municipalities in Abra besides areas in neighbouring provinces of Kalinga, Mountain Province and Benguet. The Abra Provincial Multisectoral Forest Protection Committee has already claimed that the mining group's activities may cause massive environmental degradation in the province especially in vital watersheds.

The Mining Act

What really galled indigenous peoples in 1995 was the midnight passage of Republic act No. 7942 also known as the Philippine Mining Act of 1995. Approved in March 3, 1995, it gives almost blanket permission for foreign mining companies to take over mineral lands in indigenous peoples' ancestral domains. Indigenous communities were really offended when the Congress took a very short time to have this law passed while the indigenous peoples

have been lobbying for almost ten years for an Ancestral Domain Law. The indigenous peoples worked hard to have the then House Bill 595, also known as the Andolana Bill, passed, but only to have it shelved on the third reading by the same Congress which passed the Mining Act.

The Act also gives an opportunity for 100 per cent foreign-owned corporations to engage in the mining business upon the approval of the President. It encourages transnational companies (TNCs) to slowly take over already established Filipino corporations primarily because of their advantage in advanced technology and capital. Furthermore, the provisions of the Act on timber, water, eminent domain and easement rights clearly violates the rights of indigenous peoples. The passage of the Act elicited very strong reactions from indigenous organisations, especially the groups associated with the Cordillera People's Alliance (CPA) whose membership includes small-scale miners' organisations.

Terror Bills

After the elections of 1995 and the political manoeuvring of the elite political parties, 1996 saw what seemed to be a consolidation of the Ramos political forces within the elite political structure. Two lawmakers, former 'Martial Law architect' and leader of the military rebellion that precipitated the overthrow of the Marcos dictatorship, Senator Enrile, and former Marcos postman, Congressman Roilo Golez, introduced what are now called the Terror Bills. The proposed legislation was supposedly designed to curb terrorism especially with the increase in bombings and terrorist attacks in Metro-Manila and in Mindanao. Civil liberties groups and NGOs saw the bills as an intended attack on civil liberties and a move towards Martial law.

Different groups including indigenous peoples organisations and support NGOs mobilized their members against the passage of the Terror Bills. The pressure seemed strong enough to cause the House Speaker, a very reliable Ramos ally, to back out of backing the terror bills which Malacanang has deemed urgent.

The protests showed that there was still a critical mass of politicized Filipinos who have remained vigilant against authoritarianism. But some analysts think that there is no need for Ramos to actually declare Martial Law to consolidate power. This is because they observe that a 'creeping coup' is already taking place with a

takeover by ex-generals and retired military officers of key cabinet and administrative positions.

Consultations on the Indigenous Peoples' Legislative Agenda

In 1995, Ramos appointed two sectoral representatives for indigenous peoples to sit in Congress: a *Teduray*, from Mindanao associated with the governments' Office for Southern Cultural Communities (OSCC) and the Tribal Communities Association of the Philippines (TRICAP) and an *Ifugao* from Cordillera associated with the peace movement. With the help of a consortium of NGOs, the latter got funding for six regional consultations and one national consultation on the indigenous peoples' legislative Agenda from the Office of the Presidential Assistant for the Peace Process (OPAPP). The goal of the consultations was to come up with an Ancestral Domain Draft Bill to be presented in Congress. The consortium went all over the country to ensure a broad-based consultation. Initial reactions from indigenous organisations and NGOs was sceptical because of the record of Congress. However, most of the peoples' organisations still gave it a try. The general agreements for the non-negotiable features that any legislation on Ancestral Domain should contain were the following :

1. The law must give full recognition to the right of indigenous peoples to ownership and management of Ancestral Domain;
2. It must respect indigenous culture, justice system, concepts of ownership, land use and resource utilization;
3. It must contain special provisions which will take into account different conditions pertaining to the possession of territories and the degree to which indigenous culture is preserved (some indigenous communities have intact territory and intact culture, while others are dispersed and their culture threatened);
4. Indigenous peoples themselves should identify and delineate their ancestral domains;
5. Sufficient funds should be provided by government so that the law may take its full effect; and,
6. It should prevent government and private interest groups from further encroaching on indigenous territories.

Participants agreed that the above-mentioned features were to serve as initial bases of unity among NGOs in pursuit of legislative advocacy work. The NGOs likewise committed themselves to strengthen their unity through regular consultations and other meaningful exchanges.

The National Consultation was held at Pagsanjan, Laguna on December 15-17, 1995. Here the participants agreed upon a draft bill. The draft bill contains all the positive features from previous bills on ancestral domains filed in Congress and especially the inputs/points agreed upon in all the regional consultations by all the indigenous participants.

Since the indigenous sectoral representatives have not yet been confirmed by the Commission on Appointments, they cannot file this bill. Thus, in 1996 the omnibus draft bill was polished by a drafting committee and presented to Senator Flavio who will most probably sponsor it. Congressman Andolana has also read the Bill and acknowledges some of its better features. He has promised to study it further.

The original proposal for the draft bill was a bill on ancestral domain whereby the state would recognize the indigenous peoples' 'native title'. However, the consensus among the indigenous participants was for a draft bill to include all other indigenous peoples' concerns such as ancestral land, human rights, discrimination, preservation of culture and an indigenous agency whose main concern is indigenous peoples' ancestral domain and indigenous rights.

The indigenous peoples see the bill as a major accomplishment and they are very proud of it. They are very well aware that Congress will water it down, shelve it and cut it to pieces. But their organisations are already preparing for the next step which is to lobby in Congress. For many of the indigenous organisations involved in the consultations what mattered most was that the consultations provided them with opportunities for inter-tribal sharing of experiences, making links and consolidation of their organisations.

Organizing Efforts

The past years have seen a disappointing trend towards weakening and splitting of indigenous organisations, particularly national and regional federations. These splits have been accompanied by recriminations and mudslinging on both sides.

Dissensions in indigenous ranks are in no small measure also due to the splits in the national democratic movement led by the

Communist Party of the Philippines (CPP) which for a long time was the leading force for change even among indigenous organisations and federations. The split was reflected among advocacy NGOs and indigenous organisations and federations. While disappointing, this has led many indigenous leaders and members to rethink and take a long hard look at their erstwhile alliance with the so called alternative mass movements and ideologically-based political groups. Regional and local groups are increasingly meeting challenges on their own. Also, new organizations are sprouting spontaneously and old organizations are reviving or regenerating along more independent and more indigenous lines.

The Cordillera People's Alliance (CPA) in the Cordillera has been able to recover from organizational problems faced the years before. Leaders and organizers have taken a firm and radical stance regarding indigenous issues but they have retained openness, flexibility and resiliency with other forces. For example, the CPA still leads the other indigenous federations in its capacity to muster international support and in its international linkaging. The CPA rejects any form of delineation of specific ancestral domain claims in the Cordillera claiming that the entire Cordillera is the ancestral domain of the Cordillera people. They have therefore concentrated on working for genuine regional autonomy and self-determination for the Cordillera peoples.

The leadership of the Lumad Mindanao has separated from the national federation, KAMP, in an atmosphere of mutual recriminations. It is now attempting to launch a quiet comeback. They are organizing silently and are experimenting on 'new' forms of organization. Instead of building up a federation with indigenous organisations created on the basis of past regional-political areas of work, the leaders and organizers are concentrating on organizing by tribe and ethno-linguistic affiliation. This, they say, better reflects and respects their indigenous kinship systems and native socio-political structures.

In December 1994, the Pambansang Lupon ng mga nakatatanda sa Tribu (National council of Tribal Elders) or the PLANT, a national indigenous federation was born. Most of the members of PLANT were the partners of a para-legal NGO. The organisation's leaders initially created the organization to get a better deal from their NGO partners.

In 1996, the group came up with a program-of-action geared mainly towards education of their organisations and the defense of

their ancestral domains. Having learned their lessons from both government and alternative political movements, the group is very cautious with its statements and actions. It takes pains to point out that most of its organisations belong to different networks thus it has no intention of competing, and would rather coordinate, with other national indigenous federations, for example, KAMP.

In Cagayan de Oro, a provisional Council of indigenous leaders was created uniting leaders of the *Higaonon*, *Subanen*, *Manobo*, *Bukidnon*, and *Talaandig*. The Council was created as a result of various indigenous leaders of Northern Mindanao meeting together for the first time during the Indigenous Legislative Agenda consultations. Despite differences in experiences, networks and affiliations, the ad hoc council felt that it was time to have a mechanism to coordinate indigenous efforts towards defending their ancestral domains. The Ad Hoc Council is seen as just a temporary mechanism and a focal point for the activities of indigenous leaders and elders in the sub-region.

One issue that is being debated among indigenous organisations and support NGOs is the delineation and survey of ancestral domain claims. A growing number of indigenous organisations are delineating their ancestral domain claims through the process stipulated in the DENR's DAO 2. The process calls for the survey and delineation of ancestral domain claims and presentation of proof of occupancy, etc., before a Certificate of Ancestral Domain Claim (CADC) is issued.

The camp of KAMP, the CPA and radical indigenous organisations affiliated with alternative movements reject the DENR's program, saying that there is nothing to be gained from a CADC as it will only divide the people. In many indigenous peoples' areas, unscrupulous local government officials and some indigenous leaders are applying for CADCs only to turn the land over to investors. Sometimes bigger and more powerful tribes or groups are staking claims even on the ancestral domains of weaker neighbouring tribes. Furthermore, the CADC is nothing but a certificate of claim. It is not a title.

While indigenous organisations that have gone into delineation through DAO 2 processes speak of some advantages as well, they all agree with the criticisms levelled against DAO 2. But the most successful indigenous organisations that were issued CADCs went through DAO 2 processes with open eyes. They knew the pitfalls.

They are saying that it is after all a choice for each indigenous community whether to delineate on their own or through government processes. The right to self-determination is still the main principle. They should not be criticized as selling out to the government by applying for CADCs.

What the indigenous organisations actually saw was the organizing, educative and mobilizatory potential of community mapping of ancestral domain claims. They transformed community mapping into a learning experience for the entire community. Instead of limiting delineation to leaders and technical personnel only, indigenous leaders involved the entire community. They recalled the epics and legends that showed that their ancestors actually occupied and lived on specific parts of their domain in different times. They recalled once again, the stories of their struggles to their children who had forgotten the old stories; their roots. The process has become a massive identity-awareness opportunity.

Also the people learned to face the government, local government officials, the DENR and Congress people. Each engagement adds to the peoples' political experiences. And the leaders are always learning and informing the people what they are learning.

NAGALAND¹

As in past years, throughout 1995 India imposed the 'Disturbed Area' Act on most parts of *Naga* areas in India. Any place declared a 'Disturbed Area' comes under Military Authority and all fundamental rights/civil rights are suspended automatically. The Army down to the rank of 3 stripes have the power to "fire upon or otherwise use force, even to the causing of death" against any person/s acting in contravention of any law or order in force in the disturbed area; to prohibit assembly of five or more persons, to prohibit carrying of things capable of being used as weapons, to search and arrest without warrant, etc. This is done under the Armed Forces Special Powers Act 1958 (as amended in 1972).

The law provides that any area becomes a 'Disturbed Area' when the Governor of the state notified that it is so through the official gazette because he/she is of the opinion that the area is in

1. Nagaland means the whole of the ancestral land of the Nagas which includes Nagaland state.

such a disturbed or dangerous condition that the use of forces in aid of the civil powers is necessary. Here it is the personal decision of the Governor, the state Assembly does not have the power to advise. The basis of the Governor's decision cannot be tested anywhere, so it depends entirely on his wishes and he is virtually an agent of the Central government. Furthermore, the law forbids taking legal action against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act.

Human Rights Situation

Recognition of and respect for human rights is a thing of the past in the areas where the Armed Forces Special Powers Act is in force. With the Act providing virtually total legal impunity, the Indian Armed forces in Naga areas have routinely harassed, tortured and detained members of the public or even shelled whole towns under various pretexts.

On March 5, 1995 an Indian army convoy carrying over 600 soldiers of the Rashtriya Rifles passed Kohima Town when the tyre of one of the lead vehicles burst with a loud noise. The bursting sound was taken for an attack by the Naga army and some of the Rashtriya Rifles opened fire immediately. Others followed by firing at Naga pedestrians who were passing by. They instantly hit 17 persons and four of them died on the spot. The soldiers then started shelling with mortars and RPGS into the thickly populated area of Kohima town. The Rashtriya Rifles were soon joined by the 29 Assam Rifles and the Central Reserve Police Force at various points of the town. The army ran through the streets attacking any civilians in their way for about 2 hours. During this ruthless attack 8 civilians including 2 children were killed, more than 150 injured and 136 were taken into custody. Hundreds of homes were looted and more than 50 houses were destroyed or damaged by shellfire.

This was also the result of shelling with mortars and indiscriminate shootings in Ukhrul Town, Manipur state, on May 9, 1994 and in Mokochung town on December 27, 1994 by the 20 Assam Rifles, the 16 Maratha Light Infantry and the 10 Assam Rifles in which a total of 15 civilians were killed and three women raped.

There have been many more incidents of the Indian armed forces firing indiscriminately in towns and villages in Naga areas in 1995. To cite a few more examples: Akuluto town in Semi area, Nagaland State, was subjected to indiscriminate shooting by the Indian army on 23 January, 1995.

In yet another instance of sadistic assault, Mr. Inashe Ayemi, an officer of the state, his driver and an assistant Md. Khadir, and Ram Bahadur were killed by a rampaging contingent of the Indian army in Dimapur, Nagaland state on September 7, 1995. There was a brief exchange of fire between a contingent of the Indian army and a group of people suspected to be insurgents in the locality just a few minutes before Inashe Ayemi arrived with his driver. They were said to have been getting out of their car when gun shots began to ring out again. Md. Khadir and Ram Bahadur run to the third floor and climbed to the terrace-roof to see. There Khadir was hit by a stray bullet. It was not a fatal injury. As people in the house were rushing Khadir down from the roof, Indian Army entered their house and on seeing some people lifting a person with bleeding wounds, the army attacked them. Inashe Ayemi moved forward pleading to be heard first but was knocked down with a full swing of Carbine on his head. They continued to hammer him furiously breaking his skull and knocking out his eyes from the sockets. Ram Bahadur and Khadir were taken along with Inashe's dead body and tortured to death.

On 11 March, 1996 at about 03.30 am a group of armed personnel believed to be the Naga army from the National Socialist Council of Nagaland (NSCN) attacked the 20 Assam Rifles outpost at Huishu Village. The encounter continued till 07.00 am. The villagers who were caught unaware by the burst of gunfire ran for safety, leaving behind all their belongings. One third of the villagers who had gone to participate in the Centenary Celebration to mark the coming of Christianity at Ukhrul (East district headquarters) could not return home because of the reign of terror unleashed by the Assam Rifles. The fleeing villagers, mostly women and children, were heading towards Poi Village (about 4 kms North Huishu) led by one Mr. Paisho. They were intercepted by the reinforcement from Poi post firing towards the unarmed civilians. Mr. Paisho (who was sector leader of Village Volunteer Force attached to SSB, Poi Post) intervened to try to stop the Assam Rifles personnel to stop firing at the civilians to avoid any casualty. The Assam Rifles arrested Mr. Paisho. The women were used as human shields to walk in front of security personnel who placed their assault rifles muzzles on the women's shoulders and herded them back to Huishu village.

Even after the armed National Socialist Council of Nagaland (NPMHR) withdrew from the scene, the firing by the Assam Rifles

continued till 07.30 am. After the firing had ceased, the Assam Rifles started looting valuables and razed 103 houses out of a total of 107 houses in the village including 19 paddy granaries worth several lakhs of rupees.

Those who could not flee were detained inside the local church for three days, all without food except for a few infants. Others who hid in the jungle returned to their village when the Deputy Commissioner and Superintendent of Police along with a medical team and leaders of various social organizations reached the village in the afternoon of 13th March, 1996, only to see their houses and household properties razed to the ground. The glass of the church windows was completely shattered, and the church quarters where the women's society office was located had been gutted.

On the same evening the badly tortured bodies of Mr. Paisho and Mr. Kumar (a Nepali labourer) were found riddled with bullets on the outskirts of the village. The Assam Rifles claimed that they were killed in the encounter. But both had been taken into custody by the Assam Rifles after the fighting was over.

Attack on the Human Rights Activists

On 19 June 1995 in a blatant attempt to suppress the human rights movement by force, Shelley Chara, a highly respected human rights activist from the Naga Peoples Movement for Human Rights (NPMHR), was shot dead by 2 gunmen at his residence in broad daylight. The persecution and harassment of human rights activists is a commonplace experience but this premeditated killing has hurt the people deeply and massive protest rallies were staged in different parts of Manipur state where he was killed. Since his return from the 13th Session of the UN-WGIP (United Nations Working Group on Indigenous Populations) in Geneva 1994, he was said to have been constantly shadowed by Indian secret agents. India has denied any role in his killing and instead claimed to have apprehended his assassins in July 1995. However, to date, no one has been formally charged for the killing.

The India Government has also been stepping up its persecution and harassment of Luingam Luithui, the AIPP (Asia Indigenous Peoples Pact) Secretary General and a well-known human rights activist and his wife Peingamla. On July 2, 1994, Peingamla's passport was pick-pocketed in a crowded market place in Bangkok, and the Indian Mission in Bangkok took advantage of this situation to refuse her a duplicate passport (she was not given even a travel

document). Instead, the Indian Mission launched a false propaganda campaign against Luithui with the aim of getting his wife immediately arrested in Thailand since she no longer possessed a passport. According to a source close to the Home Ministry of India, it has twice sent the Home Secretary to Thailand to lobby for Luithui's arrest (T.V.R. Shenoy's article 'Curious Case of the Ibrahim Brothers.' Economic Times 13.02.96). India has also refused to issue additional visas to Luithui as a move to immobilize him.

The Government of India has been widely condemned for this. Participants at the PP-21 Convention of Civil Society and Human Rights, Kathmandu, 8-10 March 1996 issued a statement condemning the Indian Press and the Indian Government and called them to immediately stop the illegal action and harassment. In Delhi scores of NGOs and student leaders and eminent persons have jointly released a response to T.V.R. Shenoy's article, calling on the Economic Times not to "allow itself to be used by interested sections of the bureaucracy in its illegal campaign against a citizen".

Some Encouraging Signs

For most of the last 42 years, i.e. since the beginning of the military occupation of Nagaland by India in 1953, the bulk of the Naga population has been living in a situation where they are continually confronted by Indian state terrorism. To hide the pain and the shame inflicted by state terrorism, the Indian elites have propagated unfounded stories about the Naga in the Media, the state apparatus and through the schools in order to scare visitors away from Nagaland. They have instigated riots and attacks on members of the human rights movement in order to suppress facts. When these have not seemed to work, the Ministers and their Press talked of the need for a political settlement of the issues.

This time, the Prime Minister of India and his deputies are also calling for a political solution. However, any serious move towards finding political solutions to the long standing issues would require wide consultation with the people. Otherwise, it will merely end up as yet another pacifying step.

The NPMHR has prepared the ground for launching the second phase of the campaign to repeal the Armed Forces Special Powers Act, 1972 in collaboration with many organizations and eminent individuals. For the first time, Citizens for Democracy, which in many ways represents the elder statesmen of India, has come forward with concrete steps to facilitate open dialogue between the

Nagas and the Indian public. This is a very positive step in the direction of preparing the public to realize the historical reality, namely that imposition and assimilation has no room in a democracy.

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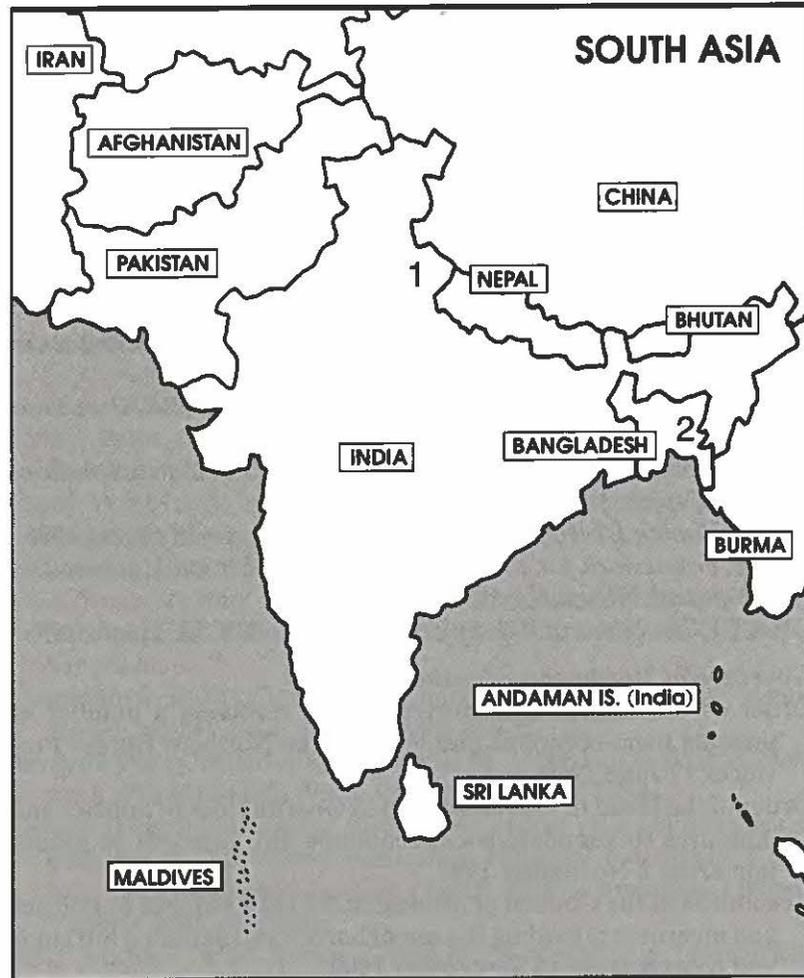
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1. *Van Gujjar and Jaunsari*

2. *Jumma*

SOUTH ASIA

INDIA

Uttar Pradesh

If, in the very near future, an amateur radio operator in India listens in to a CQ call and hears the roar of a tiger or the trumpeting of a wild elephant in the background he will know that it is from the forests of the proposed Rajaji National Park. The call will probably be from a *Van Gujjar* alerting his fellows to the movements of wild game poachers, or timber smugglers, or a forest fire, or maybe it could be an emergency call for medical assistance.

The above scenario is remarkable in that the Van Gujjars had, until as late as mid-1995, been on the brink of being thrown out of these very forests. This move to expel them from the forests, stop their transhumance practice and settle them in areas inhospitable to them would have traumatically severed them from their centuries-old lifestyle. This in turn would have effectively made them lose their cultural and indigenous identity. Today they have organised themselves and are claiming their legal rights and entitlements accruing to them as a forest dwelling transhumant indigenous people. The proposed park authorities are no longer pressurising and coercing them to leave the area and have renewed their permits for practising transhumance to the high altitude Himalayan pastures in the summer months.

An independent research team comprising of international experts on environmental studies and anthropology and national experts in the field of law and forestry, assisted by the Van Gujjars themselves, has formed a Community Forest Management of Protected Areas plan. This plan, when implemented, would create the first People's National Park in India. The plan aims at protecting the ecosystem and wildlife of the Shiwaliks, and the rights, needs and lifestyles of the Van Gujjars and local villagers. It is envisaged that this will give the people the possibility to make their own choices about where they wish to live in an environmentally and

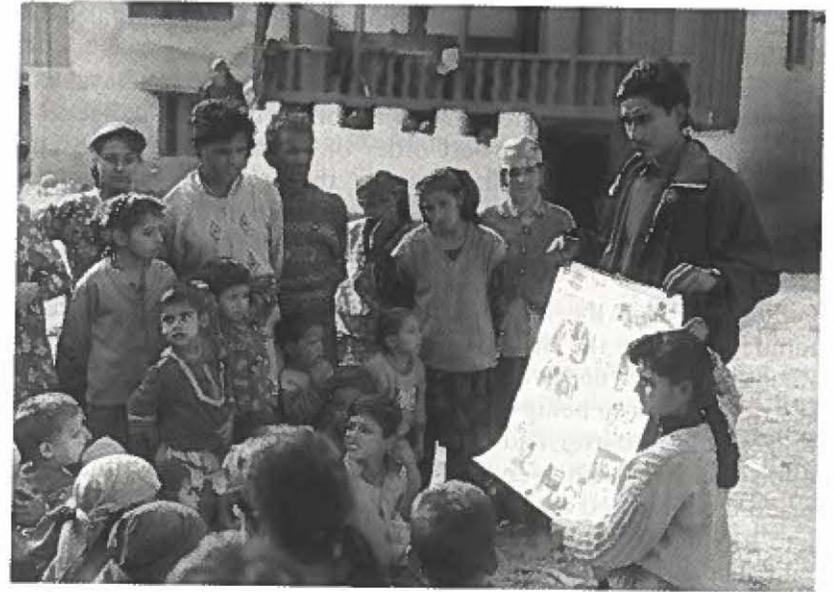
economically sustainable manner, be it in the forest or out of it. These objectives will be addressed through five complementary strategies: a core area community forest management structure, a villager minor forest produce committee structure, a community enforcement structure, support for the Van Gujjar nomadic lifestyle by the forest department, and Van Gujjar development priorities. The plan is in keeping with the provisions of the Indian Constitutions for the individual's fundamental right to life and use of land.

The Van Gujjar Pastoralists

The Van Gujjar pastoralists inhabit the forests of the plains during the winter months and the highland Himalayan pastures during the summer to support their buffalo milk production. A kinship exists between them and the animals of the wild because they perceive both to be deriving from the same forest womb. They thus construe killing of wild animals to be a sin leading to public condemnation, beating and social ostracism. To them the forest itself is a benign and nurturing place. Their general understanding is that prosperity comes to those who honour Nature's way just as poverty will automatically strike those who scorn her laws.

The Van Gujjars have been essentially people of the forest for centuries. However, in more recent years city interventions like exploitative marketing forces as well as unsympathetic and many a time corrupt government departmental attitudes have brought pain and misery into their lives. For those who live in the districts of Western Uttar Pradesh, in the forests of the Shivalik range of mountains, the worst has been the threat to change their lifestyles. This was consequent to the state government's notification in 1983 of its intention to form these forests into the 820 square km. Rajaji National Park.

Seeing the exploitation and forced misery of the people, RLEK (Rural Litigation and Entitlement Kendra, a NGO working for the empowerment of the Van Gujjar and Jaunsari indigenous peoples) started its work in 1992. In three years twenty-one thousand adults became literate through an innovative adult literacy programme. They organized themselves to fight for their legal rights and entitlements. The first of a series of primary schools was begun for the formal education of their children. They were provided human and veterinary health cover through a team of qualified medical staff that includes today a support team of Van Gujjar para medics and



*Training of indigenous peoples in Uttar Pradesh, Northern India.
Photo: RLEK*

para vets. They market their milk with the infrastructural support of two refrigerated milk vans. They hold accounts in banks and have also formed themselves into Self Help Groups recognised by the Government of India. Thus, today they are on the verge of breaking the shackles that had so long viciously fettered them to debts, insecurity and an uncertain future.

The Jaunsari Indigenous Peoples

Yet another social revolution might take place in the Jaunsar hills of the same Himalayan region. Women from the indigenous *Kolta* community and similar 'weaker sections', whose men have lived as bonded labourers even as recently as 1975, will contest for 'Panchayat' (local self government) elections against the very landlords who had bonded them. In a closed society steeped in age old social mores this transition, albeit a great leap forward for the body politic of the country, will have traumatic effects on the so long self styled 'governors' of the people. Even when the writing is clear on the wall they are not willing to accept or even believe that a woman, and moreover from the 'weaker' castes of the Koltas and others, could

head institutions of local self governance with constitutional sanction in their village Panchayats.

The Koltas in the Jaunsar region of the Western Himalayas are an absolute contrast to the Van Gujjar community. This indigenous group, belonging to the lowest order of the Hindu caste system, comprised the original inhabitants of the area and its habitat's remoteness and inaccessibility had insulated them from the rest of society. With no monetary system, they survived on the system of barter.

Settlers from the upper castes and the codifying of the land tenure system by the British colonisers in 1883 brought misery into their lives. This deprived the Koltas of ownership to land and restricted them to being only agricultural labourers. They were no longer able to barter and could only meet the expenses imposed upon them through loans from their landlords. This effectively made them bonded labourers and many a time several generations had to work for free for the landlords to pay back the debt. An inhuman and insensitive government system only compounded their misery. Such economical compulsions led a majority of the bonded labourers to sell their women into the prostitution trade. RLEK's efforts in and out of courts in this region and of others in different parts of the country' put a stop to this practice through the Bonded Labour Abolition Act of 1975 passed by the Government of India.

Current Intervention by Apex Court

Nearly all states have held elections to Panchayat Raj institutions consequent to the 73rd and 74th Constitution Amendment Acts. The state of Uttar Pradesh has held elections in all districts except those of the hill areas of the west. This includes the Jaunsar area. RLEK therefore took up the matter with the Supreme Court of India. It maintained that the continuation of Panchayats in these areas beyond their five year tenures was a constitutional violation and it also deprived women, scheduled castes and tribes and the 'dalits' of their constitutional right to governance as forty per cent of the seats were reserved for them at all three levels of the system. The apex court has issued show case notices to the Government at its behest. Also, vested interests had been denying the existence of scheduled castes in the Jaunsar area so that the benefit of reservation could not accrue to the Koltas and other 'low' castes. RLEK successfully intervened for them with the administrative authori-

ties so that they can now hold seats of governance after the forthcoming elections. (As per all indications today the intervention would have succeeded in compelling the Government of the State of Uttar Pradesh to hold fresh elections to Panchayat Raj institutions by the time this article is being read).

Jharkhand

The year 1995 has been another landmark for the people of Jharkhand. It has been so because of the stiff resistance to the Koel-Karo Hydroelectricity Project (KKHEP) and because of the question of Autonomy.

In May, 1995, it was reported that the central government had sanctioned 10 crore Rupees for the hitherto dormant Koel-Karo Hydro-Electricity Project in Jharkhand, Bihar. It was reported to be the outcome of a meeting between amongst others, the Chief Minister of Bihar, Mr. Laloo Prasad Yadav and the Central Energy Minister, Mr. N.K.P. Salve. It was further reported that the Prime Minister, Sri P.V. Naramimsha Rao was to lay the foundation for the project in July, 1995.

No leader from the Koel-Karo Jan Sanghatan (KKJS), the people's organisation long opposing the project, was present at this meeting; a sad example of the top-down approach to the lives and destiny of the communities.

The project involves the construction of dams across the southern Koel river at Basia, Gumla, and the northern Karo river at Lohajimi, Ranchi. It involves submergence or acquisition of about 26,000 acres of cultivable and 14,000 acres of 'barren' land and about 9,000 acres of public and government land. According to an earlier project report, 122 villages with 10,739 families in Gumla, Singhbhum and Ranchi districts would be displaced. Non-governmental sources indicate this to amount to 256 villages comprising approximately 16,300 families. According to the people, 150 sarnas (places of worship) and over 300 sasandries (places for the burial of the ancestral bones) of tremendous cultural and religious significance for the adivasis would also be submerged.

The project was mooted as early as 1954, but really stiff resistance began in 1973 when India's Planning Commission cleared the project. Even now, soon after the May meeting when newspaper reports were out, resistance against the project gradually built up in the shape of mass meetings. Between 10-30 June 1995 mass meet-

ings were held in which estimated 5,000 to 20,000 persons attended. It culminated on 5 July when the Prime Minister himself was expected to lay the foundation stone for the project.

About 15,000 to 3,0000 people gathered at Torpa and Basia to demonstrate their opposition. Unfortunately, since neither the Prime Minister nor the Chief Minister of Bihar showed up, the people were not able to express their strong resolve against the project. However, they did return home with the courage, resolve and optimism of people's solidarity.

The Autonomy Issue in the Jharkhand Area

In the month of December, 1994, the Jharkhand Area Autonomous Council Act, 1994 which is "to establish an Autonomous Council for all-round accelerated development of the Jharkhand Area" was enacted by the Legislature of the State of Bihar. Since its enactment, popular resentment and even dissent has been expressed against it because it falls short of the cherished goal of a state within the Indian Union.

The Act was largely an imposition and was only reluctantly accepted by one of the chief protagonists, Jharkhand Mukti Morcha(S). In fact soon after, Mr. Phabhakar Tirkey (JMMS) half-heartedly conceded that if nothing else "...at least the name Jharkhand has been given recognition and legitimacy". However, as recently as February 1996 the JMMS has been very annoyed and convinced that the Government has betrayed it because of the lack of co-operation and the reluctance of the Bihar Government to allow the Council to exercise power under the 42 subjects that have been conferred. It was therefore decided again to embark on a path of agitation.

What is the Jharkhand Movement?

According to one opinion, the Jharkhand Movement is a movement for a separate Multilingual and Multiethnic State (Province) in the Indian Union comprising the Chotanagpur plateau and the adjoining areas of West Bengal, Orissa and Madhya Pradesh. The most widely accepted view of its aims is that it includes Chotanagpur, Santhal Parganas, Midnapur, Bankura, Purulia, Mayurbhanj, Keonjhar, Sundargarh, Sambalpur, Raigarh and Surguja districts which are now distributed in four states (*Third World Studies* July-September 1989 New Delhi). Statehood for the entire Jharkhand Region still remains an elusive reality, and only some autonomy in

the form of the Jharkhand Area Autonomous Council (JAAC) in Bihar has been conceded. And even this was very obstructively and dilatorily implemented. An Interim Council and the Interim Executive Council was finally formed in August 1995, with Mr. Shibu Soren as chairman. The JAAC Act says: "the duration of the Interim Council and Interim Executive Council shall be for six months or till the constitution of the Council under section-3 whichever is earlier". This provision has already been violated and the tenure has been extended by another three months. Section-3 says: "The state government shall establish an Autonomous Council for the area of the Council which shall consist of not more than 162 directly elected members and not more than 18 nominated members." The Interim Council, however, is a state nominated body. In the Interim Council there are 31 Janata Dal (JD), members, which is far in excess of the representation it enjoys in the Jharkhand region in the Bihar State Assembly.

Scheduled Areas and Panchayati Raj

As early as 1874 the British had promulgated separate Acts for the government of the tribal areas in India. The Government of India Act of 1935 similarly classified these areas as 'wholly excluded' North East Tribal regions, and the rest of the tribal areas in the country were classified as 'partially excluded'. These classifications were made by the British and when they did so, they omitted contiguous areas that could have been recognized as tribal areas or scheduled areas.

The Constitution of independent India continued the practice, albeit with modifications. The wholly excluded areas were incorporated into the Sixth and the partially excluded areas in the Fifth Schedules of the Constitution. The north Eastern Tribal regions of Assam, Meghalaya, Tripura and Mijoram are governed by the Sixth Schedule provisions and the Fifth Schedule provisions cover the tribal areas of the rest of the country.

While scheduling the tribal areas in 1874 the British omitted certain tribal majority areas from scheduling. These areas remained unscheduled even after independence as the Presidential Order of Scheduled Areas issued in 1950 omitted these tracts. To rectify this anomaly the Parliament amended the Fifth Schedule of the Constitution in 1976, enabling the President of India to increase the scheduled area and the Government of India directed the State

Governments to send the proposals for scheduling the tribal majority villages/tracts but these have remained unscheduled to this day. The net result is the absence of scheduled areas in the states of Tamil Nadu, Karnataka, Kerala, Uttar Pradesh and West Bengal in spite of a large number of tribals living in compact areas.

In the states where there is a scheduled area large tracts of tribal areas remain outside the boundaries of the scheduled area. The areas in Santhal Parganas and Chotanagpur in Jharkhand which have traditionally and historically been recognised as a tribal area are for instance unscheduled. There are laws such as the Chotanagpur Tenancy Act of 1908 and the Santhal Parganas Settlement Regulations of 1872, for the benefit of tribals. The Chotanagpur and Santhal Pargana areas have been conferred with some measure of autonomy by the Jharkhand Area Autonomous Council Act 1994. Even so, significant tribal areas in the Chotanagpur and Santhal Parganas such as in Palamau and Hazaribagh districts, remain unscheduled and thereby excluded from the constitutional safeguards.

In 1992, Parliament in its Seventy Third Constitutional Amendment, made far reaching changes and provisions for local self government (Panchayati Raj) at the village level. However, Parliament excluded the scheduled areas notified as per the Fifth Schedule from the changed provisions of local self government. Panchayats are traditional village councils, and after Indian independence, they were modified with democratic and electoral mechanisms. However, the problem with Panchayat in tribal areas was that it was an imposed concept and disregarded the traditional indigenous system. Recognition of the imposed system by the government gradually weakened the indigenous systems but they did not totally die out.

Disregarding provisions for excluding scheduled areas, the Bihar Assembly extended the Bihar Panchayat Raj Act of 1993 to be applicable also to its scheduled areas. This took place in spite of the fact that, traditionally indigenous and tribal economy, policy, culture and social set-up in Jharkhand has been counterpoised and in contradiction with the caste society of Bihar. Incidentally, Mr. Laloo Prasad Yadav, the Chief Minister of Bihar has gone on record as saying that: "Jharkhand will be build over my dead body".

In response to the Act, separate written petitions were filed in the High Court of Patna, and its Ranch Bench, amongst them one

by Mr. Basudeo Besra and Jharkhandis' Organisation for Human Rights (JOHAR). The Patna High Court on 22.12.95 "...held that the Bihar Panchayat Raj Act, 1993 shall not apply to the Scheduled Areas... and we restrain the respondents from holding the elections for Panchayats in the Scheduled Areas".

In the JOHAR Writ Petition the Ranchi Bench upheld the Patna judgement. However, the Judgement does not exclude the unscheduled areas in Jharkhand from this 1993 Act. This is further absurd, when we note that the Darjeeling Gorkha Hill Council (DGHC) has been given the benefit of exclusion. The DGHC area is not a predominantly tribal area nor does it fall within the Fifth or Sixth Schedules, being rather a recent creation on the Indian political landscape after sporadic and violent agitation. And, if the DGHC can be conferred the benefit of exclusion then a rationale for including the non-scheduled areas of Jharkhand in the ambit of the 1993, Act fails to be seen.

Meanwhile, in pursuance of the Constitution's Seventy Third Amendment different footing for scheduled areas, "The Committee of Members of Parliament and Experts constituted to make recommendations in law Concerning Extension of Provisions of the Constitution (Seventy third Amendment) Act 1992 to Scheduled areas" has submitted "...that customary law, traditional practices, community ethos, etc, should prevail whatever political legal administrative structures are brought into being in Scheduled Areas and Tribal areas" and "...that in any system that is proposed the traditional systems are allowed to play their due role".

The tribals and indigenous peoples of India await and watch whether India lives up to its own Seventy Third Constitutional Amendment in the spirit of the Constitutional safeguard for tribals which it itself lays down.

Kerala

The land struggles declared on 26 January, 1994 by the Adivasi organisations under the Joint Struggle Committee formed to carry forward the struggle in Kerala to implement the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Land) Act of 1975 and the Kerala Private Forest (Vesting and Assignment) Act of 1972 made steady progress. Under the Kerala Scheduled Tribes Act, all transactions of Adivasi lands to non-Adivasis during the period 1960 to 1982 are to be nullified and lands restored

to the original owner. 8553 applications have been filed under this for restoration of land.

The Act also restricts the transfer of land from Adivasi to non-Adivasi from 1982. This Act is yet to be implemented by the government, despite a High Court order to do so. The government has declared that the Act itself is to be modified acquiescing to the pressure of the migrants. The Kerala Private Forest Act, however, stipulates that about 23,000 hectares are to be distributed amongst the landless Adivasis but this too remains unimplemented and the major portion of the identified lands are controlled by the government. The occupation of the Cheengery Project land of 528 acres (which ought to have been distributed to the Adivasis long ago) on January 26, 1995 was broken up by the government by mass arrests of Adivasis on 7 February. On 5 March, 76 families took over another piece of land at Panavalli which was controlled by the government, put up huts and began cultivating the land.

Despite the burning down of huts by the officials and subsequent arrest of more than a hundred men, women and children on 3 April, the people continue to hold on to the lands. In August, a state-wide campaign on the issue of lands and land struggles was carried out successfully. The mainstream political parties of all hues continued their opposition to the land struggles of the Adivasis threatening bloodshed. The government is toying with the idea of giving one acre of land to the Adivasis along with a sum in cash instead of implementing the Acts which are to some extent protective of the land rights of the Adivasis. While this is the situation in Wayanad district which has the largest concentration of Adivasis in Kerala, in Atttapadi of Palakkad district the revolutionary Communist Party of India (Marxist-Leninist) called 'Red Flag' has launched a land struggle attempting to take over land at Varagamadi village which the authorities themselves had decided to take from the non-Adivasis but had not yet done so. On January 10, 1996 the Police and para-military force swooped down and arrested the leaders who were addressing a public meeting at Palakkad. And two days later many who had attempted to march to the identified land were arrested by the Police who had spread over the area in large numbers to strike terror. Despite this, entry to the land was made. The Communist Party intends to intensify and spread the Adivasi land struggles in Kerala.

Tamilnadu

The state has a population of over half-a-million Scheduled Tribes constituting 1 per cent of the population. Though land alienation has been rampant like the district of Nilgiri where the tea and coffee plantations of the big companies have been spreading like a virus, there is no protective legislation as in the neighbouring state of Kerala. This can primarily be attributed to the lack of any revolutionary left movements in Adivasi areas of Tamilnadu to provide the political impulse, as there is in the state of Kerala.

In the past few years, the Adivasi villages bordering Tamilnadu and Karnataka states have been caught in the crossfire between the elusive smuggler and fugitive, Veerappan, and his gang, and the Special Task Force (STF) constituted by the police and the para-military forces specifically to nab them. Murder, rape and robbery of Adivasis by STF have been a common phenomenon. The STF atrocities in Chinnampathy village of Coimbatore district on June 11, 1994 with allegations of rape of Adivasi women and assault of men aroused sharp protests especially by the women's wing of the Communist Part of India. Consequently the government ordered a judicial probe headed by Judge Ms. Bhanumathy, with the victims tactically supported by the Peoples' Union For Civil Liberties of Tamilnadu, which indicted the STF of rape and assault as well as the district administration, the police and the elected people's representative to the state assembly for attempting to suppress the facts. However, the government decided on May 3, 1995 to provide compensation of Rs.100,000 to each of the two Adivasi women victims of rape and gave compensation to the injured as well. No action was taken to identify and proceed against the culprits in uniform. Even this, in a state known euphemistically as a police state, has acted as a deterrent to the STF who continue unsuccessfully their combing operations to capture Veerappan.

Adivasi rights to survival in their homelands has been systematically snuffed out in the Wild Life Sanctuaries constituted under the Wild Life Protection Act of 1972 as in Mudumalai and the Indira Gandhi Wild Life Sanctuaries in Western Ghats. With tourism projected to be the biggest industry in Tamilnadu by 2000, projects for eco-tourism development by private business and resorts have been on the rise and Adivasi lands being grabbed. The Coimbatore Zoological Park (CZP), supported by the Zoo Outreach Organisation, both NGOs, have been attempting to take over about 400

acres of Adivasi lands in Thoovaipathy in Coimbatore District bordering Kerala. Interestingly, prestigious institutions as the International Union for Conservation of Nature, WWF, International Union of Directors of Zoological Parks, the British Airways, Rotary International etc. are in some way or other linked to its promotion. Slated to be the first privately owned zoological park in the country and the best in the world, promoted by unscrupulous businessmen and industrialists, there have been demonstrations by Adivasis accusing them of atrocities, land grabbing, false cases, etc. Their activities especially in relation to land grabbing was probed by the fact finding team of the Peoples' Union for Civil Rights of Tamilnadu in August 1994 as well as by FIAN International - a human rights organisation headquartered in Germany. FIAN initiated a campaign against the CZP. The Adivasis demolished the CZP fence and retook Poramboke (government) land (which the CZP had illegally taken over from Adivasis in mid-1994) in July, 1995 thus intensifying the direct confrontation.

After the call by the National Front for Adivasi Self-Rule for civil disobedience in October 2, 1995, a state level campaign was launched in mid-November of 1995 on the issue of self-rule initiated by the Joint Council for Tribal Associations - a forum of Tamilnadu NGOs involved in tribal development. A rally of about 10,000 Adivasis from Tamilnadu was held on December 2, 1995 demanding that all Adivasi villages be scheduled under the 5th Schedule of Article 244 and the enactment of law as per the Bhuria Committee Recommendations for the 5th Schedule areas.

Karnataka

The Karnataka State Moolanivasi Budakatu Janara Vedike (Karnatak State Indigenous Peoples' Forum) decided in October, 1995 that they would enter the reserved forests and national park areas to collect minor forest produce on November 22 in their bid to establish their self-rule. This decision was subsequent to a systematic campaign and rallies demanding self-rule. The government responded in its characteristic fashion threatening arrests to prevent those who would be collecting the minor forest produce as they do not possess the requisite legal permission. Despite the threat and massive deployment of police and forest officials, the Adivasis entered the forests in a number of places in hundreds, made their customary offering to the spirits of the forests and

symbolically collected the minor forest produce. The police forces and the forest officials did not resist this symbolic gesture of self-rule and thus avoided a direct confrontation.

NEPAL

Nepal is a multi-ethnic, multi-lingual, multi-religious and multi-cultural country. Linguistically, Nepali people are divided into four language groups: Indo-Aryans, Tibeto-Burman, Dravians and Austro-Asiatic speaking peoples. These linguistic divisions are also reflected in the social structure in that the Indo-Aryan-speakers are Jat (caste)-based (vertical status differentiation) and the Tibeto-Burmans are mostly tribal (Jati/Nationality), i.e. spatial or horizontal groupings. The conjectural history substantiated by geological and anthropological studies suggest that the Tibeto-Burman-speaking peoples were the first settlers of Nepal. The indigenous descendants of these settlers are known as *Aadibasi / Janajati* in Nepali. Today they comprise the *Bhote (Dolwa, Manage, Holonge, Topkegola, Byansi, etc.)*, *Sherpa, Hyolmu* and *Thakali (Lhopa, Bara Conle, Marphali, Tangbe, Chimtan, Syantan, Siyar, Thintan, etc.)*, in the Mountain area; *Chepang, Gurung (Tamu), Jirel, Lepcha, Limbu, Magar, Newar, Rai, Sunuwar, Tamang, Thami, Dura, Chhantyal, Pahari, Kusunda, Hayu*, in the Hill area; the *Bote (Majhi, Kuswar, Daral), Kumal, Raute, Damuwar, Raji* in the Inner-Terai (inner plains); and the *Dhimal, Gangai, Koche (Rajbashi, Tajpuriya), Meche, Kissan* and *Tharu* in the Terai (plains). Two groups; *Satar* and *Jhangad (Diayidian)* also live on the plains. These indigenous peoples live in different parts of the country and retain a strong sense of their distinct cultures, the most salient feature of which is a special relationship to the land. They range from hunters (nomads) and forest dwellers to urban dwellers who participate fully in the national society. Religiously, they are either Buddhists or animists.

Some of the Janajati indigenous peoples were organized long before the 1990 Peoples Movements. The representatives of these organizations together founded the Nepal Federation of Nationalities (NEFEN) in 1990 with the objective to coordinate, direct and lead the Janajati Peoples' organizations for their common cause. The objectives of NEFEN are two folds; its main objective is to empower indigenous peoples so that they lead a full life with

dignity and play a critical role in the development of the nation. The operational objectives are to raise public awareness of all international human rights, to promote human rights, minority rights and indigenous peoples' rights and to undertake activities that will ensure special protection and development for the disappearing indigenous peoples and national minorities from the state. At present NEFEN is represented by 23 indigenous peoples' organisations. They are as follows:

1. Members: Chhantyal Pariwar Sangha (Chhantyal People)
2. " Danuwar Jagaran Samiti (Danuwar People)
3. " Dhimal Bikas Kendra (Dhimal People)
4. " Dura Sewa Samal (Dura People)
5. " Jirel Samudaya Utthan Sangha (Dhimal People)
6. " Kirant Ral Yayokkha (Ral People)
7. " Kirant Yakthung Chumlung (Limbu People)
8. " Meche Samaj Sibiyari Aafat (Meche People)
9. " Nepal Bhasha Mangka Khala (Newar People)
10. " Nepal Hyolmo Samaj (Hyolmo People)
11. " Nepal Kushwar (Majhi) Sangha (Majhi People)
12. " Nepal Magar Sangha (Magar People)
13. " Nepal Tamang Ghedung (Tamang People)
14. " Niko Thami Sewa Samiti (Thami People)
15. " Rajbanshi Bhasha Prachar Samiti (Rajbanshi People)
16. " Sunuwar Sewa Samaj (Sunuwar People)
17. " Tamu Bandha Sewa Samiti (Gurung People)
18. " Thakali Sewa Samiti (Thakali people)
19. " Tharu Kalyankarini Sbjha (Tharu People)
20. " Yhambu Shyarwa Chichhog (Sherpa People)
21. " Nepal Jhangad (Urab) Kodem sudrara (Jhangad People)
22. " Nepal Chepang Chyoksna sangha (Chepang People)
23. Assoc. Members: Kirant Dharma and Sahitya Utthan Sangha

NEFEN, through its Second Congress in 1994 and National Consultation on Indigenous Peoples of Nepal held in March 1994 organised by National Committee for International Decade for the Worlds' Indigenous Peoples (formed at people level) together with Asia Indigenous Peoples Pact (AIPP), has identified two types of problems and proposed possible solutions and an action-plan: Type 1 to be fulfilled by NEFEN and Type II to be fulfilled by His Majesty's Government. The NEFEN proposal to be fulfilled by the Government is as follows:

1. To recognise the definition of indigenous peoples and their rights as spelled out by the National Consultation of the Indigenous Peoples of Nepal in 1994.
2. To establish 'Central Institute of Nationalities' for the development of indigenous religion, languages and cultures and 'Development Council for Nationalities' for the Socio-Economic upliftment of Nationalities to formulate plan, policy and programmes; and
3. To seek ways of power sharing with indigenous peoples by establishing self-rule and autonomy at local level and House of Nationalities (upper House of Parliament) instead of National Council of Parliament.

NEFEN had proposed that the Nepali Congress Government formed a 'National Committee for the International Year for the Worlds' Indigenous Peoples' at the Government level in 1992 in correspondance with the United Nations' call. Due to the Government's unwillingness, a National Committee for the International Year for the World Indigenous Peoples at a Peoples' level was formed. After the lapse of six months of the International Year 1993 and one week before the World Conference on Human Rights to be held in Vienna, the Nepalese Government also formed a National Committee for the Indigenous Peoples Year but did nothing except a workshop. At the beginning of the UN Decade NEFEN also proposed that the Government form a 'Decade Committee for Indigenous Peoples' and a 'National Committee for the International Year of the Worlds' Indigenous Peoples'. The Communist Party of Nepal United Marxist-Leninist (CPN-UML) Government formed a National Committee for the Indigenous Decade but it stopped functioning along with the fall of the UML Government. The present Coalition Government of three parties headed by Nepali Congress came into power in October 1995. This Government has not yet convened a single meeting of the Decade Committee. But it did appoint a Task Force in order to receive suggestions on founding an 'Academy for the Upliftment of Janajati Peoples'. The task force has already submitted its Report to the government. It is not certain that the Government will implement the report. One of the positive aspects of the report is that it has adopted the definition of Janajati Peoples (indigenous peoples) as

defined by NEFEN and the National Committee of the Indigenous Peoples of Nepal.

Amidst mass protest the present constitution has reconfirmed Nepal as a Hindu State. There are many implications of a Hindu State, for instance the Brahmin Caste (upper caste of ruling groups) students have been monopolising Sanskrit education, a source of Hindu religion, from schooling to University with free lodgings, food and stipend while indigenous peoples' children are not getting even a free compulsory basic education. Despite the existence of the free Sanskrit University for high caste Brahmins, the Nepali Congress Government introduced Sanskrit education in general High School level education as a compulsory subject and the UML Government introduced radio news in Sanskrit language. Since the first day news was broadcast in Sanskrit through Government media, NEFEN has been agitating against compulsory Sanskrit education and radio news in Sanskrit. NEFEN gave a memorandum to UML Prime Minister urging it to withdraw compulsory Sanskrit education from the curriculum and to stop Sanskrit news through Radio Nepal because:

1. No family speaks Sanskrit at home so it is a dead language
2. Sanskrit is the source and means of Hinduisation
3. Sanskrit has no connection with the languages of indigenous peoples as Sanskrit belongs to the Indo-European language family whereas indigenous peoples' languages belong to the Sino-Tibet/Tibeto-Burman family.
4. No one would be deprived of the right to information if it was not given in Sanskrit language.
5. There are still many communities who do not understand the news broadcast in Khas-Nepali (so-called national and official language) and other media used languages.

Instead of Sanskrit education and language, the indigenous peoples of Nepal want education in their mother-tongue, and radio news in their own indigenous languages. NEFEN also demanded that the Sanskrit University should be transformed into a multi-lingual university and that university should be free to every community whether they are Hindus or Buddhists or Janajatis. Due to the constant pressure from NEFEN, the UML Government had formed a Task Force to resolve the Sanskrit dispute. This task force had

prepared a report but the present Government did not accept it. The Sanskrit education and the radio news is still going on.

Likewise NEFEN had to play a defensive role while the Hindu fundamentalists called for 'Close Nepal'. NEFEN had strongly opposed the Hindu fundamentalists and had received very good support from the people. The Hindu fundamentalists failed to 'close Nepal' and were compelled to stop their movement.

Apart from seeking recognition and asserting the rights of the indigenous peoples, NEFEN is actively seeking ways and means of alternative development which could be suitable for indigenous peoples. NEFEN has worked with Cultural Survival Canada on a project called 'Alternative Economics of Indigenous Women'.

NEFEN is seeking ways to document the traditional knowledge and wisdom and the culture of indigenous peoples. NEFEN has established a relationship with the Asia Indigenous Peoples Pact (AIPP), the Indigenous Peoples' Biodiversity Network (IPBN), and Indigenous Peoples of the Tropical Rainforest.

CHITTAGONG HILL TRACTS

The February 1996 general elections did not yield definitive results. The prevailing unrest has not been conducive to peace and stability in the country as a whole, and the situation of the indigenous people of the Chittagong Hill Tracts has not improved. The Special Affairs Division of the Prime Minister's Cabinet retains overall responsibility for Hill Tracts affairs; an indication of the sensitivity of the Hill Tracts issue. The area remains closed to foreigners and prior permission from the Special Affairs Division is required to be allowed entry to the Hill Tracts at the military check posts stationed at the internal border to the Hill Tracts.

Negotiations

The negotiations of the Bangladesh Government and the Jana Samhati Samiti (JSS) have been discontinued as a result of the present political crisis. The principal demand of the JSS is for regional autonomy within the framework of the national constitution. Since the dialogue between the JSS and Government was initiated in November 1992, no substantial progress has been achieved with the exception of a cease-fire in place until 31 March. No dates have been set for the next round of talks.

An analysis of the negotiations leads one to question the sincerity of the Government's intent to agree a settlement to the conflict. There is a noticeable lack of will to place indigenous issues firmly on the national political agenda as a top priority. The National Committee on Chittagong Hill Tracts - *Parbatya Chattagram Samkranto Jatiyo Committee* with Col. Oli Ahmed the (then) Communications Minister as its president has been conducting the negotiations. This task has now been delegated to a Sub-Committee lead by Rashed Khan Menon, General Secretary of the Bangladesh Workers Party.

What is significant is that the dialogue is seen as a catalyst towards the securing of a lasting and durable peace in the Hill Tracts with full recognition of the rights of the indigenous peoples.

Influence of the Security Forces

Although Bangladesh is a democratic state, the influence of the armed forces within the Hill Tracts region is pervasive. There are civilian authorities in place, including the Deputy Commissioners and the three District Councils functional since 1989, yet to all intents and purposes the actual power is in the hands of the security forces. Their sphere of influence and involvement is not contained to counter-insurgency measures, the original reason for their presence in the Hill Tracts, but spills over into other aspects of civil society. For instance a certificate is required from the General Officer Commanding for entry into some educational institutions. The authority of the District Councils on the other hand is limited to routine administrative matters.

Although it is difficult to obtain statistical data of the exact number of security forces stationed in the area, local estimates calculate this to be on a ratio of 1:6 with one security personnel for every six civilians. To date, there has not been any noticeable reduction in the number of security forces present in the Hill Tracts. To the contrary, there are reports that the military continues to expand its operational base in the Hill Tracts and that new camps have been established in the region including at Matiranga and Dighinala.

A more significant development are well-founded reports indicating that the military has been entering into lease agreements with indigenous land owners up to the year 2000. The rent offered is well below the market price, and little or no compensation is paid

for any existing structures or crops and fruit trees. The indigenous people are not in a position to negotiate better terms and conditions or to refuse to accept the tendered rent.

Human Rights Abuses

Detailed reports of human rights abuses by security forces continue to be received. The Special Rapporteur on the Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in particular: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Nigel S. Rodley reports "that he had continued to receive reports of torture and rape by members of the military and paramilitary forces against tribal people in the Chittagong Hill Tracts" (details in UN Document No. E/CN.4/1995/34).

One of the most disturbing developments of 1995 was the creation of an organised group of indigenous and bengali youths - *Pahari Chattra Parishad, Pahari Gana Parishad-er Shantras Protirod Committee - PCP-PGP-SPC* (Hill Peoples Council, Hill Students Council Terrorism Resistance Committee). Known locally as the *Mukhosh Bahini* or Masked Force from the masks they wore during a procession, the thrust of their activities is to disrupt any peaceful initiatives of the indigenous peoples towards regional autonomy. And in particular the activities and events of the Hill Students Council, the Hill Peoples' Council, and the Hill Women's Federation. There are allegations that this group was established as a counter organisation to the Hill Peoples and Hill Students Councils as its name denotes.

The major operational area of the PCP-PGP-SPC is the town of Khagrachari, Khagrachari Hill District. There are reports of harassment, intimidation, assault and arson including the destruction of a local library in December 1995. On 7 March 1996, there are reports of an attack on the house of a Hill Peoples' Council leader. Further, that during the ensuing confrontation between the indigenous people who had come to help the HPC leader, and the *Mukhosh Bahini*, three people were killed, including Amar Bikash Chakma. There were demonstrations against these extra-judicial killings in Dhaka on 9 March, and in Khagrachari on 10 March 1996 in front of the Deputy Commissioner's office.

The members of this group are reported to be armed. The local authorities, including the Deputy Commissioner and the police,

indicate their inability to take effective preventive action against this group. And there are allegations that the PCP PPG SPS has the support, including financial assistance, of high level authorities. Some sources go so far as to allege the armed forces are also involved.

In addition, there are continuing reports of extrajudicial killings and forced detention by the security forces stationed in the Hill Tracts. Recent events indicate that the violence and harassment against the indigenous people, in particular the students, has escalated. On 31 March 1996, a young student named Kyajai Marma, was reportedly shot dead by the armed forces. This incident occurred during a protest march of the Hill Students Council and the Hill Peoples Council to demonstrate against the arrest without warrant on 30 March of Cha Thwai Prue Marma, a central committee member of the Hill Peoples Council.

When the indigenous people, including members of the HSC and the HPC, led a procession to mourn the death of Kyajai Marma, the police are reported to have attacked the demonstrators with batons and taken the corpse away. A large number of people (some say as many as 50) are reported to have been injured, three seriously. Two persons are reported to have been arrested including a member of the Hill Peoples Council, namely Subhashish Chakma.

Land Issues

The issue of land is crucial for all indigenous people, and the Jummas are no exception. During successive administrations a number of programmes have been implemented, without any consultation with the people concerned, with disastrous consequences on the land and resource base of the indigenous people of the Hill Tracts. The first one was the construction of the Kaptai hydro-electric dam in the 1960s. The dam submerged 40 per cent of the land base of the Hill Tracts, and displaced 100,000 people. The rehabilitation and resettlement measures were inadequate and the compensation offered, in cash and in land, grossly inappropriate.

The population transfer policy of the Government (1979-84/85) whereby some 450,000 plains people were brought into the Hill Tracts region from the plains areas also resulted in mass displacement of the indigenous people, internally and externally. The settler families were provided with lands which legally belonged to the indigenous people. This process of land loss continues today.

Another measure which further exacerbates the problem of a diminishing subsistence base for the indigenous people are the afforestation programmes of the Government. In 1992, the Ministry of Environment and Forests initiated a process of creating Reserve Forests in the Hill Tracts area (Bangladesh Gazette 21 May 1992). This will effectively place 86,000 acres in Rangamati District, 37,387 acres in Khagrachari District and 7,389 acres in Bandarban District outside the use and management of the indigenous people in addition to displacing the families living within the areas.

The practical effect of the afforestation programmes is to criminalize the traditional gathering activities of the indigenous people living within the designated areas. On 18 January 1996, the *Bhorer Kagaj* a national newspaper, reported that in a press conference in Rangamati on 13 January 1996, local headmen and villagers complained that the Forest Department officials had arrested, detained and charged a large number of indigenous persons for allegedly stealing forest produce, many of them falsely. The villagers alleged that many of the people charged were either dead or no longer resident in that area.

In implementing this measure, there were no mechanisms of consultation with the indigenous people or their headmen and traditional chiefs as required by the CHT Manual (Regulation 1 of 1900). In addition, Section 64 of the District Council Acts (19, 20 and 21 of 1989) states that the prior permission of the District Councils is required for all settlements and transfers of land. It is relevant to note that although the District Councils have been functional since 1989, the involvement of the Councils in land and related matters is non-existent. Land is not within the list of subjects transferred to the jurisdiction of the Councils up to today. Their authority is limited to routine administrative matters, such as staff reports etc., with few decision-making powers of any significance.

Representations demanding cancellation of the afforestation order were made to the relevant minister by indigenous people and their leaders including by the Chakma Chief Raja Devasish Roy, Dipankar Talukdar, the Member of Parliament from Rangamati and the villagers of Betbunia-Kashkhali. To date the Government has not taken any measures to address the concerns of the indigenous people.

The Government has not yet implemented its plans to conduct a cadastral survey of the Hill Tracts region. This decision caused great concern among the indigenous inhabitants of the area whose main cause for concern was that this would legitimise the illegal land holdings of the settlers occupying indigenous lands. However, the Government has stated its intention to initiate the cadastral survey commencing with the Bandarban Hill District.

A cadastral survey if conducted prior to resolving the question of land rights in the area, and without a political settlement of the situation as a whole would be detrimental to the interests of the indigenous people. In addition, if initiated before the refugees who are remaining in the camps in India have had the opportunity to claim their lands, this would aggravate an already complex situation further.

Refugees

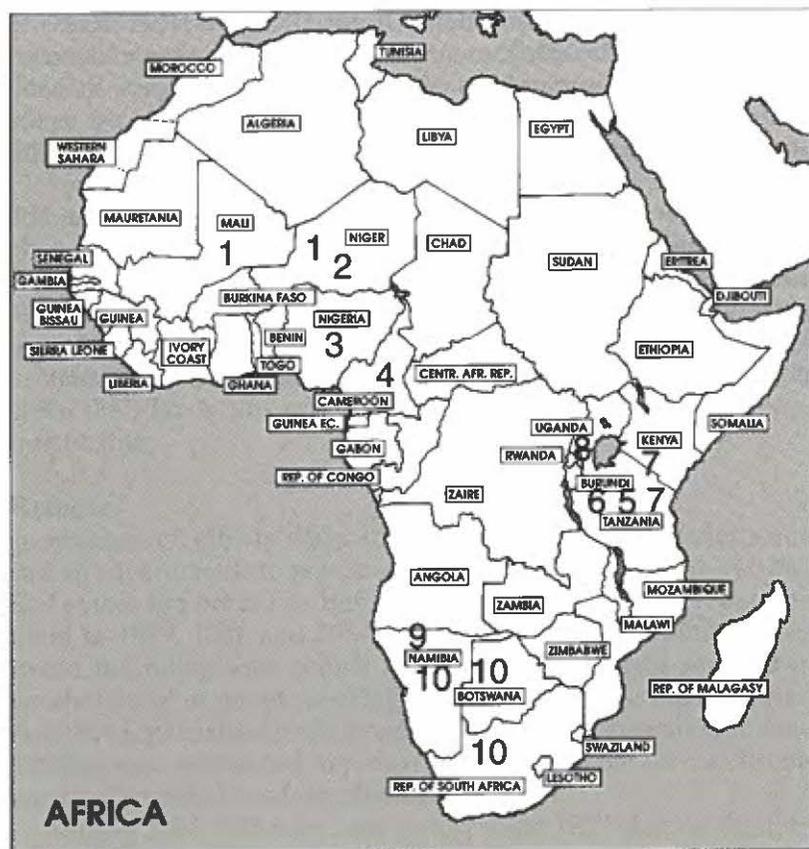
A number of efforts were undertaken by the Bangladesh and Indian governments to repatriate the over 50,000 refugees who had fled across the border to India. Attempts were made to repatriate them in 1979, 1981 and 1984 but each violent confrontation between the indigenous people and the security forces resulted in another wave of people seeking refuge in neighbouring countries. Another repatriation process was begun in 1994, and some Jumma families were persuaded to return mainly due to the severe curtailments of essential food supplies in the camps.

During 1994 (February and April) some 1027 *Jumma* families returned to the Hill Tracts on the strength of a 16 point deal agreed with the Bangladesh Government. However, the Government reneged on this agreement and substituted a weaker 19-point package. The conditions of this agreement were not met, and the refugees did not get back their lands, their jobs and other facilities as promised. Many found their lands to have been allocated to plains settlers as part of the incentives of the population transfer programme, who refused to give these lands back. However, some Jumma refugees did receive their lands back but found them to be within settler colonies and therefore difficult to occupy as a result of the ethnic tension between the settler communities and the indigenous people.

The refugees remaining in India are reluctant to return as a result of these reports. Although the conditions in these camps are

appalling, the state authorities will not allow UNHCR access to these refugees. The refugees and their leaders have been demanding international supervision of the repatriation process. It is relevant to note that Bangladesh has allowed UNHCR access to the Rohingya refugees who are in camps in parts of southern Hill Tracts.

Thus, it is apparent that the situation of the Jummas of the Hill Tracts remains grave and that both their life and their property continues to be threatened. With the increasing attention being given to indigenous rights within the framework of the Decade for Indigenous Peoples, effective measures to secure a durable and negotiated settlement to the crisis in the Hill Tracts is essential.



- | | |
|-------------|-------------|
| 1. Tuareg | 6. Hadza |
| 2. Toubous | 7. Maasai |
| 3. Ogoni | 8. Twa |
| 4. Mbororo | 9. Himba |
| 5. Barabaig | 10. San/Kwe |

AFRICA

MALI

In 1990, *Tuaregs* in Mali and Niger took up arms against the governments of both countries. Since then, peace treaties have been signed by both Tuareg rebel groups and the respective governments and have been violated by Tuareg and *Moor* groups involved in the rebellion as well as by the governments.

From a Spiral of Interethnic Violence to Qualified Optimism

Towards the end of 1994 and during the first part of 1995 the situation seemed particularly bleak in Northern Mali which had entered into a spiral of violence. Until then, the conflict in the northern regions of the country had been primarily between the Tuaregs and Moors on the one side, and the Malian government and army on the other. Killings, rapes and even massacres of Tuareg and Moor civilians spread panic and large numbers fled to Algeria, Mauritania and Burkina Faso, where many still live in refugee camps.

At the end of 1994 and the beginning of 1995 the conflict took on a more ethnic character. A movement called the *Mouvement Patriotique Ganda Koy* (the Patriotic Movement of the Masters of the Land), consisting mainly of Songhays and with close ties to the Malian army, grew in strength and importance. The Songhays are agricultural pastoralists living in the Niger valley. They have long history of complex and hostile relations with the Tuaregs. The former slaves of the Tuaregs, the Bellah, also organised themselves in a movement of some strength called the *Mouvement pour l'éveil du monde Belah* (Movement for the Awakening of the Bellah World). During the rebellion, Fulanis also organised in a movement called *Lafia*, operating in the Niger Delta, to the south of the main Tuareg/Moor and Songhay areas of influence. Several attacks and killings of civilians took place, primarily between Moors/Tuaregs and Songhays. The increasing inter-ethnic violence also had racial

undertones and was increasingly presented in the Malian media as a conflict between 'reds' or 'whites' (Tuaregs and Moors) on the one side and 'blacks' (Southern Malians, the Malian government and army, the Songhay, the Belah) on the other.

Then, during the first half of 1995, the situation changed from giving cause for alarm into being more hopeful. One of the reasons for this seems to have been grassroots initiatives from people tired of war and unrest. A Songhay elder took the initiative at a local meeting between conflicting parties and the local Songhay population agreed to accept the return of Tuaregs with their goods to the village's markets. The idea of local peace agreements spread throughout much of the northern part of Mali, and meetings re-established commercial relations between different ethnic groups. The violence and fear also diminished.

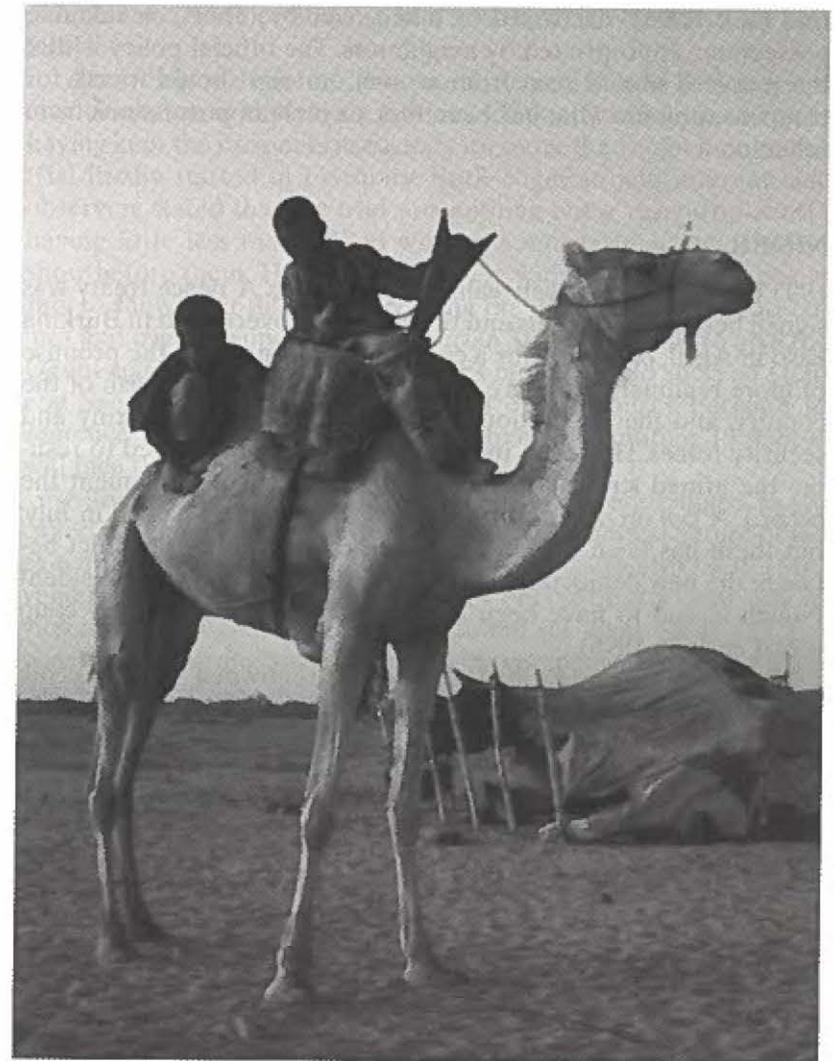
A large meeting was held in Timbuktu in July, at which leaders of different movements, Malian authorities, representatives from different countries following the conflict and NGOs were represented. The aim of the meeting was to speed up the peace process in Northern Mali. Three central concerns were: 1) the reinstatement of the Malian administration in the North, 2) the return of Tuareg and Moor refugees and 3) the reintegration of Tuareg and Moor rebels into the Malian army.

Towards the end of 1995, at least 6 local reconciliation meetings have been held in Northern Mali. All groups implicated in the conflict were represented, and the results seem promising. Moreover, the meetings have contributed to the decentralisation process taking place throughout Mali, instigated by the new democratic government.

The Refugee Problem

A generally held view in Mali is that the peace cannot be said to have returned as long as the refugees have not returned and been reintegrated. At the end of 1995, some 10,300 refugees were said to still be in Algeria, possibly as many as 70,000 in Mauritania, while in Burkina Faso the number dropped from 38,000 (in May/June) to a few thousand.

Refugees return in two ways; either trickling back in a 'spontaneous' way, or taking part in the planned return schemes of the UN High Commission for Refugees (UNHCR). At the end of 1995, only about 550 persons have taken part in the planned return



Two nomadic Tuareg boys playing on a camel. The family's tent is in the background. Photo: Gunnvor Berge

schemes, which at that time were suffering from what seems to have been the embezzlement of funds. However, as many as 2000 are said to have returned spontaneously. The homecoming of refugees creates a highly tense and unstable situation as many return to

find their homes destroyed or taken over by others, or valuable possessions appropriated by neighbours. The official policy is that the refugees should start from scratch; no one should ask for compensation for what has been lost, or reclaim possessions from others.

NIGER

1995 has been a relatively calm year in Niger. A peace treaty was signed between the rebels and the Nigerian government in Burkina Faso in April, providing for a cease fire, disarmament, the promise of more regional autonomy and development for the north of the country, and the integration of *Tuareg* rebels into the army and security forces. However, in September rebels threatened to resume the armed struggle if the government did not implement the accord. A law on decentralisation was to have been passed in July, but there has been a deadlock in the country due to conflict between the new democratically elected president and vice president (which is said to have been the main cause of the military coup d'état early in 1996).

Two central Tuareg leaders, one the renowned Mano Dayak author of two books on the Tuareg situation, died in an air crash in Niger in December, 1995. The accident is under investigation.

Towards the end of 1995, the *Toubous* took carried out two armed attacks, demanding control of their own desert state. The *Toubous* are another nomadic people in Niger living to the east of the Tuaregs and towards lake Chad.

NIGERIA

1995 was a dramatic year for the *Ogoni* people of South-Eastern Nigeria. Having experienced a massive clamp down from the Nigerian army in 1993-94, causing the death of some 2,000 people, the destruction of more than 20 villages and leaving at least 100,000 people homeless on their own land, the suffering of the *Ogoni* people was severely worsened when the Nigerian military authorities decided to execute *Ogoni* leader Ken Saro-Wiwa and eight other *Ogoni* activists by hanging on the 10th of November 1995. The nine were on trial for allegedly having instigated the murder of four

prominent *Ogoni* politicians less hostile to government in May 1994.

According to Nigerian law, murder cases should be tried in a civil court, but in this case a military tribunal was set up and after having kept the prisoners in custody for more than eight months the trial finally started in February. Both Nigerian and international observers stated that the trial was nothing but a 'cangaroo-court', having little less than bribed witnesses and falsified evidence to show before them. The defence lawyers withdrew from the case in July to show their dismay concerning the illigimate court proceedings and tried to appeal to the Nigerian Supreme Court to give the *Ogoni* activists a fair trial. Before this motion could succeed General Sani Abacha however approved of the court's decision to sentence the nine *Ogoni* to death by hanging. Another 19 people will face the same charges in 1996.

Although Ken Saro-Wiwa and the others were hanged as so-called murderers there is little doubt as to the political nature of the executions. Saro-Wiwa and the *Ogoni* organisation MOSOP (Movement for the Survival of the *Ogoni* People) has fought a non-violent battle against the multi-national oil giant Shell and the Nigerian authorities since 1990, seeking compensation for the environmental destruction of their area and acknowledgement of their political rights as a minority. Some 30 billion dollars of crude oil has been extracted from the area since 1958 and continous gas-flares and regular blow outs have made life more or less unbearable in several parts of *Ogoni* land. In addition to this the people living on the land have virtually never received a single dollar neither from Shell nor from Nigerian authorities. These are, however, dangerous claims for the Nigerian government to acknowledge.

The oil-industry makes up 90 per cent of Nigeria's export income and the Nigerian economy is heavily dependent upon oil. Only in Rivers State (where the small *Ogoni* population of some 500,000 people is situated) there are some 20 ethnic minorities facing the same environmental degradation as the *Ogonis* and who would have just cause to claim the same rights as the *Ogonis* should their struggle succeed. The *Ogoni* people's quest for local self-determination, envisioned by Ken Saro-Wiwa as a separate state under the umbrella of the Nigerian federation, was not an easy pill for Nigerian authorities to swallow. The Nigerian military rulers are not yet ready to face the growing unrest among the many Nigerian

ethnic minorities (Nigeria is made up of some 200 ethnic groups and the actual federal model is promoting the three largest, the Yoruba, Hausa-Fulani and the Igbo).

CAMEROON

In October 1995 four leaders of the *Mbororo* cultural association Mboscuda were held in custody on political charges of defamation against a wealthy landowner in the North West Province of Cameroon. The four were temporarily released in November awaiting a possible trial in the beginning of 1996.

The landowner who raised charges against the Mboscuda leaders has for many years exploited the Mbororo population in the region both economically and politically. He is an influential individual in a politically turbulent region and is representing the political party in power.

The matter is one of great complexity and reflects both the human rights situation in Cameroon in general, the specific political situation in the English speaking regions of Cameroon (only two provinces are English speaking - the rest is Francophone) and the challenges the Mbororo cattle nomads are facing in their struggle to adjust to the modern Cameroonian state.

The Mbororo association Mboscuda was created in 1992 to help the Mbororos find viable answers to their marginalised position in the Cameroonian society. This includes ways of coping with the farmer/grazier conflicts that are becoming more and more frequent due to the population growth and the growing demand for land resources, but also ways of integrating Mbororos into the social and political life of the Cameroonian state - in terms of education, work possibilities and the creation of a forum that can speak on behalf of the dispersed Mbororo nomadic and semi-nomadic population.

Even if Mboscuda was formed as a *cultural association* and had no ambitions of becoming anything else, the matters of cultural importance to the Mbororos can easily be conceived of as political by their surroundings because they touch upon sensitive issues in the region. When the Mbororo start claiming their rights to grazing lands and water holes they become a threat to their sedentarised neighbours and even more so these days because the Mbororos themselves have also begun to settle. When the Mbororos are no longer willing to pose as supporters of the political party in power

they become a threat to the political position of the rich landowner who raised charges against the Mboscuda leaders. It does not help the Mboscuda leaders that they are living in a region perceived of as one of the most unstable political zones of Cameroon; the province's capital Bamenda is the stronghold of one of the most important political opposition leaders and also of the Anglophone separatist movement. If the authorities manage to link Mboscuda to either of the two (especially the non-authorized separatists) it could mean serious trouble for the organisation and their leaders.

TANZANIA

With the recent democratisation of politics in Tanzania, people's relations with government have changed. This is reflected in a growing number of private cases being successfully brought against the government for infringement of customary rights to land. To deal with this challenge to its authority, the government at first issued a number of Government Notices extinguishing customary rights to land in those areas where they were being contested. When these were declared illegal in the courts, the government then tried to legislate the problem away with the Regulation of Land Tenure (Establishment of Villages) Act of 1992. This in turn was declared unconstitutional in the case *Hon. Attorney General v. Akonaay & Lohay* (Civil Appeal No.31 of 1994).

The failure of government to assert its will in contravention of customary rights prompted a Presidential Commission of Inquiry into Land Matters that was followed by a review of land policy by the Ministry of Lands, Housing and Urban Development.

Land tenure insecurity remains a problem for minority peoples in Tanzania despite the proposed new national land policy. Calls for greater public control over land and more openness in its administration by government made by the Presidential Commission of Inquiry into Land Matters and endorsed by a national land policy workshop, have not been fully realised in the proposed National Land Policy of June 1995.

The policy does, however, propose to register customary titles, although this is to be entrusted to Village Councils and not Village Assemblies as recommended by the Commission. This is of particular concern to people who live in areas where village leaders do not represent their interests as is the case in many pastoral areas. An

intolerance of minority people is also reflected in proposed bans on shifting cultivation and nomadism.

Such proposals have fuelled a public debate that is covered by an expanding free press and it has also been stimulated by publication of a Kiswahili summary of the Commission's report. A pastoralist pressure group called the Pastoral Caucus has succeeded in gaining greater protection from alienation of their lands through the gazetting of pastoralist areas. However, the new policy has yet to be ratified by parliament, and land rights remain the major concern of indigenous minorities who continue to suffer from land alienation. Many such land cases are also associated with violations of human rights, including: harassment, beatings, impounding of livestock, summary exaction of fines for 'trespass', arbitrary arrest, and detainment without cause.

The long-standing dispute between *Barabaig* pastoralists and the government over the allocation of prime grazing land for a parastatal wheat scheme has not yet been resolved by the courts. The first of two cases has, however, been successfully concluded in the High Court (*Yoke Gwako & 5 Others v. NAFCO & Gawal Farm* - Civil Case No.52 of 1988). The judge ruled that the Barabaig were illegally dispossessed of their customary title by the government's agent, NAFCO. However, it was a hollow victory as the judge confined his judgement to only six out of 788 Plaintiffs on a procedural point, and then awarded them only paltry compensation. The case has gone to appeal on the grounds that the judge erred in not revoking the acquired title and granting the land back to the Barabaig.

Maasai leaders are also concerned about land grabbing by politicians and private entrepreneurs including foreign corporations who are leading what has been described in the national press as a 'scramble for Maasailand'. This has been stimulated by the liberalisation of the economy which has encouraged wealthy and politically powerful interests to acquire land by any means for commercial purposes. In Nabarera village in Simanjiro district alone, 40,000 acres of pasture land have been allocated to village leaders, senior civil servants and their relatives. MPs from Simanjiro and Kiteto districts each received plots in excess of 2,000 acres, as did the Lutheran Church.

Pastoralists have also been excluded from wildlife protection areas. For example, the eviction of *Maasai* and *Iparakuyu* residents from Mkomazi Game Reserve has provoked concerted resistance

and also caused them to take their case to court (*Kopera Keiya Kamunyu & 44 Others v. Minister for Tourism, Natural Resources, Director of Wildlife, Project Manager of Mkomazi Game Reserve* - Civil Case No.33 of 1995).

Indigenous residents of the Ngorongoro Conservation Area are complaining that the proposed new General Management Plan was drawn up without their full participation and therefore fails to take sufficient account of their needs. They are particularly concerned about a refusal to affirm their rights to land and plans to reimpose the ban on cultivation despite the fact that it is necessary for their survival and has made no major adverse impact on wildlife conservation.

In response to persecution and the alienation of their lands, minority groups have formed NGOs to defend their rights, better represent their interests and attract support for community development. There are now well over ten such organisations, and more are being registered all the time. Most have been formed by pastoral groups, although a group of *Hadza* hunter-gathers who live east of Lake Eyasi just south of Ngorongoro are represented by the organisation Mongo-wa-Mono.

Maasai and *Barabaig* pastoralists have formed PINGOs, a forum of pastoralist NGOs, with the aim of building solidarity among pastoral organisations, strengthening capacity in community development and acting as a civil pressure group on issues such as land alienation. PINGOs regards democracy and respect for human rights as necessary components of development, and has set an agenda for action that includes inter alia participation in the UN International Decade of the World's Indigenous Peoples, training on working with conflict, research, public awareness raising, human rights campaigning, provision of formal education, voter education, women and youth development.

Tanzania conducted its first multi-party elections in October 1995. Despite widespread opposition to the long time ruling party, Chama Cha Mapinduzi (CCM), it won an overall majority. Although it is widely acknowledged that the poll was neither entirely free nor fair, most observers believe the results broadly reflect the will of the people. Consistent with much of rural Tanzania, the CCM won a majority of seats in pastoral areas due to people voting for individuals rather than parties.

The new CCM government does not represent a major change from the past, but it does herald a fresh approach. One of new

President Mkapa's actions on taking office was to declare war on corruption that includes a crack down on bribery in the courts. He has also appointed 18 new faces to the Cabinet who tend to be younger and more professionally qualified than in the past. The Prime Minister, Frederick Sumaye, is also MP for Hanang and this may result in conditions improving for the Barabaig in that district. Progress with the new Land Policy may be positively affected by the appointment of a new Minister for Lands, Gideon Cheyo, who is a respected senior civil servant.

KENYA

Kenya has long been the focus of international criticism for its poor human rights record and lack of good government. Many of its excesses have until recently been overlooked by donors because of the country's strategic commercial and political ties in the West. Of particular concern is the political manipulation of the judiciary to serve the interests of government, and the victimisation of individuals and groups who expose corruption or oppose government. It has also been implicated in the enforced evictions of Rift valley residents, and the harassment of ethnic Somali refugees.

Like Tanzania, Kenya has also bowed to international pressure for political pluralism. In both countries the ruling parties have been re-elected, largely due to the failure of opposition parties to unite against them. Unfortunately, the government in Kenya has interpreted its reaffirmed mandate to suppress opposition through harassment and detention of opponents. Recent reports suggest that physical abuse and withholding of medical attention from detainees is a regular feature of political detention.

Kenya is bisected by the Rift Valley which is mainly occupied by pastoralist groups with the *Maasai* occupying the southern plains that straddle the border with Tanzania. Land tenure insecurity for pastoralists in Kenya stems from policies for the privatisation of property in a free market economy. This is compounded by a land market based on the principle of 'willing buyer willing seller'. The sub-division of communal pastoral lands has enabled prime land to be acquired by wealthy and politically well connected people to the detriment of indigenous residents.

The sub-division of Iloodoariak Trust Land (146,000 hectares of *Maasai* pastures at the foot of the Ngong hills about 80 kilometres

southwest of Nairobi in Rift Valley Province), for example, resulted in 362 non-residents acquiring title to 20,000 hectares to the exclusion of 1,200 residents. Beneficiaries included local officials and members of the business and political elite and their families, such as the wife of a government Minister.

In another ongoing case a group of *Loita Maasai* are in conflict with Narok County Council over the status of the sacred Loita forest (Naimina Enkiyio) in the southwest west of the country. The Council supported by the local MP and Minister for Local Government wishes to open it up for tourist development. The group have formed the Loita Naimina Enkiyio Conservation Trust to preserve the natural integrity of the forest by securing legal guardianship. It remains to be seen whether the issue can be resolved without any imposition by government.

Successful resolution of these cases and future prospects for indigenous peoples in Kenya very much depends on whether the KANU government can be forced into respecting the rule of law and tolerating informed opposition. Pastoralists are fortunate in being favoured by the President's allegiance to Rift Valley residents. However, corruption in high places can still thwart the rights of vulnerable groups. For example, direct appeals to the President by the Iloodoariak Community resulted in the Attorney General requesting that legislation be drawn up to resolve the land dispute without resort to the courts. Immediately thereafter a senior Minister implicated in the affair instructed a private lawyer to prepare counter legislation that would enable the government to show willing, but actually do nothing for the people of Iloodoariak. It remains to be seen which legislation will prevail.

RWANDA

"I am a widow...we decided to escape when we first heard the loud noises of guns. Ruhengiri was the place we ran to. The problems started when we came back from exile. Many of our people were thrown into prison by people saying we were interahamwe... we would like them back because the Twa people are very few, and therefore we need them back. Our pottery does not earn us enough money to survive... A long time ago our grandfathers used to hunt and brought us back some meat. The Twa were getting help from

the kings, like Rudahigwa. But this has changed now... our living conditions are very poor. Maybe this is happening to us because we are Twa."

This testimony was collected from an elderly *Twa* woman in Tambwe, Rwanda, June 1995, recounting her experiences of the war. Between April and July 1994 as many as 1 million Rwandan men, women and children were brutally murdered. These were mostly Tutsis. This comprises some 14% of the population and the death toll continues to mount as the country waits in desperation for the international world to aid them in their quest for justice.

In reports of the bloodshed, the international media have neglected mentioning the Twa, the third lowest class, caste or echelon of Rwandan society. This omission can be broadly attributed to the Twa's status in Rwandan society: that of a minority both numerically and politically. More specifically, the Twa have tended to be perceived as external to a political discourse in Rwanda which focused its attention on a conflict between two factions: the 'Hutu' and 'Tutsi'. This was mirrored by the international media. As an increasing amount of information has been gathered, it has become increasingly apparent that the Twa have been directly affected by the war and in some cases actually targeted as a community.

The Twa are one of the 'Pygmy' peoples of Central Africa and are recognised as the autochthonous population of the area of forest now called Rwanda. They are Banyarwandans, sharing the common language, religion and culture of the Rwandese people as a whole. However, their relationship with other colonising groups; the Hutu, Tutsi and Europeans has been one of ever greater loss of their natural habitat and integrity of their traditional mode of hunter-gathering subsistence.

Up until recently some Twa still lived by hunting and gathering in the few remaining forests of Rwanda. But apparently without exception all have now been forced into settlements without being offered adequate alternatives or compensation for the loss of their livelihood. Most of the major expulsions of Twa occurred in the last 35 years as a result of ill-informed and short-sighted western conservationists. In 1993, the World Rainforest Movement (WRM) witnessed the last of these hunting communities living in Nyungwe forest. The use of the forest as a military training ground during the recent war however, marked the final eviction and loss of this traditional way of life.

Fieldwork carried out in 1993, by WRM and the APB (Association Pour La Promotion Batwa) confirmed the dire and marginal situation of the Twa. The successive governments that have existed throughout Rwanda's recent history have neither provided the Twa with any security over land that they may have been allocated. Land theft or forced eviction are still common place occurrences. This has led to the Twa increasingly entering into dependency relations with their neighbours which are too often characterised by abuse. Other sources of income such as pottery, do not provide a reliable alternative livelihood. Too often the Twa are forced to beg or else exist on edge of starvation.

The Twa are an extreme case of former hunter-gatherers who have been subject to severe discrimination. The basis for this discrimination is rooted in history and is manifested both at an economic and cultural level. Access to vital resources is restricted and the Twa are victims of social segregation and a racial stereotyping that labels them as inferior or subhuman. Years of institutionalised discrimination have given the Twa an inferiority complex and a sense of despondency.

Despite this, the Twa are unique in the way that they set up the first legally incorporated 'pygmy' organisation established and run by Pygmies, in Central Africa.

Prior to 1991, there had never been an association for the Twa run by the Twa themselves. There had been a number of associations formed to help the Twa but they were always dominated by non-Twa, with very variable commitments to support the Twa. After the RPF (Rwandese Patriotic Front) invasion of Rwanda in 1990 and the political liberalisation forced upon Habyarimana's regime by the Arusha Accords, a number of educated Twa got together and created the Association Pour La Promotion Batwa (APB). The Twa had no effective means of presenting their very real grievance at a regional and national level and the media and national agencies tended to ignore their plight. The APB's aims were to network with Twa in all parts of Rwanda and survey the socio-economic situation of their people. The APB would thus create a forum and information base enabling them to draw attention to the appalling situation and lack of representation of the Twa and to press for Twa rights. With limited resources, they set up a number of projects to raise awareness of Twa needs and provide practical assistance to the Twa. Furthermore, regional and interna-

tional contacts were established and representatives travelled abroad to attend conferences.

In 1993, WRM, at the invitation of the APB, sent representatives to Rwanda to help them develop their capacity as a truly representational grass roots organisation. A team of Twa, trained in field-work methods, travelled around Rwanda with the WRM, undertaking a socio-economic survey, while making contact with local representatives.

These efforts were halted by the genocidal conflict of 1994. The existing Twa organisations were disrupted by the dispersal and death of their members. Communications with the outside world ceased, until news of a few survivors filtered its way through to organisations such as WRM and UNPO. With the assistance of UNPO, Charles Uwiragiye of the APB was able to conduct a preliminary study of the situation of the Twa in the remaining villages in the immediate post war period in the camps outside Rwanda. Health Unlimited also carried out a survey in December 1994, in order to assess the immediate needs of the Rwandese and to see whether a specific project could be focused on the Twa. Meanwhile, WRM made preparations for a follow up project, the aim of which would be to visit the same villages in 1993 in order to gain primary data of the Twa's experiences in the war and to rebuild the Twa's representative organisation. The survey took place in May-June 1995.

The Effect of the War on the Twa of Rwanda

With the signing of the Arusha Accords in 1990 and the acceptance of a multi-party democratic state, the president's party and its accomplice CDR, in the face of new competition began a sustained effort to gain popular support and hence votes. Offering material incentives and political protection, party members encouraged others to join. Large and influential communities were targeted all over the country including some Twa ones.

Several Twa from the communities visited, such as Rutonde, talked of experiencing severe intimidation to join the MRND (National Republican Movement for Democracy and Development), and upon refusal receiving death threats. Two large communities were visited and persuaded to join the MRND: Shyrongi, where UNPO reports a Twa was beaten to death for wearing the wrong hat; and Masango, where the Twa were bribed to join the inter-

ahamwe (youth militia). The latter was a community, founded in 1993, to experience shocking levels of violence and imprisonment from the local government. Most of the Twa knew very little about politics and current affairs in the country and were easy to manipulate due to poverty and discrimination.

During periods of increasing tension such as the Burundian Coup when numerous Hutu were displaced and sought refuge in Rwanda's border areas, Twa communities such as at Ntili, were the least able to defend themselves and therefore the first to be attacked. The Twa community was attacked in the market place with crow bars, their pots smashed and when they returned home their village had been burnt down.

Throughout the war the instigators of the genocide manipulated the media through the use of propaganda. In this, the Twa were not spared. Accused, as siding with the invading race of Tutsi's, other Rwandese were encouraged to take the law into their own hands and punish the Twa. Broadcast on Radio Mille Collines October 1995 messages such as this, led to a wave of attacks targeted at Twa communities.

BOTSWANA

In the huge Kalahari desert in Botswana you are faced with the horrific sight of game animals dying at the high cordon fences which are set up in the interest of the cattle industry in Botswana to avoid the spread of foot and mouth disease among the cattle. Enormous fences run both north-south and east-west in the Kalahari and efficiently prevent the game animals from following their trekking routes. The wildebeest, hartebeest and eland are all dying of thirst, displaced from their traditional territories and direct routes to water by the cordon fences. Government officials boast that after the Great Wall of China the Botswana fences are the most visible man-made objects from space. "I cried great tears when I saw the deaths along the Kuke veterinary fence, giraffe, wildebeest, hartebeest in their tens of thousands", said Roy Sesana from the Central Kalahari Game Reserve, expressing the feelings of the indigenous *Kwe* peoples of the Kalahari.

The nomadic *Kwe* of the Kalahari Desert know the catastrophe instinctively. They are the original peoples of the Kalahari. This killing of game animals in the Kalahari reflects very clearly the

need for the indigenous peoples to be involved in finding solutions to environmental problems. Living in a balance and harmony in the desert environment for more than 40,000 years has demonstrated the Kwe peoples' invaluable expertise in conservation, as well as their extensive and profound knowledge of natural resource management. The Botswana Government has chosen to ignore this and in the 30 years since independence has been responsible for the decline of up to 98 per cent of the game population in the Desert Basin of the Kalahari.

The Central Kalahari Game Reserve

Today the tourist industry has brought a high market value to the Kwe's last remaining ancestral lands, the Central Kalahari Game Reserve (CKGR) which is home to the *G/wikwe* and *G//anakwe*. What was once deemed an uninhabitable and undesirable desert by the Botswana Government has now become prime real estate for economic exploitation. The survival and human rights of the Kwe are to be sold to the highest bidder. To date, the Kwe have suffered gross violations of human rights under Botswana's policies of dispossession and relocation of the traditional communities.

Under the Governments edict, euphemistically described as 'cutting off services', Kwe women, children and families face thirst and starvation. Basic services such as the provision of water are being denied to the Kwe, and their indigenous rights to collect traditional foods from the veldt, to collect firewood, to hunt and to have access to potable water are being violated. Their subsistence hunting rights have been subject to falsified accusations and charges of poaching leading to an increase in documented cases of beating, torture and arbitrary detainment as Kwe men are arrested for 'poaching' game animals for food. As expressed by Aron Johannes, representative from the indigenous organisation, First Peoples of Kalahari: "Nowadays when those Kwe who try to hunt along their traditional land they run into the hated fences or worse yet game wardens who arrest and torture them as poachers". The Kwe notice every year, as more people from outside arrive to crowd them away from the Central Kalahari Game Reserve, that more of the syndicated boreholes that must provide water for more cattle are running dry, that more wild game herds are thinning out and that more veldt is reverting to desert. For a hunting and foraging peoples, every diminution of the biodiversity means a 'little death' -

every extinction means emptiness in their being and in their bellies.

The Central Kalahari Game Reserve covers around 52,000 square kilometres. In 1986 the government decided to evict the Kwe from the Game Reserve, however, due to massive protests this was prevented. From 1992 threats of forcible removal began again. Here in 1996 the situation of the Kwe in the Game Reserve is still very difficult, and living conditions are bad. There has also been renewed fear among the Kwe that they might be forcefully removed.

Control of ancestral land is the most important issue which the Kwe face today. Political will and imagination on the part of governments to see the challenges posed by indigenous peoples as opportunities rather than constraints is essential. The old approach favouring integration into one mainstream culture is not acceptable from a Kwe point of view. The human, social and economic costs of integration can no longer be denied or ignored.

Indigenous Organisation

Facing the very threat of extinction, the grassroots Kwe leadership of Botswana came together in 1992 to assume a political voice for the control of their culture and development. The organization they created is called Kgeikani Kweni, or First Peoples of Kalahari. In October 1993, First Peoples of Kalahari (FPK) became legally registered as a non-governmental organization. The members of the board are elected from *Nharo*, *Tsaókwé*, *G//ankwe*, *G/wikwe* and *#Au//ae*.

Their mission is to ensure the survival of the Kwe people by assisting Kwe communities in gaining control over their cultural, social and economic destiny. The purpose of FPK is to advocate the indigenous people's rights guaranteed to Kwe people according to international law; to develop the leadership of Kwe men and women; and to provide culturally appropriate development. In brief, the goals are:

- To be recognized as a distinct peoples and secure ownership of the remaining Kwe ancestral territories.
- To be a people capable of creating our own sustainable development plans.
- To establish a centre that can:
 - communicate, exchange, and distribute information among

our different peoples as well as with other First Nations peoples around the world;

- coordinate, report and record the information on specific local conditions of the N/oakwe scattered all over 'Gomkgei' - the Sand Face - and link them together;
- coordinate the mapping of the territorial distribution of *tsgores* (sip-wells), as they are the centres of our ancient lands.
- To create a National Council for the N/oakwe through duly elected representatives who work for the recognition of land and human rights for our peoples, and to achieve self-determination through the National Council.

FPK presently works actively on the situation in the the Central Kalahari Game Reserve.

The modern colonizing state and the vigorous cash economy is a serious threat to the Kwe. With the discovery of diamonds and with the advent of favoured access to the European Community's beef markets, development in Botswana has never looked back. Cattle have assumed an economic importance more exalted than any part of the natural ecosystem. Cattle barons, diamond mining interests and elements of the middle class and the political elite form powerful vested interests in favour of a growth-development which does not respect nature and the indigenous inhabitants. The government has learned to market its environment record in glowing terms, discrediting its critics, and blaming animal mortality (such as 50,000 wildebeests at Lake Xan starved to death) as a natural phenomenon of recurrent prolonged draughts which the animals are adapted to deal with.

Just as USA and Canadian officials have been known to blame dwindling salmon runs on the miniscale catch native subsistence fishing, their counterparts in Botswana have been known to suggest that the bows and arrows of the Kwe make a serious dent in the eland populations. The country's best known NGO on the conservationist front, the Kalahari Conservation Society, has been co-opted, and even the international environmental movement, a force to be reckoned with in African affairs, has been of more help to the government's wildlife tourism initiative than to the Kwe whose culture is based on living amongst animals rather than segregating them into game reserves.

But whereas the wildlife of Botswana are allowed limited freedom in the interest of tourism revenue, the government insists that the Kwe must be herded into settlements where they can 'develop' (an euphemism, as elsewhere in the colonizing world, for deculturation, alcoholism, idleness, economic and sexual exploitation).

The marginalization of the First Peoples in Botswana is reflected in many ways, but perhaps most obviously in the steady parade of names mistakenly applied to them: Bushmen (apartheid terminology, from the Dutch *Bosjemannitjies* for orangutan), Basarwa (their stereotype within the dominant Tswana Society, deriding a lack of land and cattle and summed up in the saying "you Basarwa, you are worthless"), San (an anthropological designation that has gained currency despite its non-acknowledgement by the Kwe), and most recently Remote Area Dwellers (a bureaucratic term which translates into the various Kwe languages as "those who are deep within the deep" suggesting death and burial to some Kwe, "as if their soil covers ours"). N/oakwe is better but not easy to pronounce without being heard, meaning Red People. Kwe is being accepted. The government does not officially recognise the Kwe among the Botswana tribes by any name, it should be noted. But for the Kwe and for the rest of human-kind, survival depends on understanding the Kwe message. Planet earth is home to almost 6 billion human beings, the most voracious consumers of resources known. The Kwe are no better prepared than any other group to understand the full impact of those billions and their technologies on the natural environment. But they know that every year the environment that sustained them for centuries has fewer resources to share with them. They feel it in their stomachs, and in their full beings when they pause in the pathetic settlements to wonder 'if god has made a mistake'.

"Ten thousand of our people have been displaced with no alternatives. How can we live? We ask all governments, is this a life for our people?"

NAMIBIA

Bushmen (San, Ju'hoansi)

In the past two years much has changed for the *Ju'hoansi* of Eastern Otjuzundjupa, Namibia. While at the same time much remains unchanged. Through the establishment of a new management struc-

ture, the Ju'hoansi of Nyae Nyae are now full partners in the development process and have become increasingly well equipped to respond to the challenges of development whilst maintaining cultural integrity. After the challenges posed in September 1994 regarding their relationship with the Nyae Nyae Development Foundation a new relationship has emerged. One which recognises and respects the rights of the Ju'hoansi to drive the development process.

In line with this new relationship has come a greater understanding of and control over the Natural Resource Management (LIFE) project, control which will be boosted by the imminent introduction of conservancy legislation by the Namibian Government. The conservancy legislation will enable many communal groups to reap the benefits of their wildlife and veld foods as well as enabling the community to control and direct tourism in their 'conservancy area', an option for development in which the Ju'hoansi are leading the way in Namibia.

These changes are providing tremendous benefits for the Ju'Hoansi of Eastern Otjuzundjupa. But, while they are gaining a foothold in mainstream Namibian society, they are continuing to confront many of their traditional problems, including constant attempts by Herero pastoralists to bring cattle into the Nyae Nyae area. Likewise, many agencies both within government and the private sector fail to acknowledge the Nyae Nyae Farmers co-operative as the traditional authority in Nyae Nyae. This failure to respect Ju'Hoansi rights is a drain on the energy of the organization and impinges on their capacity to continue to drive the development process.

The West Bushmanland communities are also undergoing rapid changes with the imminent departure of ELCIN as the implementing agency for the resettlement program of dispossessed Bushman. The Ministry of Lands and Resettlement is to take over the program and manage it directly. With pressure from Herero pastoralists, who are also being resettled from Botswana, competition for limited land will surely become an issue. Whether the West Bushmanland communities are strong enough to hold on to their land is yet to be seen.

The issues facing the West Bushmanland communities are also a constant threat to the security of the San communities of West Caprivi as they are also facing land encroachment from other indigenous peoples of the region. In particular they are being challenged by Mbukushu people who see the Bushmen communities as easily intimidated and forced off their land.

In other areas of Namibia the San peoples continue to experience the worst of living conditions. On all social indicators the San are rated in the lowest categories and continue to suffer discrimination from all other groups in Namibia. The San, through lack of land, poor educational outcomes and general acts of discrimination are far short of being truly equal partners in the Namibian nation.

Efforts to address the general plight of Bushmen in Namibia are fragmented and poorly co-ordinated. Many agencies are acting in isolation from each other and thus duplication of services and support are endemic. In response to this situation and the diminishing need to provide support to the Ju'Hoansi of Eastern Otjuzundjupa, the Nyae Nyae Development Foundation of Namibia (the oldest NGO supporting Bushmen rights), is re-assessing its role and accepts that it must take on the broader responsibilities for supporting Bushmen development throughout Namibia.

The ovaHimbas

After Namibia got its independence in 1990, SWAWEK (South West Africa Water and Electricity Corporation) took a new interest in the old plans for a Kunene River hydroelectricity project as a solution to Namibia's future energy needs and independence from importing energy from South Africa. A Scandinavian consortium was given the contract to conduct the pre-feasibility and the feasibility report on the project. The proposed Epupa dam will flood an area of 250-350 km² which is at present an essential part of the pastures and water resources of the approximately 5000 *ovaHimbas* who live in this area.

The ovaHimbas are semi-nomadic pastoralists who have lived in the northern part of the Kunene region, Northwest Namibia, since the great Bantu migrations of the 16th and 17th centuries. This region is often called the 'Africa's last wilderness' which reflects the remoteness of the region and the traditional way of life of the ovaHimba nomads. The ovaHimbas were isolated during the South African occupation but had their self-determination and kept their traditional culture alive. During the war of independence they supported South Africa and some of them still want South Africa back in Namibia. This attitude has to be understood in the context of the self-determination they had and the economic support they received from the South African army during the war. Since independence the ovaHimbas have lost some of their self-determination and some of the economic support they received from the

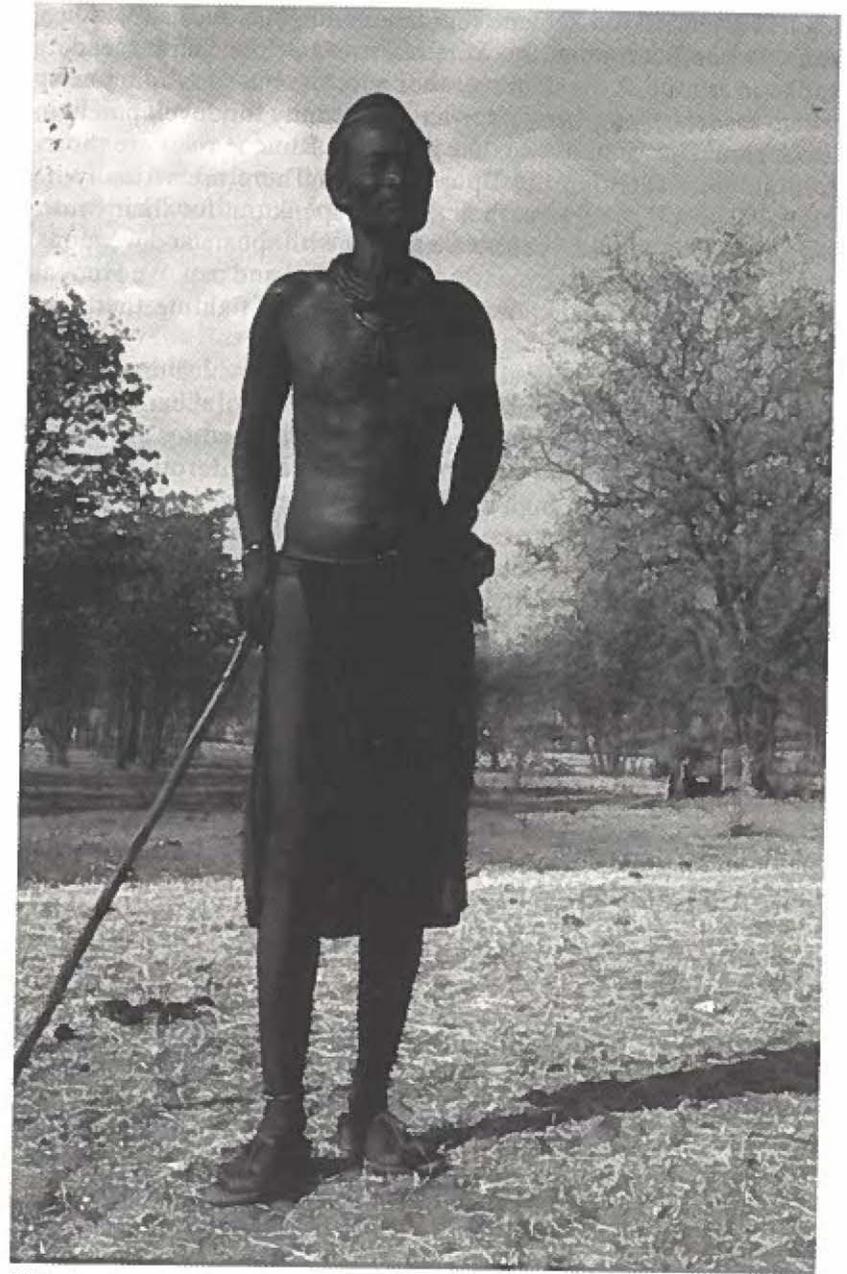
South African army. The Himbas say that the Ovambos have never had anything to say in Kunene region and there are no reasons why they should start now. On this background the conflict over the proposed hydroelectric dam project has developed.

The Namibian government sees the Epupa dam as a solution to Namibia's future energy needs. The project is the biggest industrial project in Namibia since independence and the government stands to gain a lot of prestige from it. Namibia needs to solve the energy situation as the Ruacana power station which, provides most electricity today, has a low storage capacity and can only run on full capacity during the rainy season. The other energy source, the van Eck coal-based plant, is extremely expensive due to the high cost of importing coal from South Africa. In the dry season Namibia has no other choice than to import 50 per cent of its energy from South Africa at increasing prices. The opposition to the dam does not question the need for a new energy supply, but rather questions the economic viability of the Epupa project and its environmental and socio-economic consequences.

The major criticisms are based on:

- 1) The prognoses of future energy needs in Namibia while the mining industry, which is the greatest energy consumer, is in decline.
- 2) The need to export energy from Epupa to South Africa to make the project economically viable, when prognoses from South Africa indicates that it does not need to import energy.
- 3) Epupa will only be productive for 20-30 years due to sedimentation.
- 4) The environmental impact on a unique environment in a semi-desert region.
- 5) The need for further investigation into alternative energy sources in Namibia.
- 6) The impact on the Himba people and their rights enshrined in the Namibian constitution as well as international rights as minorities stated by the UN and ILO.

Initially, the government was not eager to give the Himba people information, but during 1994-95 this situation improved and there were public meetings in Windhoek and Kunene region. OvaHimba



Himba headman, Namibia. Photo: Thomas Tvedt

leaders attended the Kunene region meeting but, because of long-running conflict among the Himbas, some of the Himba leaders spoke in favour of the dam together with the business community which sees the Epupa project as an opportunity for development in the region. The Himbas who live along the Kunene river are therefore alone in resisting the Epupa project. There are virtually no organisations that support their view or speak out for their cause. As an old Himba said, "before we fought with spears and weapons, today this fight for survival is done with paper and pen. We Himbas have no education and knowledge of this way of fighting, therefore we have already lost the fight".

The next step is the final feasibility report on which the government will base its decision as to whether to go ahead with the construction. Hopefully, this report will be finished by the end of 1996 but it is up to the government to investigate other energy sources and take the environmental and socio-economic impacts on the Himba people into consideration.

One of the main problems is the government's reluctance to acknowledge the Himba people as an ethnic/minority group because this means that the Himbas could use international conventions to support their fight for their land rights. The government argues that an acknowledgement of the Himbas as an ethnic group with special rights is a prolongation of South African apartheid politics. However, the reality is rather that the ovaHimbas are a minority group that has to be taken into consideration if this unique people are going to survive in a modern Namibian society and not end in destitution with no means or opportunity for survival at the bottom of the social ladder.

SOUTH AFRICA

The issue of indigenous groups or forgotten peoples searching for their roots is very important at present in South Africa. This results from the new Constitution which provides for the right to participate in one's own culture. Another reason is the right to have traditional leaders as a measure to safeguard cultures. These leaders will have an input at the national, provincial and local level.

Indigenous groups in South Africa can also be perceived as people whose cultures have become or are becoming marginalised. At present the *Griqua* people claim recognition of their leaders and

restitution of their ancestral lands. The Griqua today live scattered over many parts of South Africa, while their ancestral lands are mainly in the Northern Cape Province.

The *Outeniqua* people of the Western Cape are also claiming recognition for their traditional leaders and for their cultural identity. Like the Griqua, they are descendants of the early Khoekhoen people of Southern Africa. Other descendants of the Khoekhoen are the *Korana* and the *Nama* or *Naman* of the Northern Cape. The last two groups are also becoming aware of their cultural roots and identity.

Today the *Bushmen* of South Africa are found at Kagga-Kamma and Schmidtsdrift. The people of Kagga-Kamma are a small group who originally lived in the northwest of the Northern Cape Province. They were later resettled on a game reserve at Kagga-Kamma in the Western Cape Province. They claim restitution of their ancestral lands and negotiations with the Department of Land Affairs have already started. They are hoping to return to their ancestral lands soon.

The *!Xū* and *Khwe* people of Schmidtsdrift have to leave their present area as this was awarded to the Tswana people as a result of a land restitution claim. The *!Xū* and *Khwe*, together with the *!Xū* and *Khwe* Trust, appointed a development consultant to prepare resettlement plans. These plans were submitted for approval to the provincial government. Land for resettlement was also identified and can be bought as soon as the plans are approved.

The *!Xū* and *Khwe* communities have each established a community council to negotiate their resettlement with the authorities. In 1995 members of the community were invited to visit Bushmen in Botswana. Two members also attended a workshop on Bushmen research which was arranged by the University of Botswana at Gaborone.

At present the Trust is facilitating a number of development projects at Schmidtsdrift. The Trust employed some *!Xū* and *Khwe* women to prepare children for school by teaching them in their mother tongue. A few women are employed as community development officers. They are attached to the local clinic and form a social work section to assist with the identification of people in need. The arts and culture project of the Trust is going well. During the last year two contracts with international firms were concluded on behalf of the artists for the exhibition of their work internationally.

PART II

INDIGENOUS RIGHTS

INDIGENOUS PEOPLES AT THE UNITED NATIONS

THE DECLARATION REACHES THE COMMISSION ON
HUMAN RIGHTS

By Andrew Gray

Between 20th November and 1st December 1995, indigenous peoples from all over the world went to the United Nations in Geneva to defend the draft Declaration of their rights which is currently passing through the UN system. In August, 1994, after 12 years of work, the expert body of the United Nations' Commission on Human Rights (the Subcommission on Prevention of Discrimination and Protection of Minorities) had unanimously approved the draft Declaration on the Rights of Indigenous Peoples. This document had previously been drafted by a Working Group on Indigenous Populations (UNWGP) which meets with hundreds of indigenous representatives in July every year in Geneva to hear their concerns and draft legal standards to protect their rights.

The approval by the Subcommission was extremely significant because it means that impartial experts of the United Nations have accepted the Declaration. Since the document was passed, indigenous peoples have continued to study the text and the overwhelming response is that, whereas it is not as strong as an indigenous declaration would be, it constitutes acceptable minimum standards for guaranteeing indigenous rights.

The Declaration has now begun its tortuous passage from the expert bodies up to the highly politicised realm of the UN Commission on Human Rights consisting of 53 government delegations which meet every year in February and March. Here the governments are now dissecting the text of the Declaration, bringing to bear their own concerns, national agendas and political biases. The draft will be amended at the Human Rights Commission and then pass through the Economic and Social Council (ECOSOC) to the General Assembly of the United Nations for final approval.

Work on the Declaration was too time-consuming for the Commission on Human Rights so, in March 1995, a Working Group was established to re-draft it. The Working Group is 'intersessional' because it takes place during the period between Commission meetings and it is 'open-ended' in that all governments, inter-governmental organisations and non-governmental organisations with consultative status at the United Nations can participate. However, this form of UN participation seems far from 'open-ended' to indigenous peoples who constantly insist that they should be present at any attempt to define their rights. They want to represent themselves and not always have to rely on NGOs with consultative status. In response, the Commission on Human Rights opened up the possibility of participation for indigenous organisations, but only after constructing a complicated process for application. Indigenous organisations and peoples have to apply to the Coordinator of the International Decade for Indigenous Peoples, Mr. Ibrahim Fall. He consults with the state governments of each applicant and then forwards the information to the UN Committee on Non-Governmental Organizations in New York. This body then decides whether or not to recommend the authorisation of participants to attend the Working Group whenever it sits.

By the beginning of the Working Group on November 20th, 99 applications had been received from indigenous representatives and, in meetings on the 18th and 31st of October, the NGO Committee approved 78. The 21 cases still pending will be dealt with together with new applications at a later date. In the event, over 100 indigenous representatives took part in the meeting. No one knows how long the Working Group will meet but estimates vary at between five and ten years.

Initial Concerns

Once the Declaration reached the hands of governments at the Commission, indigenous peoples prepared for the worst. The main areas of concern were how the meeting was to be chaired, the extent to which indigenous peoples would have genuine participation and whether the draft Declaration would be accepted as the basis for discussion.

In many UN Working Groups, the Chair is a major factor in the progress of the meeting because he or she can determine the methods of work. The two models facing the meeting was the open

forum of the UN Working Group on Indigenous Populations where everyone has the right to speak equally or, alternatively, the Commission on Human Rights, which has complicated procedures in speaking time and is dominated by governments. Choosing a Chair could have taken days, but in the event Mr. José Urrutia from Peru was elected in the space of an hour on the first day by unanimous agreement of the governments.

Although access to the Commission Working Group is not as straightforward as that of the summer Subcommission Working Group, no indigenous person was prevented from entering or from speaking. José Urrutia proved to be an efficient and fair moderator, regularly meeting with the indigenous participants, allowing everyone to speak and consulting widely (not only with governments) when problems arose. The first decision after his election was that the Subcommission's draft Declaration should provide the basis for discussion. This allayed indigenous fears that the draft Declaration would not even be accepted as the starting point the Commission's Working Group discussion.

The position of the indigenous peoples present was summed up in a resolution presented at the beginning of the first session of the Working Group:

"It is the consensus of the Indigenous Representatives attending the Indigenous Peoples Preparatory Meeting in Geneva, November 18-19, 1995, that the United Nations Draft Declaration on the Rights of Indigenous Peoples as adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, be adopted by the Working Group created by the Commission on Human Rights through Resolution 1995/32 of 3 March, 1995, as it reflects minimum standards for the survival of Indigenous Peoples."

Peoples and Definitions

In the afternoon of the first day of the Working Group, an indigenous ceremony took place in the meeting room and set a positive tone for the discussion, after which the Chairman brought to mind the murder of Ken Saro Wiwa. These two events went even further than the Subcommission Working Group in allowing public expressions of indigenous culture and reflecting their concerns. Several general statements by indigenous and government delegations established the overall interests of the different participants. Most of those present favoured a reading of the Declaration section by

section where opinions could be presented as to the advantages and disadvantages of the draft.

The discussion raised two issues which have recently plagued UN discussions on indigenous peoples. Brazil raised the first question, continuing a theme which they have been championing since the Congress on Human Rights in Vienna. At the Vienna meeting Brazil insisted on substituting the term 'indigenous people' for 'indigenous peoples' in the final statement. Supported by the United States, Canada and Bangladesh, a small group of countries have threatened consensus formation in so many meetings that the term 'people' without an 's' has found its way like a bad misprint into several UN documents.

The debate of the 's' in peoples relates to the fact that in United Nations instruments, all peoples have the right to self-determination. Furthermore, the use of the term 'peoples' refers to a collectivity where rights are enjoyed by groups as well as individuals. The countries which complain, want to recognise neither self-determination nor indigenous peoples' collective rights. By removing the 's' they aim to take the life out of the draft Declaration and conceptualise indigenous people as individuals.

The absurdity into which this discussion can fall took place when Brazil objected to the name 'Open-ended inter-sessional working group on a draft United Nations declaration on the rights of indigenous peoples'. In spite of the fact that the Declaration uses 'peoples' consistently, Brazil insisted that the 's' be removed. After considerable discussion a compromise was reached, avoiding the word peoples altogether; a new name was provided: 'Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995'.

At the same time, several Asian countries, led by the representative from Bangladesh, insisted that before discussing the Declaration in detail there should be a debate on its scope (this meant primarily a definition of the term 'indigenous').

There was some concern that the Asian group would hijack the meeting and delay the proceedings in the same way as had occurred in a symposium on the Permanent Forum at Copenhagen earlier in 1995, where filibustering by Bangladesh and India caused the meeting to continue until 3 am. An Asian statement by the regional group presented on the afternoon of the second day by Nepal insisted that "it is crucial to define "indigenous people" taking into

account that the term has its genesis in... "the unique situation of the original inhabitants of the Americas and Oceania, who were, at a point in history, overrun by settlers from overseas". The statement, which was backed by the threat of a walkout by the Asian countries, was clearly aimed at ensuring that the Declaration did not apply to Asia.

The morning of the third day was abuzz with negotiations between the Asian countries and the rest of the meeting. A compromise was reached where the afternoon session would be devoted to a discussion on 'scope' and comments on the Declaration itself would begin the following day. The first speaker was the Fijian government representative who strongly denounced the attempt by the Asian countries to enforce one position on the rest of the meeting. An indigenous statement was then read by the *Maori* representative Moana Jackson:

"It is a historical fact, as tragic as it is incontrovertible, that the endeavour of Indigenous Peoples at the WGIP and in this forum have been largely motivated by the dispossession of colonisation.

The taking of land, the dismissal of language and culture, and the denial of Indigenous Peoples' right to determine their own destiny are all consequences of colonial dispossession which this declaration seeks to address in the eyes of Indigenous Peoples.

Within that context, any efforts to define who or what are Indigenous Peoples are seen as further attempts to dispossess and take away our inherent right to be. Indeed to assume a right to define Indigenous Peoples is to further deny our right to self-determination, since there can be no more fundamental expression of that right than the ability to determine who one is through self identification. It has been constantly reaffirmed by Indigenous Peoples that to define membership, identity and status must be pursued by Indigenous Peoples without external interference. It is our concern that States now seek to define who we are amounts to such an interference.

The right of self determination is a precondition for the exercise of all other rights and to delimit it through an assumed authority to define Indigenous Peoples is in effect to delimit all our rights.

In a more specific sense it is our submission that to attempt such a definition is in fact unnecessary. By its nature the declaration must be inclusive, universal and world-wide, rather than exclusive and narrowly focused. Other human rights instruments have

operated effectively without particular definition, as for example the Declaration on the Rights of Minorities where the term minorities is not defined. It would be our submission that this Declaration will operate equally effectively without attempting the difficult task of defining the term Indigenous Peoples.

We would however reiterate our concern that for States to assume a right to define who we are is to deny the right to self determination. The old adage that 'the namer of names is the parent of all things', has been a recurring source of denial and dispossession of Indigenous Peoples. We would urge that this Declaration not be used to maintain that appropriation by others which has so sadly marked our past."

All the indigenous peoples present supported this statement as did many governments. Bangladesh presented the case for limiting scope to the Americas and Oceania and argued that self-identification opened the concept to 'pretenders'. Meanwhile the indigenous peoples from Asia had prepared their arguments with detailed documentation. Prior to the meeting the Philippines indigenous delegation informed their government representative that not only was indigenous included in Article 2 sec. 22 of the Constitution, but that the President had publicly endorsed the draft Declaration in its entirety. In her speech, the Philippine government representative clearly distanced herself from the Asian group statement of the previous day.

The Nepal delegate, who had presented the Asian group statement was later informed that he was speaking against his own government's policy as the concept of indigenous is recognised there. As part of the observation of the International Year of Indigenous Peoples, the government of Nepal established a committee to oversee national indigenous activities. When challenged on this point after the meeting, the government representative admitted that he had only done what Bangladesh had requested.

However the most pertinent information came from Bangladesh itself, where the Asian indigenous group demonstrated clearly that in Act No. 12 of 1995, published in the Bangladesh Gazette on June 30th, paragraph 27, there is a reference to 'Indigenous hillmen' in the Chittagong Hill Tracts, exempting such indigenous peoples from the taxation of economic activities. Other similar references to 'indigenous hillmen' were produced from the Bangladesh Na-

tional Board of revenue documents of March 10th, 1980; April 9th, 1980, October 17th 1992 and June 12th, 1995. This information deflated the whole presentation by Bangladesh and with few further comments, the discussion of scope, over which so much time has been fought, finished half an hour early. The debate had been a fiasco for the Asian countries which proposed it because they had played a high card by threatening a walk out in return for the discussion, and in the event had gained nothing.

Afterwards, one indigenous participant said "this was the first moment in the meeting when we had our backs to the wall". Nevertheless the unity of the indigenous caucus remained strong; indeed just prior to the discussion, participants agreed that an attack on one indigenous region would be treated as an attack against all. This solidarity kept up momentum throughout the meeting.

The question of peoples and definition, did not disappear, however. The 's' returned with a vengeance during the writing of the Working Group report, while the scope question will probably be taken up at the next Subcommission Working Group on Indigenous Populations. Nevertheless, the discussion showed clearly that indigenous peoples are not prepared to accept the use of the term 'people' without an 's' and that any attempt to define them in order to limit the scope of the Declaration will be completely unacceptable.

Discussion of the Declaration - Indigenous versus Governments

The following five days were taken up by a discussion of the Declaration taking the Preamble and each of the nine parts in turn. The procedure consisted of indigenous peoples and governments making comments on the text. A summary of the comments was then written up by the Secretariat for inclusion in the final report for the Commission, which was circulated among the participants in draft form. Whereas the indigenous peoples at the meeting consistently reiterated their desire that the Declaration be accepted as it was, the governments clearly plan to redraft it. However there was no consensus among the governments as to how to do this.

The governments in the United Nations are divided into five areas: Asian states (including the Pacific); Latin American and Caribbean states; Western European and Other states; Eastern European states; and African states. The first three groups were the most vocal in the discussion, but in no region was there any firm

consensus. For example, in Asia, the negative views of Bangladesh, India and Japan towards the Declaration were in complete contrast with the full endorsement by Fiji. In Latin America negative views of Brazil, Argentina and Peru were opposed by Bolivia, Colombia, Nicaragua and Cuba. In the Western block, negative approaches by the USA and Canada were opposed by the Nordic countries. The lack of a regional government consensus helped to ensure an open debate and might explain why, with the exceptions of Brazil, Bangladesh and the USA, no country openly tried to impose its views on others.

Whereas indigenous peoples and supportive governments justified their acceptance of the Declaration in terms of rectifying violations of human rights, those governments opposing the Declaration argued that it was 'unclear or 'impractical'. However the most frequently used criticism was to relate the Declaration unfavourably to existing national and international law. This argument involves sleight of hand because it avoids discussing the content of the text and simply relates the discussion to other legal provisions. As might be expected, according to this argument, the progressive aspects of the Declaration are rejected if they are stronger than international or national legislation and never strengthened if they are weaker. In this way existing legal provisions are used as a means of limiting the Declaration.

At several points in the meeting, this use of existing legislation to limit the draft Declaration was challenged. For example, a technical paper by the Secretariat analysed the whole Declaration in terms of already existing international legal instruments and showed it to be perfectly consistent. Various lawyers at the meeting substantiated the Declaration and the indigenous position by reference to a barrage of precedent.

Several countries which took a negative stance were clearly inconsistent with their national legislation. The initial position of Philippines ignored the fact that President Fidel Ramos has endorsed the draft Declaration in its totality. Peru's initial statement ignored several national and international commitments to indigenous rights. The reason for this is possibly that the government delegates were unaware of their national and international obligations to indigenous peoples. Indigenous peoples spent much of their time trying to educate government members in both national and international law.

The frustration of the indigenous peoples hearing national and international law used to thwart the Declaration came when Japan's consistently negative stance was challenged by Shigeru Kayano, an indigenous member of the Japanese Diet and on the committee to draft a new Ainu law. He said:

"The government of Japan has repeatedly made statements on the draft declaration, criticizing ambiguities of wording and unfamiliarity of some concepts of rights...As they have not made any constructive proposals, their position seems quite conservative and tightly negative to the draft declaration. Here, I would like to urge you not to accept their statements as unchangeable or fully-investigated attitudes of the Japanese Government. Of course I am fully understanding that the delegation of Japan is always controlled by Tokyo with little discretion in Geneva, so that it cannot be responsive to the discussion here or changes in the political process in Japan."

This statement summed up much of the frustration felt by indigenous peoples in dealing with the government arguments against the draft declaration. Finally one international lawyer, Hurst Hannum, said:

"On the international level, consistency with existing human rights norms means only that the rights set forth in the draft declaration should not fall below the current minimum standard... It is the purpose of the declaration to expand upon and clarify existing rights, not merely to repeat them.

Many delegations have objected to particular provisions of the draft declaration because they are inconsistent with existing domestic laws or constitutional provisions. First, of course, it must be recalled that no General Assembly declaration can directly create binding legal obligations... so no state would be required to amend its laws were the declaration to be adopted. In addition, the moral and political obligation of implementing the declaration in good faith requires only that the goals or purposes of the declaration be met, and in many instances the means of achieving those goals can be found within existing domestic law. Finally, it may be well to recall the status of the Universal Declaration of Human Rights in 1948: not every state which voted for the Declaration met all of its standards, but this did not prevent its adoption as a set of principles to be achieved progressively."

Discussion of the Declaration - Main Issues

The open discussion surveyed the whole draft Declaration in order to identify some of the main points. Several elements arose in all of the sections, particularly the question of self-determination, collective rights and control over resources. Nevertheless, certain features clustered together and it was possible to see positions around which discussions will focus during the next few years.

The Preamble

Although several governments made comments on the text, most of them decided to wait to comment on the substantive articles. However the question of 'peoples' arose again over the subject of the title. Australia, Norway, Finland, Russia, Cuba and Bolivia came out strongly in favour of the term 'peoples' while the USA, Japan, Canada and Brazil were opposed or consistently used 'people' in their presentations. In between were New Zealand and the United Kingdom who were prepared to discuss the matter further.

Another feature which arose in the Preamble was the United Nations' instruments which should be referred to at the beginning of the Declaration. Under scrutiny was ILO Convention 169, which is the only current document dealing with indigenous peoples. Indigenous representatives were not keen to refer to the Convention because it is considerably weaker than the text of the Declaration; at the same time some governments such as Brazil and Argentina opposed the inclusion because they consider that the text of the ILO Convention 169 is too progressive.

Part I - Self-determination

Part I of the Declaration concerns general principles covering indigenous peoples' rights to enjoy all human rights and fundamental freedoms, assurances of non-discrimination, the right of self-determination, the right to maintain and strengthen their distinct ways of life and the right to nationality. Much of the discussion focused on the concept of self-determination.

Self-determination is the right of all peoples to control their destiny and constitutes an all-embracing framework for all other rights. The indigenous representatives at the Working Group unanimously supported Article 3 of the draft Declaration: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their

economic, social and cultural development." Indigenous peoples based their position on the importance of equality between peoples. If all peoples have the right to self-determination, as is stated in several UN instruments, then indigenous peoples should not be treated any differently from anyone else. To do so would count as discrimination.

In all there were four broad positions on the concept of self-determination expressed at the Working Group: 1. Indigenous peoples supported self-determination in an unqualified sense, free from discrimination, as expressed in the draft Declaration. This was supported by countries from all over the world: Denmark, Norway, Finland, Australia, Bolivia, Cuba, Fiji were those most clearly in favour. 2. Some governments accepted the concept of self-determination but would like a clearer statement that the term does not affect the territorial integrity of states. Governments taking this position included Chile, Colombia, El Salvador and Indonesia. 3. A weaker position was taken by Sweden, New Zealand and Canada, which although not opposing self-determination, felt that more dialogue and negotiation was necessary. In principle they were able to consider the inclusion of the term self-determination providing that the meaning is unequivocal. 4. Several countries rejected self-determination and advocated terms such as 'autonomy'. Those countries, which were generally negative about the Declaration as a whole, such as Brazil, Argentina, Bangladesh, India, Japan, United States and France had difficulties with the concept. Many of those governments which did not speak would appear to be in 2 and 3. For this reason, the term self-determination was supported in principle by more governments than had been expected. The concept has by no means been rejected. However, the opponents are insistent and unless indigenous and progressive countries assert their positions, the strength of the draft Declaration could be seriously impaired. Indigenous delegates stated clearly that should self-determination disappear from the Declaration, they would consider the text worthless as it would be a discriminatory document.

Part II - Collective Rights

The second part of the Declaration looks at life, integrity and security. It is designed to promote the right of indigenous peoples to self-identification and freedom to belong to their own communities while protecting them from physical and cultural genocide as well

as the forcible removal from their lands and territories. Furthermore indigenous peoples have rights to special protection and security in periods of armed conflict. Throughout the text, indigenous peoples are recognised as having both collective and individual rights.

The discussion covered several points and a few governments questioned the definition of cultural genocide, asserting the right of states to conscript indigenous peoples into the armed forces and the need in exceptional circumstances to remove indigenous peoples from their territories. However the main discussion concerned the question of whether the Declaration should cover collective as well as individual rights.

Indigenous peoples and the legal experts at the meeting were adamant that collective rights were essential to the survival of indigenous peoples and that they have a reputable history in international law, ranging from the Convention on Genocide, through the Covenants on Human Rights to ILO Convention No. 169. One international lawyer, Patrick Thornberry commented: "It does not represent a technically adequate standard before this Working Group to make sweeping objections to all collective rights". Nevertheless, throughout the meeting collective rights were denied by the USA, France and Japan.

The insistence on this anti-collective stance was frustrating to the indigenous peoples because it lacked both logic and practical applicability. Indigenous land and territorial rights are based in the collectivity while any acknowledgement of indigenous institutions is meaningless without respecting the decision-making capacity of a group as a whole. Cree representative Sharon Venne illustrated this:

"As Indigenous Peoples, we believe that the rights of the individual are protected by the collective...When a eurocentric state government wants our lands, they use the collective right of expropriation. Our lands are taken for the collective good of the state. This is a collective right used by the state to take our lands. But when Indigenous Peoples invoke the use of the term 'collective rights', the state calls foul. Why is there a double standard? Our collective right is just as important as their collective right."

Government's positions on collective rights fitted broadly into the following categories: 1. Governments such as Norway, Finland,

Denmark, Australia, Fiji, Bolivia and Colombia had no problem with collective rights as expressed in the Declaration. 2. Some governments such as the United Kingdom and the Netherlands, were concerned that collective rights would affect the individual rights of indigenous peoples, but with reassurances on this question would not support an exclusive use of individual rights in the text. 3. Some governments such as Brazil, Chile, Malaysia and China accept that collective rights could be in the Declaration but want to negotiate and discuss clearly when this should be appropriate. 4. Several hard-line governments opposed collective rights. These were led by the USA, France and Japan. However Germany and Peru also appeared sympathetic to this position.

This list shifts some of the governments which were opposed to self-determination, such as Brazil, into being more positive on this matter than others such as Peru and Germany. The result is that there is no complete consistency in any government's position which means that they may be flexible and prepared to reconsider their line given time and reflection. Many of the delegates in Geneva were not familiar with indigenous questions and this also applies to representatives in some ministries in the home state who produced instructions on certain matters which are clearly erroneous.

Parts III and IV - Culture and Education

Part III is about culture, religious and linguistic identity and covers freedom to practise, revitalise and teach their traditions, customs and ceremonies. Little objections were raised to this Part, although New Zealand and Malaysia wanted clarification on the provision for the restitution of indigenous cultural, intellectual, religious and spiritual property. France insisted that French remain the language of its colonies.

The fourth part covers education and public information, recognising the rights of indigenous peoples to state education and to establish their own educational systems. Furthermore education curricula should promote understanding and tolerance of indigenous ways of life and reflect their values. The Part also contains provision for indigenous peoples to establish the media in their own languages and protects them from discriminatory employment conditions. Few negative comments were made on Part IV, although the USA considered that indigenous children living outside of their territories should not necessarily receive culturally appropriate education.

Part V: Participation, Consent and Positive Discrimination

Part V concerns economic and social rights. This recognises indigenous peoples' right to participate in decision-making which affects them and asserts that states shall obtain their free and informed consent before implementing any legislative or administrative measures. It also recognises the indigenous right to self-development, the right for special measures to improve their conditions and provide compensation for past deprivation. Special mention is made of the right to health facilities and the freedom to practise traditional medicine.

The first discussion centred around the concept of participation. During the discussion of the revision of ILO Convention 169, the terms consult and participate were seen as weak versions of the terms consent and control. The former pair of concepts recognised that indigenous peoples could discuss and take part in decisions which affected them, while the latter pair acknowledged their right to determine their destinies. Since that discussion, 'participation' has become a general term which covers the whole range of activities from consultation to consent. The meeting reflected this semantic shift and looked at the different meanings of participation.

The discussion was, in effect, about self-determination. Indigenous peoples saw participation as rooted in consent and control of their lives and governments such as Norway, Finland, Australia, Bolivia, Colombia and Chile agreed. Canada took a weaker position, and saw participation through the concept of 'self-government' while Sweden saw equality through state democracy as significant. Brazil and France, on the other hand, saw participation in the weakest form of consultation and the right to take part in state initiatives.

The other point of discussion in Part V concerned the question of special measures and priority of access to state resources. New Zealand and the USA did not like the idea of committing state finances to indigenous peoples and were severely criticised by indigenous representatives for refusing to accept their responsibilities. The question of special measures was raised by several governments, including the USA, Japan and France, as establishing a new form of inequality. Indigenous representatives and the legal experts present were at pains to explain that 'special measures' are not designed to make indigenous peoples less equal from others, but to ensure them a standard of living which is on a par with others in the same country. This was expressed by Hannum as follows:

"Recognition of the special position and rights of indigenous peoples does not represent an attempt to discriminate against others but merely responds to the historical injustices and contemporary reality outlined by many indigenous speakers...Obviously such special treatment is not only appropriate, but it is necessary...it is surely insufficient to attempt to dismiss serious discussion by calling them 'discriminatory'."

Part VI - Territories, Lands and Resources

Although this was expected to be one of the more contentious aspects of the Declaration, the discussion was not as divisive as had been anticipated. This part of the Declaration begins with a general recognition of the philosophical holistic aspect of indigenous territories and proceeds to recognise rights to own, develop, control and use them. Included here is the inalienability of indigenous lands and territories. Indigenous peoples have the right to restitution of lands taken without their consent, control over their resources and protection of their environment and cultural property.

The positions of the governments over these articles are as follows: 1. Bolivia and Colombia supported the indigenous representatives who clearly defended these articles of the declaration emphasising the importance of recognising lands, territories and resources that they have traditionally owned, occupied and used. 2. Australia did not acknowledge indigenous title absolutely and expressed its position by the example of freehold which can be extinguished in certain contexts. Finland and Norway were also slightly unclear of their position on lands and resources as these areas are to be approved during 1996. 3. Brazil, Argentina and Peru had problems with the term 'territory', which, although recognised in their national legislation, was ignored. Brazil argued that indigenous peoples only had usufruct rights to land as all territory was in the hands of the state. 4. The USA refused to recognise collective land rights at all and referred to 'persons owning land'. Japan also emphasised a desire to link indigenous land rights to state property law. France wanted to make environmental protection a condition of land rights. This position has been used by some environmental organisations but was roundly rejected by the World Wide Fund for Nature (WWF) which fully supported the land, territory and resources provisions of the Declaration as it stands.

Part VII - Indigenous Political Institutions

Part VII concerns indigenous institutions and looks at the right to determine structures and membership as well as possible options for self-determination, including autonomy and self-government. It supports the rights of indigenous individuals under international human rights standards and promotes freedom of movement between indigenous peoples divided by state boundaries. This part also recognises that indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and constructive agreements made with states according to their original spirit and intent.

The indigenous representatives re-emphasised their assertion of the right of self-determination and stated that the use of the terms 'autonomy' and 'self-government' should not be seen as limiting their rights. They unanimously supported the recognition and respect of treaties between indigenous peoples and governments as international agreements. The International Indian Treaty Council, the Maori and representatives from Treaty peoples in Canada made strong statements on this subject. The representative from Treaty Six said:

"All we are saying to Canada is, live up to the treaty as a whole and respect the treaty relationship that was established by our respective ancestors and everything else will fall into place....The very fact that an International Treaty was entered into by our Nations and the Crown is in itself a recognition of our sovereignty and self-determination and the relinquishment of that right was not even discussed at the time of the Treaty."

Colombia, Bolivia, Fiji, Australia and the Nordic countries were positive in the recognition of self-determination and treaty obligations. Those governments with treaty obligations such as New Zealand and Canada were equivocal, while the USA and Argentina were not enthusiastic about treaties being recognised as international agreements.

Parts VIII and IX - Implementation and General Provisions

Part VIII obliges states to give full effect to the Declaration and provide indigenous peoples with the procedures and financial assistance to bring its aspirations into fruition. The United Nations should establish a body to monitor the Declaration. The final part

says that the rights in the Declaration are minimum standards for indigenous peoples, both men and women, and should not weaken any future rights they might acquire. Finally the Declaration says that it should not be interpreted as implying any activity contrary to the Charter of the United Nations.

Discussion on these parts was relatively short. As with the other parts, the indigenous representatives were in favour. The Nordic governments considered that the current discussion on the establishment of a permanent forum would be relevant for the implementation of the Declaration. New Zealand was concerned with the financial obligations on states made by the Declaration. However Japan and the USA continued to reiterate their obsession with individual rights.

The Report

Throughout the meeting, the Chair and Secretariat had been drafting the final report and distributing it for consultation with the different parties. The final drafts were presented as three conference papers on the last two days and these were discussed in consultations and negotiations behind the scenes. The indigenous caucus met and formed a drafting group to read all of the reports and make their comments. Meanwhile small clusters of government representatives were strategising. Of particular note were Bangladesh, Brazil and the USA which had been the most vociferous about denial of the term 'peoples' and collective rights.

On the final day, it became clear that the main problem facing the report was that Brazil, the USA and Bangladesh wanted the term 'people' used throughout the report or that the term 'peoples' receive a bracket [] which shows that its status is under discussion. In this case it would mean a direct threat to the term peoples. Indigenous representatives and many governments were incensed that the proceedings were being delayed. In the first place the draft Declaration consistently uses the term peoples while throughout the meeting most of the participants (with the exception of a few governments) also used peoples.

Negotiations took place with a small group including Australia, Fiji, Chile and USA. A compromise was reached when a form of wording was drafted and placed at the beginning of the report. The indigenous representatives accepted it as did all of the governments. The extent to which the USA and Brazil are obsessed with

removing the 's' from peoples became clear when the meeting was held up for them to receive new instructions from home. The final wording was as follows:

"This report is solely a record of the debate and does not imply acceptance of the usage of either expression "indigenous peoples" or "indigenous people" in this report. Both are used without prejudice to the position of particular delegations where divergences of approach remain."

The amendments suggested by the indigenous participants at the meeting primarily concerned an accurate representation of what they had said. The report is important because it gives an indication of the feeling in the meeting for certain subjects. This involves interpreting indicators of support or dissent by using terms such as 'many', 'several', 'some', 'certain', 'few' and 'one'. The indigenous representatives wanted to ensure that their consensus positions were described by the term 'all'. The feeling from the report is that, in a government context, 'all' and 'many' accounts for agreement; 'several' and 'some' for room for negotiation and 'few' a minority position. However, these are still reflections on the meeting itself and many governments did not make comments.

The Chair of the meeting received the indigenous amendments and agreed that they would be included in the final revision of the text. The final hour of the meeting consisted of a reading of the report and the incorporation of a few minor amendments. The prior agreement over the word peoples and the Chair's willingness to incorporate changes led to a consensus and the report was gavelled through.

Future Activities of the Working Group

On the last day, informal discussions took place about several matters. It was agreed after much discussion that the next meeting should be held in November, 1996. Furthermore a resolution was passing through the General Assembly which should allow the UN Voluntary Fund for Indigenous Peoples to support representatives to both the summer and winter Working Groups.

The activities for 1996 were not discussed in detail. Most indigenous representatives and governments advocated a second year looking at the Declaration article by article but without entering into any drafting. This would provide more time for negotiations and enable indigenous peoples to explain their position to govern-

ments which have not been taking such an active part in the proceedings. Nevertheless, Australia seemed keen to begin drafting some of the less controversial articles and some other participants felt that the Working Group should start demonstrating results. No decision was made as to next year's working plan but the Commission on Human Rights in 1996 will be the place where resolutions for future activities will be drafted and discussed.

Conclusions

The indigenous caucus presented a united front at the meeting and the members provided a statement which summarises their position in the form of eight points: I. The Indigenous Peoples' Caucus expressed the importance of treaties as they confirm and are evidence of our right to self-determination. II. The Indigenous Peoples' Caucus asserted that the term 'Indigenous Peoples' must be adopted and further the right of self-determination as understood in International Law must attach to the term "Indigenous Peoples". III. The Indigenous Peoples' Caucus urged explicit recognition of lands, territories and resources that they have traditionally owned, occupied and used because of the long-standing history of dispossession of lands illegally or unjustly taken. IV. the Indigenous Peoples' Caucus reiterated their positions regarding their distinct status as first nations and peoples, and they further stated their support for the principles elaborated in Article 2 in order to protect their security, integrity and cohesiveness. V. The Indigenous Peoples' Caucus stated that the preamble is fundamental to the overall draft because it lays the philosophical foundations and contextual clauses and is responsive to the intent of the Declaration; the Indigenous Peoples argued for the consideration of the preamble by the operative paragraphs. VI. The Indigenous Peoples' Caucus reaffirmed the need to recognize the standards contained in the Draft Declaration as minimum standards, creating the foundation for the further development of Indigenous Inherent Human Rights. VII. The Indigenous Peoples' Caucus stated the need to retain the language of Article 45 to ensure that states and other persons do not interpret anything in the Draft Declaration in a manner of those rights specified. VIII. The Indigenous Peoples' Caucus reasserted that the Collective Rights of Indigenous Peoples must be respected and acknowledged pursuant to internationally recognized Human Rights Instruments.'

In summary it is possible to present governments positions in a somewhat rudimentary manner as a guide to future work. The governments are split within their regions but can be divided into vocal, which participated actively in the meeting, and the silent ones, which did not. Vocal countries cluster in four types: cold, tepid, lukewarm and warm while the silent governments are analysed into two on the basis of consultations during the meeting. (C) means current member of the Commission on Human Rights.

Vocal Countries

Cold	Tepid	Lukewarm	Warm
Bangladesh (C)	Canada (C)	Chile (C)	Australia (C)
Brazil (C)	Indonesia (C)	Mexico (C)	Colombia (C)
China (C)	Malaysia (C)	Russia (C)	Cuba (C)
France	Nepal (C)	Sweden	Finland (C)
India (C)	Philippines (C)	El Salvador (C)	Nicaragua (C)
Japan (C)	New Zealand	Panama	Bolivia
Peru (C)			Denmark
USA (C)			Fiji
			Norway

Silent Countries

Cooler	Warmer
Ecuador (C)	Netherlands (C)
Germany (C)	United Kingdom (C)
Ukraine	Spain
	Pakistan (C)

Unknown quantities

Algeria (C), Austria (C), Bulgaria, Costa Rica, Egypt (C), Ethiopia (C), Guatemala, Honduras, Italy (C), Sri Lanka (C), Greece, Iraq, Israel, Jordan, Kenya, Morocco, South Africa, Syria, Tanzania, Thailand, Uruguay, Vietnam.

Indigenous peoples have been aware for a while that once the draft Declaration reached the political levels of the United Nations it would be much harder to defend than hitherto. The meeting of the Working Group demonstrated that this is the case. There is far more government participation than at the Subcommission Working Group and indigenous peoples are clearly not the ultimate decision-makers as to their fate. For this reason, the open and fair approach by José Urrutia, the Chair, was welcomed by the indigenous peoples. He treated all participants as equals with the same rights to speak and to be consulted over the report. Indeed his allowing an indigenous ceremony to take place on the second day of the meeting was particularly appreciated. The meeting was a general discussion and although some governments were largely negative, the attacks on indigenous rights were not as forthcoming as had been expected. The indigenous caucus kept a unity and solidarity which meant that their position in defence of the Declaration was unbreakable. The atmosphere in the meeting was positive and indigenous delegations had time and space to discuss points with several governments and open up possibilities for understanding.

The process of drafting the Declaration has been educational for both indigenous peoples and governments. However it is clear that governments which have not participated in the drafting sessions in the Subcommission Working Group are still unclear about what it really means. Some Asian countries appeared less negative after discussing particular points personally and certain critical Latin American countries have admitted that the instructions which they received came from ministries not familiar with indigenous rights.

For this reason indigenous peoples and most governments do not favour rushing the process. A gradualist approach towards the areas of disagreement seems the most positive. With a few exceptions, Governments have not been blocking or rejecting the important concepts such as 'peoples', 'self-determination', 'territories', 'consent' and 'control'. Rather they 'seek clarification' which means that there is still room for discussion. The problems will arise at the point governments refuse to seek mutual understanding of these crucial concepts with indigenous peoples because this will threaten a break down in the dialogue.

Indigenous peoples at the meeting decided to make a priority of discussing these matters with their own governments in order to

make their positions clear and explain the reasoning behind the need for recognition of their rights. Much preparatory work therefore needs to be done before the next November Working Group.

INDIGENOUS PEOPLES AND THE UNITED NATIONS:

THE COMMISSION ON HUMAN RIGHTS
PUTS INDIGENOUS ISSUES ON THE AGENDA

By Inger Sjørsløv

A new phase was entered in the ongoing relationship between the world's indigenous peoples and the United Nations, when at the fifty-second session of The Commission on Human Rights, which took place from the 18th of March to the 26th of April, indigenous issues were put on the agenda as a separate item. Until then, indigenous issues had been dealt with mainly under the item that contains reports from the Subcommission on Prevention of Discrimination and Protection of Minorities and thus includes the report from the Working Group on Indigenous Populations. This year, however, the situation has changed. First of all the Draft Declaration on indigenous rights has reached the level of the Commission and is being processed in a special intersessional working group, as related in Andrew Gray's report. Secondly the idea to establish a permanent forum for indigenous peoples within the UN has moved forward and is slowly starting to concretize. Resolutions have been put forward in the General Assembly concerning the Decade and the possible establishment of a permanent forum, and this was also dealt with in a workshop that took place in Copenhagen in June 1995.

On the whole, the number of meetings and activities of concern to indigenous peoples has expanded substantially within the last few years. There were thus many good reasons for putting the different subjects and activities together under one agenda item, to be discussed under a whole and within the context of the issues and problems, indigenous peoples themselves see as the most urgent. Achieving this result was, however, not easy, and for a while it looked as if the governments that had put forward the proposal to establish a separate agenda item would not be successful.

The process started some time before the actual meeting of the Commission began, when the Danish Government, which has just become a member of the Commission for the next three year period, forwarded the proposal to establish a separate agenda item on indigenous issues to the Bureau of the Commission. The proposal was at that time supported by 11 countries. It ended favorably, when on the 1st of April, the Brazilian chairman Ambassador Saboia announced that a new agenda item, item 23, indigenous issues, had been added to the agenda.

In 1996 the 53 members of the Commission are: Algeria, Angola, Australia, Austria, Bangladesh, Belarus, Benin, Bhutan, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Cote d'Ivoire, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Gabon, Germany, Guinea, Hungary, India, Indonesia, Italy, Japan, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Nepal, Netherlands, Nicaragua, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, Sri Lanka, Uganda, Ukraine, United Kingdom, United States, Venezuela and Zimbabwe.

The governments in the UN have formed themselves into five regional blocs: Africa, Asia, Central and South America including the Caribbean, Eastern Europe, and the Western and Other Group (WEOG), which besides the states of Western Europe includes Australia, Canada, Japan, New Zealand and the United States. The groups negotiate individually and aim to develop solidarity and reach internal agreements before the subjects come up for discussion and vote in the Commission.

Not surprisingly, the Asian group is the most difficult to deal with in matters of concern to indigenous peoples. The African group seems so far to be rather neutral, while the Central- and South American group and Eastern Europe with the Russian Federation are relatively open to arguments put forward by the leading states in these matters. These are for the moment a part of the WEOG, consisting of the Nordic countries, Canada, Australia and New Zealand. Other members of the WEOG are rather sceptical or even negative to the indigenous cause. Many of the European countries regard indigenous peoples as minorities and are negative towards collective rights. The United States has shown an openly negative attitude and seems to have been one of the most difficult states to deal with in the recent negotiations.

For the moment, Australia, Canada and Denmark with the Greenland Home Rule are the main promoters of indigenous rights. The initiative to establish a separate agenda item on indigenous issues came from Denmark, but it was put forward on behalf of Australia, Bolivia, Canada, Chile, Columbia, Denmark, Fiji, Finland, Iceland, New Zealand, Nicaragua, Norway, Peru, Sweden, the Russian Federation and Venezuela. Soon after, it aquired the support of a number of other Latin American countries. The arguments for a separate agenda item refered to resolution 50/157 of the General Assembly, which adopts the activities for the Decade and recommends that the Commission on Human Rights considers the convening of a second workshop on the possible establishment of a permanent forum for indigenous peoples. It also refers to resolution 1995/32 of the Commission which says that the Commission should again at its 52nd session consider the question of a declaration under an appropriate agenda item to be decided upon. It furthermore refers to resolution 1995/32 of the ECOSOC which requests the Commission on Human Rights at its 52nd session to review the progress of the Working Group on the Draft Declaration and to transmit its comments to the ECOSOC at its substantive session in 1996. It concludes that "Because of the dynamic evolution of these issues, it is no longer appropriate to consider them under the item on the Report of the Sub-Commission".

After much lobbying and corridor talk in the Commission, the positive outcome of the initiative in the end was very much due to the support given by Canada, including the Canadian member of the Bureau, which assists the chairman. Not unexpectedly, the Asian group was the most negative towards indigenous issues, but the Western group was not too easy to deal with either, and much lobby work had to be done to get to the point when on the 1st of April, none of the country members seemed to be against establishing the agenda item - which had been named 'indigenous issues' to avoid the discussion of the 's' in peoples blocking the further process from the start. Put on the agenda as item 23, it was discussed on the afternoon session and an evening session on the 9th of April and part of the morning session on the 10th.

The few days in between the final adoption of the separate agenda item and the beginning of the discussions left little room for informing the indigenous representatives and making the practical and economical arrangements to reach Geneva. It was furthermore

in the middle of Easter, and many offices were closed and people out of reach. In spite of this, a number of indigenous representatives managed to be present, and 13 indigenous and support organisations were on the speakers' list for agenda item 23.

Important Statements

Among the many important statements made was one by the representative of the *Kwe* of Botswana, also known as Bushmen or San people. His speech recommended that upcoming items under agenda 23 include procedures for political participation in all decisions affecting indigenous communities; provision for the means and wherewithal for self development by indigenous peoples; protection and promotion of indigenous culture, etiology, knowledge and belief systems; and recognition of the rights of land ownership, access and use of traditional territories.

A statement by the Saami Council contained a number of constructive proposals, including a suggestion for a name of the permanent forum, which could be entitled *The UN Commission on the status of indigenous peoples*. It recommended the permanent forum to be established as a subsidiary body of the ECOSOC, and that it consider issues such as health, development, education, culture and environment. The mandate should enable the forum to deal effectively with issues concerning indigenous peoples, and it should

“have the potential to facilitate other UN organs and specialized agencies in devising coherent and coordinated policies and programmes for the benefit of indigenous peoples and which incorporate the indigenous view in their conceptualization and implementation.”

This statement also emphasized the Draft Declaration as a major breakthrough, which should not be weakened in any way, and it urged the Commission's Working Group on the Draft Declaration to ensure that the principles of human rights on which the Declaration is founded are strengthened during the considerations of the Draft Declaration. It finally highlighted the cardinal issues for the Decade as the adoption of the Draft Declaration in its present form before the end of the first half of the Decade, and interestingly proposed the further development of international standards for the protection and promotion of the human rights of indigenous peoples by starting the drafting of a UN Convention on the rights of indigenous peoples in the beginning of the second half of the Decade.

A statement by the Society for Threatened Peoples addressed the issue of self-determination and the fact that some governments oppose the article in the Declaration that deals with self-determination with the argument that this is not a clear concept in international law. With reference to West Papua, the oppression of the *Karennis* by the Myanmar government, and the continuous violation of human rights in the Chittagong Hill Tracts, it stated that

“When a state's political system and government is so exclusive and non-democratic that it no longer can be said to represent the whole of the population, and oppresses the indigenous people, that people certainly should be permitted to exercise its rights to self-determination.”

It also addressed the issue of international law being clear enough on the concepts of self-determination as relating to all peoples, and the concept of indigenous peoples in itself being just as well defined as other concepts in current use in international law. In another statement made in the name of IWGIA, a representative of the *Cree Nation* quoted that

“any efforts to define who or what are indigenous peoples are seen as further attempts to dispossess and take away our inherent right to be. Indeed to assume a right to define indigenous peoples is to further deny our right of self-determination, since there can be no more fundamental expression of that right than the ability to determine who one is through self identification.”

Aside from addressing their specific problems and concerns, most of the indigenous speakers expressed their appreciation that indigenous issues had become a separate agenda item. They were also quite unanimous in emphasising their wish that the Draft Declaration be kept in its present form, and many advocated for the continuation of the discussions and negotiations to establish a permanent forum.

On the government side, 13 member governments and a smaller number of observer governments spoke. On the whole, the speeches welcomed the fact that the Commission has taken up the indigenous issue. Many mentioned the further work on the permanent forum and the drafting of the Declaration, and many praised the work that has been done by the WGIP.

In the statement given by the representative of the Greenland Home Rule Government on behalf of the Nordic countries, the

Centre for Human Rights, the NGO-committee and governments were urged to do their utmost to ensure the most liberal access possible for indigenous representatives to the working group that deal with the Draft Declaration. It was regretted that the first meeting in the working group had not been truly open to all indigenous participants. At the same time, it complemented the chairman of the group, Ambassador Urrutia, on the transparent way in which the negotiations were conducted and on his frequent consultations with indigenous representatives. This statement also mentioned the review of existing UN mechanisms, procedures and programmes relating to indigenous peoples which had been agreed upon during the workshop on the permanent forum in Copenhagen in June 1995. The review was confirmed by the fiftieth General Assembly, and it is to be finished before the fifty-first General Assembly in 1996. The Nordic countries urged the Secretary-General to ensure that the results of the review be circulated "well in advance of the fifty-first session of the General Assembly to allow sufficient time for consultations with indigenous peoples." It is expected that the results of this review will be ready for discussion among the indigenous representatives at the WGIP meeting in July.

It should be added here that the review was proposed as a way of acquiring a better documentation on the current state of affairs in the UN concerning indigenous peoples' accesibility to the system, and the ways in which the organisation's different bodies and instruments take care of indigenous peoples' interests. This of course in connection with demonstrating the need to establish a permanent forum for indigenous peoples - a forum whose mandate and activities should be based on indigenous peoples' view of the wants and negligences of the system as it is, and the need to coordinate those instruments that do exist within the system.

The Nordic statement, along with other government statements also mentioned the idea of holding a second workshop to further discuss the possible establishment of a permanent forum between indigenous representatives and governments. This workshop can only take place after the General Assembly and the Commission on Human Rights have received and discussed the results of the review at their next sessions. The Nordic countries are eager to promote the idea of a permanent forum, and in their joint statement they also urged the WGIP to give priority consideration at its fourteenth session to the discussions of indigenous peoples' thoughts about the structure, mandate and scope of such a forum.

After the completion of the speeches on this agenda item - which surprisingly enough, considering the short preparation time, took up more than one whole day - the work on the resolutions began. Four resolutions concerning indigenous issues were put forward, initiated by Australia, Denmark and New Zealand. The following is a list of these resolutions and their main points.

Resolutions Adopted on the 19th of April at the Fifty-Second Session of the Commission on Human Rights

1) Resolution on the permanent forum, put forward by the Danish government and supported by 30 members of the Commission, (E/CN.4/1996/L.70/rev.1).

In presenting the resolution for adoption, the Danish delegation representative, with reference to the dialogue between governments, said:

"The aim of the draft resolution is exactly to strengthen and to widen this dialogue, based on the results achieved so far in the General Assembly, in the Commission on Human Rights and at the UN Workshop held in Copenhagen in June 1995. The draft resolution supports the idea that came up at the Copenhagen workshop that existing UN-mechanisms, programmes and procedures concerning indigenous peoples should be reviewed by the Secretary-General. This review is now in progress and it is our hope that the outcome of the review, as well as the report from the Copenhagen workshop, will further strengthen the dialogue on a permanent forum, as stipulated in the draft resolution."

The resolution itself

"welcomes the recommendation of the General Assembly, as contained in Assembly resolution 50/157, that the Secretary-General, drawing on the expertise of the Commission on Human Rights, as well as the Commission for Sustainable Development and other relevant bodies, undertake a review, in close consultation with Governments and taking into account the views of indigenous people, of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people and to report to the General Assembly at its fifty-first session."

The resolution also

“requests the completion of the review and its circulation to governments, relevant intergovernmental organizations and organizations of indigenous people for their comments well in advance of the fifty-first session of the General Assembly”.

Just as importantly, it

“requests the Working Group on Indigenous Populations at its fourteenth session to continue to give priority consideration to the possible establishment of a permanent forum for indigenous people and to submit its further comments and suggestions, through the Sub-Commission, to the Commission on Human Rights”.

It

“requests in particular, the WGIP to place the WGIP’s own contribution to the review of existing mechanisms, procedures and programmes concerning indigenous people on the agenda of its fourteenth session and requests the Secretary-General to invite relevant United Nations bodies and specialized agencies to submit written information on their contributions to the review to be conducted by the Secretary-General in accordance with General Assembly resolution 50/157.”

The next aim in the process of establishing a permanent forum is to convene another workshop, and the resolution

“Decides to continue the consideration of a second workshop at its fifty-third session in the context of the Commission’s continued consideration of the possible establishment of a permanent forum under the agenda item entitled ‘Indigenous Issues’.

2) Resolution on the open-ended Working Group on the Draft Declaration on indigenous peoples’ rights, (E/CN.4/1996/L.55). This resolution was put forward by Australia and adopted without a vote. Its main conclusion is that it

“Authorizes the open-ended inter-sessional working group of the Commission on Human Rights established in accordance with resolution 1995/32 of the Commission on Human Rights to meet for a period of 10 working days prior to the fifty-third session of the Commission, the costs of the meeting to be met from within existing resources;”

It also

“Encourages organizations of indigenous people which are not already registered to participate in the working group and which wish to do so to apply for authorization in accordance with the procedure set out in the annex to Commission on Human Rights resolution 1995/32.”

3) Australia also put forward a resolution, (E/CN.4/1996/L.56), supported by the Scandinavian countries and other governments, and adopted without a vote, concerning the Decade. The most important paragraphs in this resolution are the operational paragraphs 5 and 6, the wordings of which are respectively:

“Welcomes the affirmation by the General Assembly as a major objective of the Decade the adoption of a declaration on the rights of indigenous people;” and “Also welcomes the recognition by the General Assembly that among the important objectives of the Decade is the consideration of the possible establishment of a permanent forum for indigenous people within the United Nations;”

A number of governments, including USA, the UK and some Asian countries made efforts during negotiations to erase the reference to the establishment of a permanent forum for indigenous peoples as an important goal for the Decade. With the support of some Latin American countries, the reference was, however, kept in the resolution.

4) Finally a resolution was adopted on the WGIP, (E/CN.4/1996/L.66). It was put forward by New Zealand and supported by Australia, Canada, the Scandinavian countries and a number of Latin American countries.

Its main content is the recommendation that the Working Group be authorized to meet for five working days prior to the forty-eight session of the Sub-Commission. On the suggestion of Denmark it recommends in operational paragraph 10 that during the coming meeting of the Working Group, a discussion is held on the contribution of the WGIP to the ongoing review of existing UN-programmes and mechanisms concerning indigenous peoples. A major subject for discussion prior to the adoption of this resolution was operational paragraph 7, which deals with the question of definition

of indigenous peoples. As will be known by the readers of IWGIA publications, the question of definition is being brought up regularly, mainly by Asian governments who oppose the inclusion of their own indigenous peoples under the accepted international term indigenous. The wording in this resolution reflects a compromise between those governments that find that a further dealing with the question of definition is unnecessary and those that keep stating the necessity of taking up this issue. It says:

“Takes note of the recommendation of the Working Group that the Chairperson-Rapporteur address the concept of indigenous people, notes that any work should take into account the views of Governments and organizations of indigenous people, and requests that discussion of this issue take place during the fourteenth session of the Working Group under the existing agenda item on standard-setting and that the report of the Working Group be transmitted to Governments and organizations of indigenous people prior to the next session of the open-ended inter-sessional working group of the Commission on Human Rights established in accordance with resolution 1995/32.”

Final Comments

As will immediately be noticed by indigenous readers, all the wordings in the resolutions omit the ‘s’ when referring to indigenous peoples. This is of course a step backward. The governments that are supportive of indigenous rights are aware of this fact, but they argue that if they do not omit the ‘s’ in the draft resolutions, negotiations for adoption will stop before they even begin. It may be true, but still is not a good excuse, and certainly will not keep indigenous representatives from continuing their fight for the ‘s’ as representing the rights of a people.

In spite of this the fifty-second session of the Commission on Human Rights must be regarded as quite satisfactory from the indigenous point of view. Having indigenous issues under a separate agenda item will from now on make it easier and less expensive for indigenous representatives to be present when the subjects of their concern are discussed. Anyone who is just a little bit familiar with the UN work will know that we are here dealing with a very slow process, where little things that may seem insignificant can sometimes be regarded as big steps forward. The further fate of the Draft Declaration, the possible future of a permanent forum, and

the general outcome of the Decade is still unknown. Like so many other times, indigenous peoples have not much more than their hopes and their own energy to rely on. It is good that the number of activities of concern to indigenous peoples is increasing in the UN, and although the indigenous question should certainly not be isolated to one agenda item on the comprehensive agenda of the Commission on Human Rights, it is good that indigenous representatives will from now on have a chance to plan their presence and their contribution to the debate in the Commission better.

This year, an indigenous representative reminded the Commission that a representative of the *Haudonesne* people in 1923 tried to get access to the League of Nations, but was denied. Now, in 1996 there is progress with a separate agenda item. Her slight irony in stating that for this, the indigenous peoples are grateful, is understandable.

IWGIA DOCUMENTS

In English

- No. 1:** *Declaration of Barbados.* (1971) US\$ 2,20
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