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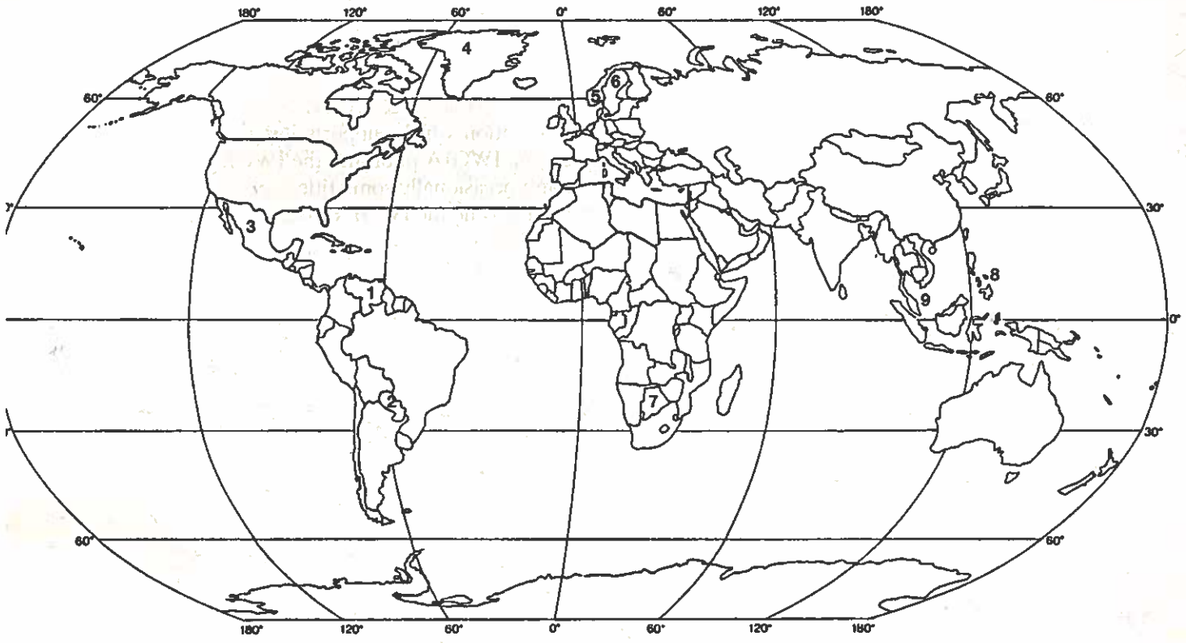

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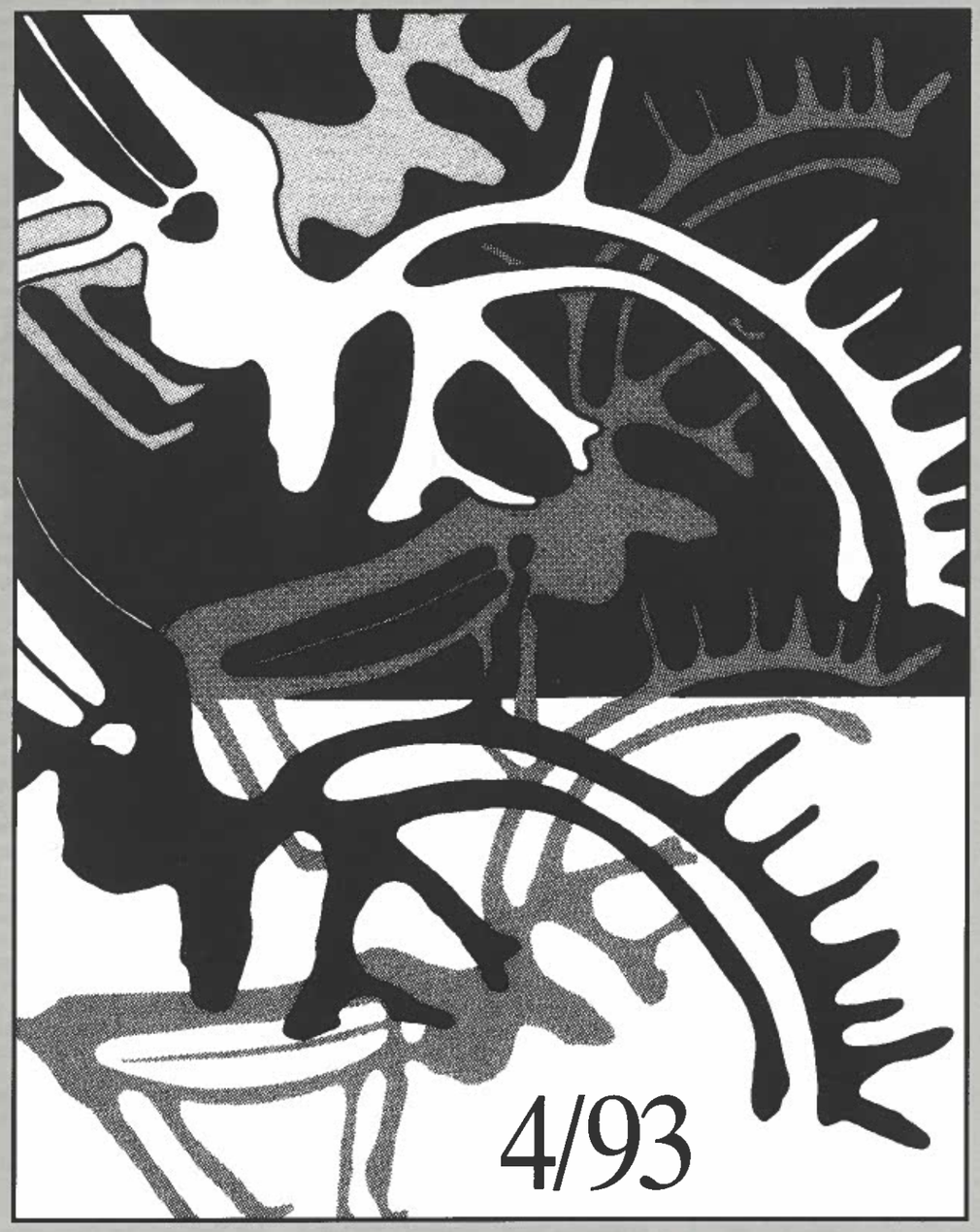
International Work Group for Indigenous Affairs



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Cover: *Jorge Monrás*

Editorial

UN International Year of Indigenous Peoples in the Rear-view mirror

By Katja Kvaale

Coincidental as it may be, the armed conflict between the Mexican army and indigenous people taking place in Chiapas in the southernmost part of Mexico began on 1 January 1994. This, being the first day after the closure of the UN International Year of Indigenous Peoples, could very well serve as a reminder that the situation of the world's indigenous peoples is by no means guaranteed improvement simply because a UN year has been dedicated to their state of affairs. It is definitely a step in the right direction, but it takes more than that.

All the glittering words that were uttered in this context during 1993 have to be condensed into real politics, real economy and a genuine willingness to cooperate and change attitudes. The question is how this will happen, and indeed whether it will happen at all. If, in the end, nothing happens, one will be left with the bitter conclusion that the UN Year simply serves as a pressure valve for nation states' bad consciences, telling them where to concentrate political bromides to satisfy the public sense of justice for the time being. It seems that government officials tend to forget their own speeches, if they ever meant them in the first place, as soon as the limelight of the UN Year concept focuses elsewhere.

To a large extent, the concept of a UN Year is a symbolic gesture that offers little more than an arena for the peoples in question to present their cause. Used in the proper way, this might carry enormous consequences, once and for all drawing the world's inert attention to these matters, forever referring to 1993, the 501st anniversary of America's colonisation, as the year when it irrevocably dawned upon the so-called modern world that indigenous peoples are here to stay. On the other hand, one should not underestimate the short term memory of the global village's inhabitants. In an age of mass media with an incredible amount of information presented constantly before our eyes and ears, the UN Year will generally have the status of a passing whim. Those who do know something about the UN Year, and why it is necessary, know exactly where to focus on human rights abuses globally. And to forget them as quickly as possible by January 1994. In this sense, from the most pessimistic point of view, the UN Year might even lead to complacency resulting from the mass psychological belief that UN Year matters »have now been taken care of«.

However, another general psychology seems to entail the belief that the abbreviation, UN, in itself implies that whatever follows is blessed with guaranteed Human Rights credibility. In a world of crumbling values, human rights are just plain good and worthwhile, and in a troubled sea of corruption and cynicism, the UN might appear as the only safe lifeline. Thus, the »customary law-value« of activities carried out in the UN's name could prove to be quite significant. Both the establishment of the Working Group on Indigenous Populations and the UN International Year of Indigenous Peoples are an irreversible recognition of the indigenous peoples' existence. This might seem to be a modest starting point, but for indigenous peoples in some continents it is a trenchant one.

Some indigenous peoples call for complete membership of the UN at the level of nation states. This triggers off the worst possible nightmare of the nation state. Aren't these people pushing their luck and behaving like ungrateful children? They have their own working group within the UN system, so what more could they want? During 1993, it has become clearer than ever that the most important thing that could happen to the world's indigenous peoples is a general change of attitudes. This includes a new concept of the world order – the realization that economic, political and cultural oppression does not always take place in a North-South context, but in North-North contexts as well. From this follows that, for instance, native North American indians and native Hawaiians are subjected to colonisation by paradigms, since »internal« affairs in a first world country seem to be harder to take seriously than »internal affairs« in third world countries, which are traditionally thought of as problematic. Indigenous peoples in first world countries appear to be transparent. It also includes an acceptance of the fact that it is not only sovereign nation states which have the right to self-determination. The solid discrimination against indigenous peoples is based on the outdated, evolutionistic but unfortunately very common idea of the industrialised, modernistic nation state sparkling on the very top of the development ladder. Hunters and gatherers, slash-and-burn agronomists, nomadic herders, indeed all (indigenous) peoples who do not praise the homogenous nation state are somehow still stuck in the twilight of primitivism. According to the Premier of Greenland, Lars Emil Johansen, racism is the greatest threat to democracy and international cooperation, which would enable the indigenous peoples to take their rightful place in a new world order of self-determination for all peoples. It is precisely this racism that forces indigenous peoples to take up nationalistic strategies, since there is no place for them within the modernistic, homogenizing nation state. If, however, the subtitle of the International UN Year – »A New Partnership« – was internalised into real politics, the nightmare of the nation states would not necessarily come true.

At the Working Group on Indigenous Populations' session in Geneva, 1993, several indigenous delegates stressed that the right to self-determination is not **given** to indigenous peoples by the UN and international law. It has existed since time immemorial, but has in the last 500 years been constantly aggrieved by colonizing powers and nation states much younger than the indigenous cultures. This implies a difference of great psychological importance when it comes to the decolonisation of the minds of indigenous individuals. They are not hoping for the mercy of the nation states but simply claiming their infringed rights. The whole UN system, being the organisation of nation states is, however, built on the opposite assumption. The whole scene of the Working Group's session is thus founded on a paradox. Indigenous delegates have been invited to partake in the drafting of a declaration of their rights. This could appear as a very natural thing, but actually it is not. The working group's five members have complete authority to draft the declaration, but have decided to learn from indigenous peoples' experiences while doing so. In this respect, the working group is unique. Governmental representatives are invited as well, or rather, being nation states, they come in »naturally«. The geography of the conference room mirrors the situation: the governmental seats, most of them empty 90% of the time, are situated up front facing the working group's five members. The whole back of the room is swarming with indigenous delegates and NGO's, who, assuming that Geneva is the centre, come from the remotest corners of the world. Although the indigenous peoples in Geneva owe their presence to a grand UN gesture, the very legal proceedings of the drafting are actually an insult to indigenous peoples' self-determination. This explains the odd mixture of gratefulness and anger characterizing the indigenous statements in the UN.

The concept of self-determination as a right which has not been given to indigenous peoples but denied to them, has other consequences than merely personal and psychological ones. It enlarges the tiny crack in the Western perception of the nation state being the sole civilized, peacegiving form of political organisation in the twentieth century. After the second world war, eliminating the troublesome differences between peoples in the giant melting pot of the nation state, was thought to be for the benefit of all in the name of peace. The United Nations was based on this assumption, and the 1957 ILO Convention #107, the first UN document ever to treat indigenous peoples as subject to international law, reflects this policy. However, for the past three decades it has become still clearer that things might not be as simple as that. Nation states are now somewhat hesitant in praising the homogenisation of man. Talking about the diversity of mankind has suddenly offered an arena to indigenous peoples. The UN's inert policy is proof of the inertia in the concept of the nation state, but events such as the establishment in 1982 of the Working Group on Indigenous Populations and the UN International Year of Indigenous Peoples in 1993 are unmistakable attempts to put an end to this inertia. It might have been a long time coming, but it is definitely here to stay.

It is striking that most of the activities and informative events in the International UN Year concerning indigenous peoples have had a culturalistic approach. Most exhibitions in museums and libraries have dealt with the exciting **culture** of these peoples, referring to hairdos, bodypaint, headgear, ethnic arts and crafts, powerful dances, mysterious shamanism, funny myths and the loving life of the extended family in harmony with nature. Even the UN's own promotion of indigenous matters is thoroughly wrapped in »culture«. Not that this is not part of the whole. The beauty in the diversity of mankind is not hard to grasp, but the beauty of self-determination is somewhat harder. It might be that the pill is easier to swallow if coated with sugar, but there is reason to worry a little about this. If the existence of indigenous peoples is legitimated only if they represent some degree of exoticism, satisfying the bored, westernised world's needs for cultural amusement, it could imply a stigmatisation of indigenous peoples. It seems that if the Inuit want to sell whale meat, the Saami want to benefit from the invention of snow-scooters and the Maasai want to use ghettoblasters, they are quite simply a little less indigenous – and tolerance of them diminishes accordingly. When it comes down to it, the very presence of indigenous peoples in Geneva disturbs the picture of them being out there, unconsciously conducting authentic culture. It takes some courage to realise that self- determination in the strict sense of the term carries with it the right to break loose from the Western »noble savage« ideal.

Not surprisingly, many indigenous peoples express great anxiety concerning how to keep the world's attention on their state of affairs after the closure of the International Year. Many express bitterness about the modest extent of immediate results deriving from the year itself. If golden speeches, flashlight-lit handshakes and entertaining cultural events were all there was to it, bitterness is easily understood. However, long-term results have some inertia as well. The Declaration of Indigenous Peoples' rights might be watered down on its way up the UN system, before finally being passed by the General Assembly in 1995. Yet, as it looks now, it will always serve as an ideal document on indigenous peoples' actual rights – or rather, as close as you can get to that with the blessing of the UN working group. The best result of the drafting could very well turn out to be the **process** of indigenous peoples coming together for more than ten years from the most different backgrouds imaginable and actually managing to cooperate. Moreover, considering that the process took place under UN conditions in Western juridical language all the way through, the results are quite amazing. For the past two decades, indigenous peoples around the world have become more and more organised, building up networks of local, national and international representation despite of very difficult conditions. They have managed to take up negotiations in a language and a form completely different from the one they are accustomed to. In a manner of speaking, they have learned to fight against the westernised, modernistic state with its own weapons. Having learned this, indigenous peoples are very hard to overlook – if decolonising the world is one of the UN's finest goals, let them prove it! Let us have self-determination all the way!

In 1993 alone, the UN International Year of Indigenous Peoples, regular massacres of indigenous peoples have taken place in Brazil, Peru and Bangladesh. There is still a long way to go from international goodwill as expressed within the UN to a genuine internalisation of indigenous peoples' rights. The recipient of the 1992 Nobel Peace Prize, the Quiché-indian, Rigoberta Menchú Tum, has done a tireless job coordinating indigenous peoples' issues since she was appointed UN goodwill ambassador to indigenous peoples in 1993. The value of her participation as a symbolic figure has not only been symbolic but real. In order to keep attention focused on indigenous peoples after 1993, she is not alone in proposing the dedication of a UN decade for indigenous peoples' issues. In December 1993, Australia put forward a draft resolution for the inauguration of an indigenous decade within the UN. Ole Henrik Magga, President of the Norwegian Saami Council, supports this idea. He pinpoints that Norway, which is still one of the most cooperative countries in respect of indigenous questions, spent 25 times more money celebrating Columbus and the Norwegian exhibition in Seville than on the International Year of Indigenous Peoples in Norway. This, Magga says, shows their order of priorities. Furthermore, the Saami people of Norway were not invited to partake in Norway's representation in Seville. To compensate for the modest results of 1993, an indigenous decade is the least we can do, he says.

All in all, the immediate results of the UN International Year of Indigenous Peoples might be few, but there is reason to believe that, seen in the rear-view mirror, 1993 was the beginning of the end of international society's disregard for indigenous peoples. What happened between indigenous peoples themselves in 1993 is probably the greatest gain of all – but the progress made will not stop there – those achievements will grow and pay off in the decades to come. ❑

The legal Fight for Land in Venezuela

by René Kuppe

A Law Suit Against the Yupka of Sierra de Perijá, Venezuela

In 1984, A. Nunez, a *Yukpa* from the community of Sirapta in the Sierra de Perijá of northwestern Venezuela signed his initials to a hand-written document dictated by the lawyer, A.J. Chacín. In this document, Nunez is said to grant the sale of a plot of 3 hectares of land for the sum of 5,000 Bolívares to the stock-breeder, A.R. Gutierrez. The particulars of the plot are stated in a very general way. The document says, for example, that to the northwest the plot borders Sirapta (the village) and to the west `the Sierra de Perijá'.

The plot is situated on a mountain top called `Cerro Espejo' and during 1983 Gutierrez cut a truck-trail up to it from the foot of the mountain and installed some technical equipment for a telecommunications centre there, including a 14 metre iron tower-antenna. The same year, according to Gutierrez, the company he formed and named 'Venezolana de Comunicaciones, S.A.' started a radio connection service between rural hacendado settlements and the urban centres. To maintain this radio station, it was necessary for employees of the company to go up to Cerro Espejo regularly.

On August 15th 1991, a group from the nearby indigenous village of Sirapta came armed with guns, machetes and sticks and forced two employees down from Cerro Espejo. The next day they took possession of a watch tower and no one including Gutierrez was allowed access to the equipment on Cerro Espejo. The local press published a statement by the people of Sirapta saying that old and new construction works in connection with the antenna on their land were destroying 2 hectares of coffee plantations, shade trees and medicinal plants, as well as spoiling the natural environment (1). Faced with the argument that the antenna had been installed 8 years before, they responded that they had owned the land for 500 years.

On September 30th 1991, Gutierrez's lawyer, A.J. Chacín (2), filed a suit in the Court of First Instance in Civil and Commercial Matters in the town of Maracaibo. It was directed against two persons identified by name, both residents of Sirapta, as well as against a third person known as 'David Aguirre' who was said to be a resident of the non-indigenous town of Machiques. It requested that the court reinstate Gutierrez's ownership of the track and the plot on Cerro Espejo and demanded that the defendants cease their acts of dissent. The suit included sworn testimony by various people that they knew the three defendants personally, including 'David Aguirre', and that the events took place as stated in the suit.

On October 28th 1991, the National Agrarian Procurator (3), (Procuraduría Agraria Nacional: PAN) requested that the Court reject the case. PAN approached the issue from the perspective of the indigenous peoples and presented a document entitled the 'Plan for the Identification of a Real Estate Plot', detailing the topographic features of communal land plots pertaining to the indigenous community of Sirapta, covering an area of 4,400 hectares. According to PAN's statement, the plot affected by the suit was situated within the Sirapta communal lands.

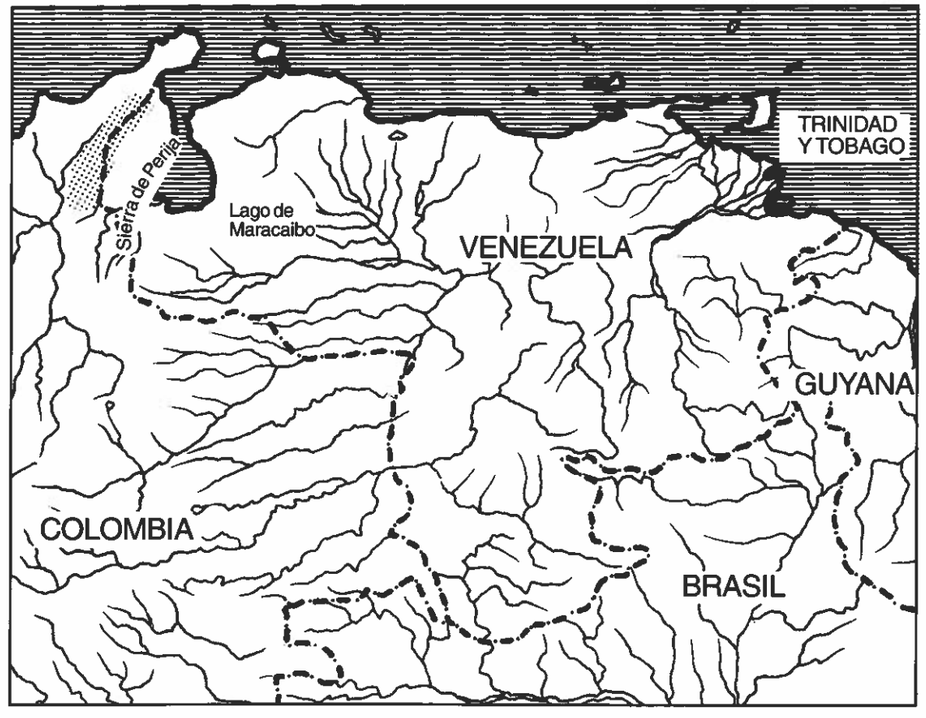
Furthermore, PAN stated that the indigenous population of Venezuela is the beneficiary of usufructuary rights to land, guaranteed and defined by the Agrarian Reform Act. These rights are irrevocable and, according to the Organic Act of Agrarian Courts and Procedure, the case under consideration ought to be heard by an Agrarian Court.

The suing party of Gutierrez did not accept this and in a written response of October 30th 1991 said:

1. The suit, even if it is directed against persons who were 'beneficiaries of the Agrarian Reform', does not come under the jurisdiction of the Agrarian Courts. The Agrarian Courts in Venezuela are not special courts for a certain type of person (such as, supposedly, indigenous persons), but rather courts for deciding *agrarian matters.*
2. The 'identification document' put before the court by the PAN was not sufficient proof that the plot is situated on 'communal lands'. (Here the suing party made use of the fact that the indigenous community had merely received, as is common practice in Venezuela, a title document not including an exact topographic description of the plot, and which does not imply subsequent registration.)
3. There is enough evidence that the suit is not filed exclusively against *indigenous* persons.

On October 6th 1991, the Court of First Instance in Civil and Commercial Matters affirmed its competence to decide the case. It stated that »the Practice of the Supreme Court shows that the competence attributed to the Agrarian Judiciary is based on the inherent nature of the goods or activities under dispute, declaring in this respect that what qualifies as a 'good' is defined in relation to agrarian production.« According to the Court, there was no evidence that, in the plot of land under question, there were any agricultural activities being carried out.

Ultimately, the court ruled against the defendants. Criminal procedures were also initiated against indigenous persons from Sirapta. Some people fled to the mountains to escape persecution by the police.



The Case Before the Supreme Court

It is not necessary here to detail the complex procedural steps which led this case to the Supreme Court where it is still pending. The indigenous peoples requested that the Supreme Court decide some of the most fundamental questions: Have the Venezuelan courts and authorities so far violated the constitutional rights of Venezuelan Indians and, in relation to this, what legal standing have the indigenous rights got under national law?

These questions were included in the indigenous request that the decision of the Civil Court be considered null and void. The request was written in the name of the two residents of Sirapta against whom the original suit had been filed, and in the name of the head of the village. The name 'David Aguirre' did not appear as he was in fact a fictitious character, despite the sworn evidence (4) to the contrary that a person of this name did live in Machiques. This sworn evidence probably contributed to the First Instance's decision to retain the case.

The indigenous request notes that the Yukpa community of Sirapta has a com-

munal title (5), recognizing their possession of 4,400 hectares deriving from the National Agrarian Institute's decision in 1978. Venezuelan agrarian law recognizes such a title under the condition that the indigenous community, as its beneficiary, maintains its proper social and kinship structure. By including the conditions of 'extended family' or 'communal state' in Article 2 of the Agrarian Reform Code, Venezuelan legislation, according to the request, attempts to maintain indigenous communal and social patterns of land use.

The indigenous request also argues that Article 2 of the Agrarian Reform Act is the legal implication of Article 77 of the Venezuelan Constitution stating that the Constitution establishes the 'exceptional ruling' required for the protection of indigenous persons. Article 77 cannot be interpreted as merely an empty notion. On the contrary, it has a concrete and significant meaning requiring the state to protect, through its laws and institutions, indigenous communities (6). By not recognizing the communal land title which the Yupka of Sirapta held for the disputed land, the First Instance Court did neglect Article 2 of the Agrarian Reform Act, which is in itself a violation of the constitutional order.

The Court also violated the constitutional order by not declaring null and void the 'contract' of the sale of land 'signed' by the illiterate and non-Spanish speaking A. Nunez. Finally, it is a fact that the original defendants were members of the Yukpa ethnic group and therefore indigenous persons who should come under the jurisdiction of the Agrarian law. The specific position of an indigenous person is recognized under Agrarian law as issuing from their quality of being 'indigenous', and not by their being agricultural workers *(campesinos)*. The competence of the Agrarian Court was thus not *functionally* bracketed by 'agrarian matters' as the Court of First Instance believed. Consequently, the Court of First Instance, by deciding the case, did illegally usurp the proper functions of the Agricultural Court.

On this evidence the Yukpa requested that the Supreme Court decree the decisions of the Civil Court to be null and void as a Constitutional Remedy. However, they made an even more striking second request. The minutes of the case were sufficient to show that the Yukpa people could not find even minimal legal protection in the lower Venezuelan courts (7), and therefore the Supreme Court was requested to declare itself competent to judge the case.

The Future Significance of the Case

The outcome of this case, brought before the Supreme Court in February 1993, will be significant for the future of Venezuelan indigenous law:

As far as the author is aware, this is the first time that the Supreme court has been called upon to judge the questionable methods by which indigenous groups are usually deprived of their land and, in view of this, the court has to test the validity of land-titles based on the Agrarian Reform Process. 'Hacendados' of northwestern Venezuela have a long tradition of 'buying' indigenous land plots from individual persons who are not aware of their legal standing. According to indigenous tradition, an individual can neither lend nor sell parts of communal lands to outsiders, and for that reason the alienation of indigenous land-titles is ruled out by Venezuelan Agrarian Law.

The case is a good example of how lower courts in the interior regions of Venezuela abuse and neglect the law in cases where indigenous interests are at stake. Courts do accept the alienation of lands, even when such land negotiations have *not* been recorded in the Public Registers and although registration is explicitly required by law. This requirement is usually neglected when a title, derived from such an illegal negotiation, is claimed *against* the indigenous group.

The First Instance Court and the suing party of Gutierrez pretended that the case did not affect indigenous lands. Initially, the suing party avoided mentioning that the defendants were indigenous persons. Even the interventions of PAN and of the defendants' legal representatives did not convince the Court that the case affected indigenous lands, although it is common knowledge that the Sierra de Perijá is the exclusive habitat of Amerindian communities. Nor did the First Instance Court recognize the specific protective legal framework of those lands.

Gutierrez, a powerful employer and landowner, is a leading figure of the social 'establishment' of northwestern Venezuela. The Court accepted perjured evidence from persons under his financial control making possible, in the most absurd manner, a suit against a nonexistent, 'non-indigenous' person. Thus the court was able to rule that the case had nothing to do with specific indigenous rights.

All these faults, neglects and biases against indigenous groups are common practice among public officials including ministries and the judiciary in Venezuela. Such cases highlight the sad and well-known situation of indigenous peoples living in a country where the rule of law does not prevail. Outside of Venezuela, public opinion is still blinded by the country's reputation of being democratic with not the worst human rights record. But the situation of the indigenous peoples of the Sierra de Perijá – and of many other parts of the country – reveals an arbitrary, violent, and genocidal everyday situation.

For the first time, the Supreme Judiciary has been called upon to admit that indigenous persons and communities do not receive justice in Venezuela. But while the Indians of Sierra de Perijá have at least a vague hope for the recognition of their land rights in this fight against a mighty invading landowner, there are even more powerful enemies in sight. Before we direct our attention to current events, we will sketch the background to these matters.

A Bit of History

The Sierra de Perijá is a mountain chain forming the international frontier between Colombia and Venezuela. Steep eastern slopes covered by dense tropical forests descending into the Maracaibo basin (Cuenca de Maracaibo) have made the Sierra one of the last strongholds of the Amerindian population of that part of South America. At the beginning of the 20th century, a large portion of the flatland to the east of the mountains was still part of Yukpa and Barí indigenous lands. Over the last 80 years, there has been a steady and violent process of pushing the Indians away from their lands, initiated by the petrol companies in 1912. In around 1950, there was a dramatic and large-scale invasion of stock-breeding and agricultural hacendados who were famous for their man-slaughtering 'Indian-hunts'. Within a short time, they cut down the forests of the flatland and transformed the region into one of the most important pastoral regions of present-day Venezuela. It is an interesting detail to note that this 'advance of the Creole frontier' was due to the successful anti-malaria campaigns of the Venezuelan government during that particular period, thus making the region a 'useful' one for the Creole invader. The indigenous peoples, with their low-density and scattered settlementpattern had themselves never suffered much from malaria (8).

The Barí, living in the southern part of the Sierra, have lost about 90 per cent of their territory since 1900. For the Yukpa in the northern part, the loss has not been as extreme, but both the Yukpa and the Barí are essentially limited to the steep-sloped mountains today. These regions have not yet been considered useful for the hacendado landholders, and the natural resources are still considered too remote for large-scale exploitation. But during the last few years a dramatic interest in the remaining indigenous lands has started to develop.

The New Menace: Coal Exploitation in Sierra De Perijá

In early 1990, articles appeared in the press mentioning plans for various enterprises to develop coal exploitation along the eastern flank of the Sierra de Perijá. The possible mining area was said to cover a zone of about 100 km from north to south, affecting many Yukpa and Barí indigenous villages and crossing the rivers running from the Sierra to the Maracaibo Lake (9). Ecologists from the University of Zulia, Maracaibo, described the Sierra as one of the regions with the greatest bio-diversity in Venezuela (10). As well as the deforestation at the exploitation sites, roads would cut through the remaining forests. Was the future of the Sierra to be similar to the situation in nearby northern Colombia

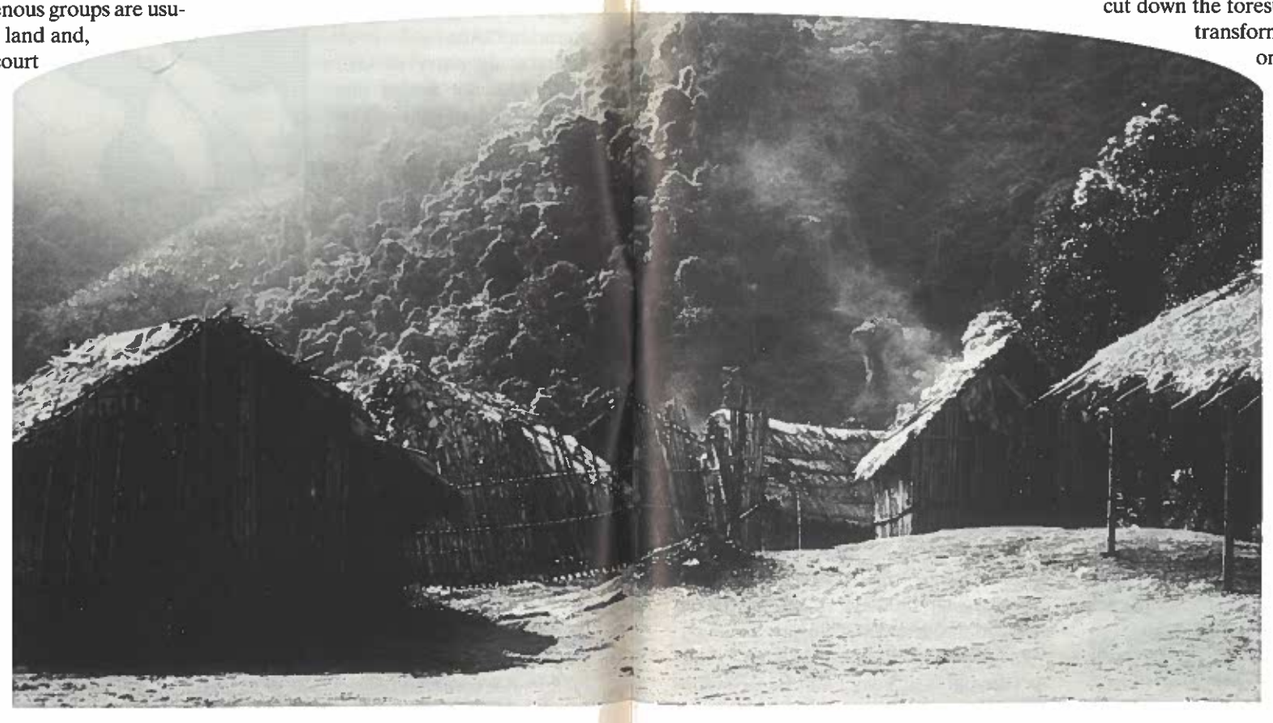


Photo: René Kuppe

where coal exploitation at the El Cerrejón coal-mine is contaminating and even poisoning the ancient lands of the Wayu peoples living there? This is where, according to a Colombian indigenous organization, at least 20 indigenous people have died from illnesses which have appeared since the coal exploitation started. It is also where the Colombian health authorities have declared large areas of ancient Wayú lands 'uninhabitable' due to the accumulation of toxic wastes (11).

On these issues and questions, both the Government of the Zulia (12) State and the Venezuelan Mining Ministry have remained silent.

In 1978, a large part of the Sierra was declared 'Parque Nacional Perijá' (13). In 1974, lower parts of the Sierra and the plains to the east had been declared 'Zona Protectora de la Región del Lago de Maracaibo' (14). National Parks and Protected Zones are legally maintained areas established to protect ecological systems, vulnerable flora and fauna and their habitat, or to provide environmental education. But the official institutions, created for the protection of nature, including the Environmental Ministry, also remained silent when the threat to the Sierra de Perijá loomed large.

In 1990, the state-backed development corporation for the Zulia region, CORPOZULIA (15), on various occasions requested at least 27 lots (16), each of approximately 5,000 hectares, for the exploration and subsequent exploitation of coal. The majority of the areas requested consist of lands used traditionally, and still in 1990, by Barí or Yukpa indigenous communities.

On August 14th 1991, the '*Gaceta Oficial*' of Venezuela, *Extraordinaria*, No. 4. 183, published requests made for the same purposes by the Commercial Society MAICCA-INTER-CHEM.

The seven lots requested, as described in the *Gaceta*, cover approximately 7,400 hectares. They consist wholly of indigenous lands, some of them even including the larger villages; four lots extend into the region declared a National Park in 1978. The Zona Protectora would also be affected by the lots, especially by rivers running from the exploitation areas to the east through the protected area.

Some Legal Background

To understand what takes place legally, it is helpful to supply some information about what the Venezuelan 'Mining Act' (17) states concerning concessions for mining activities: The state may, by a decree published in the *Gaceta Oficial*, 'reserve' areas for exploration and exploitation on most subsoil resources either throughout the entire national territory or in certain areas only. Having declared such a Reserve, concessions *can* be issued if an interested party stipulates certain advantages 'for the Nation' and follows a specific legal procedure (18). This procedure is relevant in the present case as the Sierra was declared a 'reserved zone' for coal exploitation by Presidential Decree in 1976. The procedure is as follows:

Requests for exploration and subsequent exploitation must be presented to the Mining Ministry indicating the exact location of the lot of the intended exploration activities. Such a lot may measure of up to 5,000 hectares (19). The request will be published by the Ministry in the *Gaceta Oficial* and also by the applicant in a (daily) paper in Caracas. Up until a certain time after publication, the concession may be opposed by persons claiming injury. In such a case the applicant may counter-file.

Having dismissed all objections, the Ministry may declare itself disposed to issue the concession (20). The concession is, however, not issued until the applicant fulfils certain fiscal requirements (21). An issued concession establishes: 1. exclusive right to carry out explorations within the conceded lot; 2. right to select plots for exploitation within that the given lot.

In the course of two years subsequent to the issue of the title, the concessionaire must present maps, showing in detail exploitation *plots* selected by him within the conceded lot. The plots must not cover more than half of the lots. Based on this information, the Ministry decides whether or not to give certificates of approval for the exploitation of the plots. This decision must be published in the *Gaceta Oficial* and is open to objection. Having dismissed any such objections, the Ministry certifies the approval of the exploitation parcels (24) indicating in detail their geographic location and other details. The concessionaire registers his certificate in the Public Register. At various stages of this procedure, appeals can be made to the Supreme Court against decisions by the Mining Ministry (23).

There is also a quicker procedure where the applicant asks for exploitation *plots* in his initial request (24). In such a case, the lots requested must be less than 500 hectares and the conceded lots be identical with the exploitation plots. Nowhere are indigenous rights mentioned in the Mining Act. As a consequence, there are neither substantial rules nor any procedural provisions for cases concerning land occupied or owned by indigenous peoples.

The Legal Fight Against Mining

In their capacity as legal representatives of various Yukpa and Barí communities, the lawyers Santana Mujía and Marielba Barboza, members of the law firm ASOCLIVA, on October 7th 1991, presented a legal objection to the concession of mining rights requested by MAICCA-INTERCHEM. The objection was presented as in-depth arguments based on Venezuelan environmental and indigenous law.

For similar reasons, on October 8th 1991, the Public Attorney of the Republic filed an objection against possible concessions, because these would be against the legal and constitutional rules of the Republic. An objection was also registered by the Public Attorney against conceding titles to CORPOZULIA.

Nevertheless, on August 27th 1992 (25), the Mining Ministry issued four of the seven concessions requested by MAICCA a year early for exploration and subsequent exploitation. Without giving any reasons, the concessions explicitly stated that it had dismissed objections lodged by indigenous communities of the area. The Public Attorney's interventions were not even mentioned. On September 1st 1992, another five titles were issued to CORPOZULIA partially affecting lands that had been recognized by the National Agrarian Institute as collective communal lands of different Yukpa communities.

It is quite evident that by granting the concessions the Venezuelan state has violated its own national laws as well as international human rights standards. For purposes of analysis, these violations may be grouped under two headings.

1. There are evident violations of the specific rights of Yukpa and Barí communities as indigenous peoples: the National Constitution in Article 77 makes it compulsory for Venezuela to make an 'exceptional ruling' for the protection of indigenous communities. The most important consequence of Article 77 is the fact that the ILO-Convention 107 becomes National Law in Venezuela (26). Article 1 of this document recognizes the land ownership by indigenous 'populations' of lands held traditionally. Article 6 says that economic development projects on their land shall be designed for improving their living conditions. However, experts on environmental and anthropological issues have stated that coal exploitation as planned in the Sierra will *not* improve conditions for these people. On the contrary, it will have tremendous negative hydrological, climatological and ecological effects for the region, and will also have ethnocidal consequences for the indigenous groups (27).

But are Articles 1 and 6 relevant for mining issues? According to the rule '*lex posterior derogat legi priori*' (28), even if the Mining Act states no rules for indigenous cases, the legal procedure leading to mineral titles *must* include recognition of the indigenous interests as stated in the text of the Convention, the Convention being in force as a national law.

Another implication of Article 77 of the Constitution can be found in the Agrarian Reform Act, as was argued above. The Act includes a guarantee given to indigenous populations for the use of lands and forests »where they traditionally live«, or »which traditionally belong to them« (29). Certainly in cases where land titles recognized under the Act do exist – as is the case in some northern regions of the Sierra de Perijá where Yukpa communities have Title Documents – the Agrarian Reform Act has relevance for cases where mining rights are conceded on indigenous lands.

By thus granting mining concessions in neglect of both Convention 107 and the titles based on the Agrarian Reform Code, the Venezuelan authorities have violated the specific rights of the Yukpa and Barí communities.

2. Venezuela has also violated fundamental rights guaranteed to any person by national law and by the Constitution. According to Article 67 of the Constitution, in connection with Article 2f. of the Organic Act on Administrative Proceedings, every

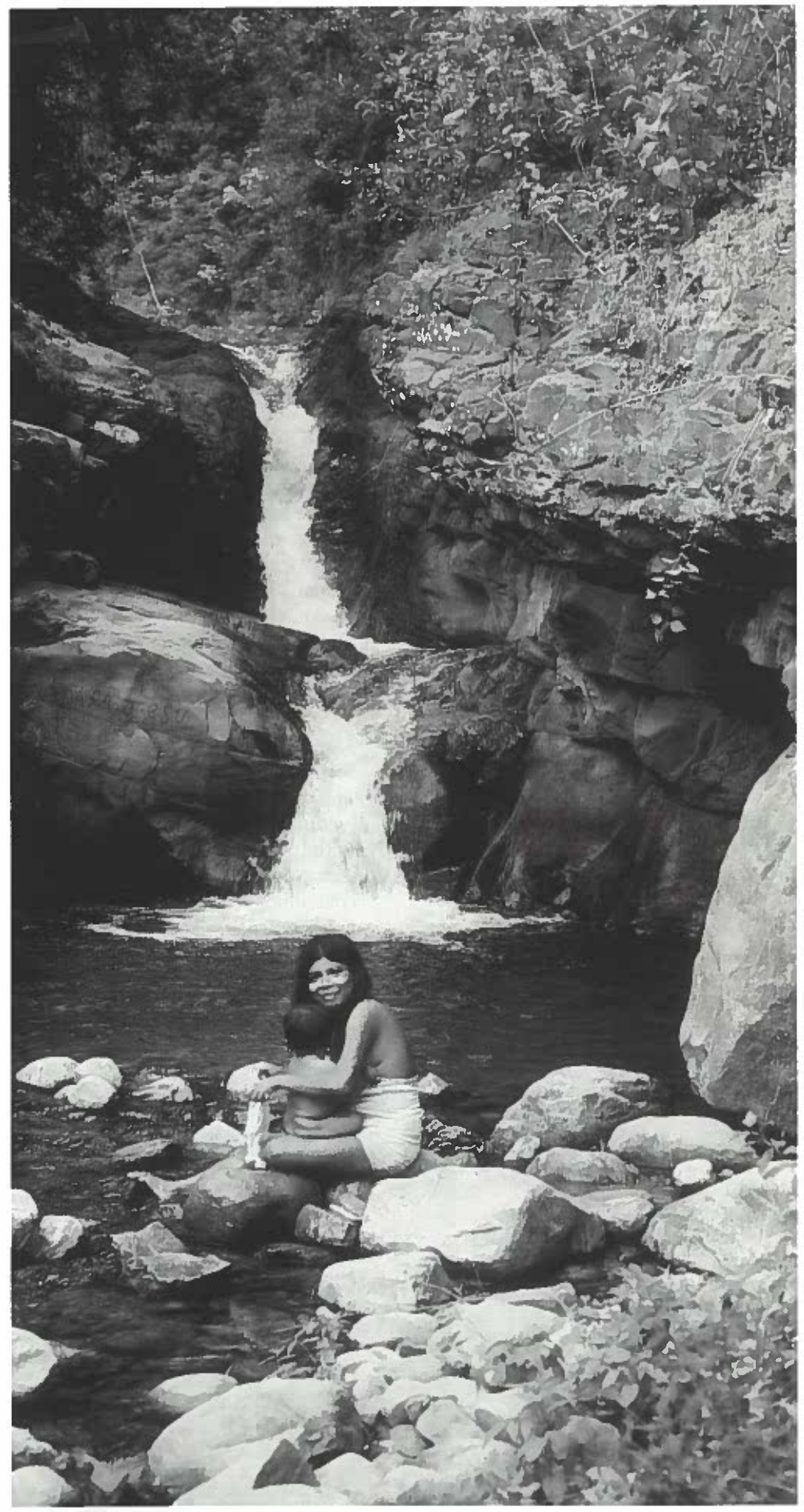


Photo: René Kuppe

person has the right to obtain an adequate response from public institutions or officers concerning one's own affairs.

The indigenous objection to Concessions made to MAICCA has never been responded to in an adequate way. The Ministry has not even decided positively to turn down the appeal. Therefore, on January 29th 1993, the legal representatives of the indigenous communities requested a formal decision about the appeal that had been filed at the Ministry 15 months before for the repeal of all administrative Acts in the case, including the issue of concessions.

Though a very significant issue, the violation of general constitutional guarantees is often overlooked in discussions of indigenous matters. Indigenous peoples not only face the problem of how to get their specific rights recognized, but they also have to fight for the recognition of basic human rights. One of the greatest barriers to implementing indigenous rights is the lack of adequate response and the refusal to even discuss the claims for these rights. This is the reality which the indigenous peoples of Venezuela face every day.

Concluding Remarks

The focus of this article has been on two law cases affecting indigenous ethnic groups of the Sierra de Perijá in northwestern Venezuela. These cases have more in common than just the fact that they concern indigenous peoples living in the same geographic region. In both cases, the authorities – local courts and Central Ministries – have completely refused to recognize the specific indigenous rights which already obtain formally. In both cases, official state authorities – local courts and Central Ministries – have neglected to consider these rights.

And in both cases, for the first time in Venezuela's recent history, the violated indigenous communities have decided to use all legal means to defend their rights, including an appeal to the highest judicial power in the country.

The Venezuelan authorities have also violated the rights of the individual citizen – especially the rights to adequate and due legal response – when the indigenous groups have tried to claim their rights before official institutions.

It is hoped that this article may help to stimulate a growing awareness of the necessary interplay between the development of *new* standards of human rights for indigenous peoples and the difficult task of getting the rights of indigenous peoples implemented by courts and other national authorities.

References:

1. El Mundo, 27 August 1991, p. 22.
2. He also drafted and finalized the sales document from 1983.
3. A Public Institution that has to intervene to defend rights based on the Agrarian Reform.
4. Supposedly by employees of the suing person.
5. The specific legal nature of the indigenous land-titles based on the Agrarian Reform Process is a complicated doctrinal matter, on which the author has written on several occasions. Such a title at least recognizes use and usufruct rights and thus implicitly passive possession.
6. The meaning of Article 77 National Constitution as a protective and not an assimilationist one, is also backed, in the Supreme Court, by references to recent international developments, such as ILO Convention 169.
7. In fact, the case has so far been judged by three different Courts before going to the Supreme Court.
8. Lizzarlde y S. Beckermann, 'Historia contemporanea de los Barí' 58 Antropologica 24.
9. 'La Sierra de Perijá: Un Problema Moral' Opinion 15.1.1990
10. 'El Peligro de llarmarse 'Sierra de Perijá' Economia 16.1.1990
11. Information paper on Sierra de Perijá, entitled 'Un punto de vista Internacional' written by the Venezuelan legal organization ASOCLIVA.
12. The sierra de Perijá, like the flatland to the east of the Sierra, is part of the state of Zulia, whose capital is Maracaibo.
13. Executive Decree No. 2983 from 12.12.1978.
14. Decree No.105 from 26.5.1974.
15. To give an impression of the obscure powers behind and within CORPOZULIA, it may be sufficient to cite from a standard work on the law for national resources in Venezuela, Regimen Juridico Institutional de la Ordenacion y Administraction del Ambiente Fundación Polar and Universidad Católica Andrés Bello, Vol 1. p218: »Up to the present, it has been impossible to get information on the internal distribution of functions«.
16. See, for example, Gaceta Oficial Extraordinaria, No. 4.183. 15.5.1990 and ibid No. 4.199, 16.8.1990.
17. ' Ley de Minas', from 1945 Gaceta Oficial Extraordinaria 18. Jan. 1945.
18. Articles 174ff.LM.
19. Compere Art 174, Section 1, LM
20. In the Gaceta Oficial there is a 'Resolucion por la cual se ordena la expedición de Título de la concesion.
21. Art. 178 LM.
22. Art. 182 LM.
23. Art. 183 LM.
24. Cf. Art174, Section 2. and Art. 184ff. LM.
25. Gaceta Oficial Extraordinaria No. 4.459, 31.8.1992
26. Gaceta Oficial No. 3235, from 3.8.1983. The following Convention has never been ratified by Venezuela, so, internationally, Venezuela is not bound by this instrument. This, however, does not mean that it is not a valid national law. But prominent lawyers and even indigenous political leaders of the country do not consider this clause in their arguments.
27. Lusbi Portillo and Cililio Carabello, 'Razones por las cuales no se debe explotar el carbón de la Sierra de Perijá, Manuscript distributed to newspapers, politicians, etc. in 1992.
28. 'The later law breaks the earlier law'.
29. Article 2. lit.d, Agrarian Reform Act.

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The Intimate Search: an Abuse of Wayu Women

UN Working Group on Indigenous Populations, 11th Session, 19-30 July 1993, Geneva

by Dalia Duran

The Guajira peninsula is situated in the north of the South America continent and is divided politically between Venezuela and Colombia. This peninsula is the ancestral territory of my people, the *Wayu*, who lived there long before the Spanish arrived.

Our territory is moulded by the tropical waters of the Caribbean Sea. Hundreds of kilometres of coastline and the permanent presence of trade winds have shaped the semi-desert environment of Guajira. They characterise its infinite plains which rise to low hills in some parts of the peninsula.

Wayu society is organised through matrilineal clans where kinship passes from mother to daughter. Our concept of family goes beyond what western society recognises as kin. Thanks to this feeling of kinship, the Wayu have a strong social cohesion which has helped us maintain a sure footing in the midst of the great calamities which we have encountered over past centuries and, above all, in the last decades when an even greater threat and a terrible danger has appeared – I am referring to drug trafficking. Contrary to what is happening in other indigenous territories in America, the drugs are not cultivated or processed in Guajira, but the traffic of marihuana and cocaine has violently undermined the foundations of our society. In spite of being a very recent phenomenon which began in the 1970s, its incidence in our society has been devastating for the Wayu. The danger can been seen especially in the women. This new scourge is like an epidemic or an atrocious plague.

With this new and very complicated situation there is a new right for our society to defend itself: to defend and preserve a model of life whose social structure is based on the family unit. Can our women continue to be the focus which provides the continuity for future generations of Wayu children? Can the matrilineal society which strengthens both the presence and participation of women among our people continue despite the threat?

This arid, dry peninsula which is difficult to reach and inhabited by a people with a warlike reputation who fought the conquistadors and colonists century after century, generation after generation, has remained distanced and isolated from European influence for over 500 years. There were very few Spanish inhabitants and even fewer missionaries. Its history has been interspersed with confrontations and our opposition to this foreign element. There are abundant historical testimonies to support this but the most forceful fact is that the Wayu people are still there. We have survived the great hecatomb of the colonial period; we number thousands of people where other indigenous nations neighbouring the Guajira were completely destroyed or assimilated into the majority culture.

Nevertheless, this achievement could be turned against us. Our territorial isolation, which until little more than twenty years ago guaranteed the tranquility of the Wayu people, is today becoming a palpable danger for our way of life. Today the Guajira peninsula is like an immense port where different types of ships pass through, and like one huge runway. There, the drugs are loaded for their journey to the world markets. The presence of the drug trade has not been fugitive or transitory. The huge amounts of money attract cheap labour into the region: today many women, men and even children work as guards for the runways and ghostly ports which appear and disappear as if by magic in the savannas and along the coast, according the to the convenience of the merciless users. The drug is stored in houses until the propitious moment, thus involving whole families. The salaries in this industry are always increasing, which has sparked off a spiralling consumerism which is foreign to our traditional way of life. Our more cherished values have been defiled. We are concerned that our sense of community solidarity is disappearing as well as the frugality of a utilitarian society which lives together taking only what it needs from the environment. And what can be said of the violence and the quantity of arms which the illicit drug traffickers use in their operations?

We watch in desperation as these changes happen before our impotent gaze. As a Wayu woman, I personally feel the threat which is closing in around each and every Wayu woman. The women have been the guarantee of our continuity for centuries and centuries. Respect for Wayu women has been undermined and a huge question mark hangs over our future. Wayu society is in an alarming state because its social organisation is coming under direct attack. A way of life clearly based on respect for women and strong communal solidarity runs the risk of being destroyed.

For over five centuries of European colonisation, women have had a fundamental role in the defense of our traditions. The woman, as a figurehead has emerged strengthened from this process. Despite the fact that the Spanish inquisitor destroyed so many elements of our society, they were unable to uproot the symbol of Wayu woman from our society. Now this reality is under such pressure that it could result in the death of a model of society which is based on family unity and, in turn, on Wayu women. A specific example of this is the body search which the state security forces of Colombia and Venezuela impose on our women.

I have already explained that the Guajira peninsula was divided into two parts after the war of independence from Spain: one part went to Venezuela while the largest part remained within the borders of Colombia. Of course, when this took place over a hundred years ago the Wayu were not consulted or asked their opinion about a division which would profoundly alter their futures. Today, in order to move around the territory which has always been ours we are subjected to the most absurd humiliations and vexations. Where roads have been built, tolls have been set up, continuing an old vice from the colonial past inherited by the democratic republics. These tolls are worse than a wall for the Wayu: they are the focus for a pestilent corruption which lurks in the shadow of power and which, of course, attacks and assaults the weakest, in this case the indigenous people. Both countries publicly declare that they are combatting the traffic in drugs and that they are fighting to overwhelm the narcotics enemy. In this fight Wayu women come off worst.

Throughout the world drug dealing organisations use so-called 'carriers' to transport small quantities of drugs from one place to another. In this case, they normally carry a couple of kilos or less from their point of origin in Colombia to the border towns in Venezuela. Wayu women have come to be very profitable 'carriers': they are resilient, know how to overcome fear and are audacious. It's sad to admit, but it is true.

The reaction of the authorities is logical. It is logical to believe that these 'carriers' contracted by the drug barons ought to be imprisoned. However, what we do not understand and do not accept is the daily harassment which our women suffer at the so-called toll posts or border control posts. What they demand of the indigenous women is inhuman and undignified. The National Guard, the Police and the Customs officials assume every women to be a 'carrier'. Indigenous women are distinctive because of their facial characteristics so whether in their traditional dress or western style clothes they are suspected of drug trafficking at the border control posts. The search includes a woman's intimate parts whereby her sexual organs are examined in a small cubicle alongside other travellers. This inspection is carried out without any form of sanitary control. Only the most humble Wayu women who use the buses or lorries as a means of transport are subjected to this search. They do not search anyone travelling in private vehicles.

Our indigenous organisation unreservedly denounces this intimate search being carried out on our women as a violation of fundamental human rights. It violates our dignity as human beings; it is not only a moral abuse but it also exposes the population to venereal diseases and other contagious diseases. This intimate search contributes to the deterioration of the physical, emotional and mental health of Wayu women who day in and day out are humiliated at the toll posts along the roads which cross our peninsula.

In the International Year of Indigenous Peoples, the Indigenous Movement for National Identity (MOIIN), demands concrete action which will benefit our peoples. We hope that this statement will move you to think deeply about our reality. We trust that this year will not become a festive folkloric commemoration, as has happened before, when our people are living in inhuman conditions under the indifferent gaze of the authorities.

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PARAGUAY

The Totobiegosode claim their traditional territory

By: Stephen W. Kidd

On Wednesday 18 August, the *Ayoréo-Totobiegosode* presented their territorial claim within their traditional habitat. They asked the Rural Welfare Institute (IBR) in Asunción to legalize an immense piece of land in an area which comprises almost a million hectares to the north of the Mennonite Colonies in the Western Region of Paraguay. They also presented a proposal that there should be no development in the area, with a view to protecting their forest-dwelling relatives and the natural resources in the area, while an anthropological study takes place to determine the exact area of their claim. There are still over 20 totobiegosode living in the mountain according to their traditional customs in a state of complete independence. Their leader is the great cacique, Ugaguede. They are steadfastly refusing to yield to the dominant society, but are increasingly endangered by the steady invasion of their land.

Historical background

Among the *chaqueño* indigenous people, the Ayoréode succeeded in resisting white domination the longest. They inhabited an extensive area in the north of the Chaco Paraguayo and the south of the Chaco Boliviano, and became famous after several bloody clashes which occurred whilst they were defending their territory against the white invaders. It was not until 1961 that Salesian missionaries made peaceful contact with them, but of the 70 Ayoréodes contacted, 30 died in one week as a result of contagion by diseases against which they had no immunity. In 1966, the New Tribes Northamerican Mission (MNT), began its evangelical mission among the Ayoréode-Tiegosode in the Cerro León area, and in the years that followed, the two missions between them virtually eradicated the Ayoréode people.

The only group which managed to avoid assimilation by the engulfing society was that which lay furthest south – the Totbiesgosode, or »the people of the place of the peccary.« They lived in an extensive area covering approximately 3.5 million hectares from Fortín Bogado in the north to the Mennonite Colonies in the south. They were the traditional enemies of the other ayoréode groups and, consequently, until 1974, they not only had to defend themself against the white people but also against the other Ayoréode who sought to exterminate them.

However, in 1979, the New Tribes Mission discovered a Totobiegosode dwelling sheltering 24 people, all of whom were taken to the mountain. As a result, very shortly afterwards, the cacique, his wife and one daughter died, the cause of death being, according to the ahthropologist, Volker von Bremen, that, »he was defeated, he lost the war, his social prestige, his world.«

Around 1984, because of the increasing difficulty in finding food, the remaining forest dwellers split into two groups. Shortly afterwards, in 1986, a North American missionary noticed signs of one of these from a plane. In spite of the worldwide condemnation of the contact in 1979, another »evangelizing« expedition was organised. On entering a Totobiegosode dwelling, the missionaries had to defend themselves from attack, and as a result, five indigenous missionaries were killed and four others wounded. Notwithstanding, 26 Totobiegosode were taken to the Campo Loro Mission where, almost immediately two others died of a virulent flu.

This tragedy shocked world public opinion and demonstrations and campaigns took place in several countries against the New Tribes Mission. Moreover, Paraguay was criticised for not providing sufficient protection for the remaining few groups of independent indigenous peoples on its national territory. It is probably because of this condemnation that the ugaguede have managed to preserve their independence until today.

The Totobiegosode today

The Totobiegosode are today divided into two groups. Those which were captured in 1979 and 1986 live in the Campo Loro missiuon in fairly difficult conditions. On the one hand, they are obliged to live side by side with their traditional enemies, and on the other, they have had to endure the consequences of abrupt and profound changes in their way of life. In the mission, many of their customs are prohibited, as they are thought diabolical, and it is impossible for them to subsist by their traditional hunting and gathering economy. They survive either by becoming cheap labour in the Mennonite Colonies or by marketing their traditional handiwork.

The other group, which comprised 21 people in in 1984, is still living in the mountain near the Mennonite Colonies. They continue to live in their traditional manner, although this has become much more difficult. They shun all contact with white men, which means that they frequently have to flee at short notice. The Totobiegosode captured in 1986 have explained what it is like to live in this state of constant anxiety. According to Chiri: »In the mountain, some days there were food shortages and we had to go far to find honey and animals – water was also scarce. There are many picadas in the mountain and we were frightened of the hunters and the white men; our area of mountain was shrinking daily. I was bored of eating the salt we obtained from the »tode« bush.«

Totobiegosode territory is being invaded

During the last few years, the pressure on the forest-dwelling Totobiegosode has intensified. Invasions by white men has become more and more destructive, as the area becomes increasingly commercialized and exploited. Just two years ago, Mennonite settlers bought more than 100,000 hectares of land in totobiegosode territory. The bulldozers are arriving, the picadas are increasing and each year a bit more of the mountain disappears.

Another tragedy looms

As already explained, in the famous *Aché-Guayakí* saying, the yacaré is eating butterflies once again. On 23 September 1991, a Mennonite bulldozer ploughed into a camp of Totobiegosode forest-dwellers, obliging the inhabitants to flee. They managed to escape, but have remained close to the Mennonite Colonies, and one month ago traces of them were found to the north of kilometre 180 of the road from Pto. Casado, in *Huehner* country.

It is believed that, because of the continual invasions, they are now in a desperate situation, and the danger of a tragedy grows daily. It is feared that, at any moment, another disastrous contact could occur, with the inevitable death toll. Or perhaps, the group will just silently disappear, victims of a fatal disease.

The Totobiegosode claim their traditional land

It is for this reason that the captured Totobiegosode have decided to commit themselves to a struggle for the survival of their people. On 25 September 1991, two days after the bulldozer destroyed the camp of forest dwellers, the leaders, Gabide Etacore, Jochade Etacore, Ducabaidé Chiquenoi and Porai Picanerai wrote their first letter demanding the legalisation of their traditional territory. They sought to secure an area in which the jungle dwellers could live peacefully according to their traditional customs, but, at the same time, those in the mission wished to regain the freedom to return to the place they were evicted from. In their own words:

»We want to state our desire to live as we please, because every ayoreo community lives as it pleases. Sir, we, the totobiegosode, know that we want to live in the land where our forefathers lived, because our tradition is that each ayoreo group lives in its own way and we want to live as totobiegosode.«

They took their petition to a trusted advisor, Dr. Walter Regehr. However, as a result of his subsequent illness and tragic death, the demand process was thwarted, and it was only a few months ago, after persistent requests, that Dr. Regehr's widow agreed to take up the groups's cause.

On 18 August, they presented a petition to the IBR, in whch they demanded the legalisation of extensive lands so that their nomadic people can benefit from the different natural resources. However, it has not been possible to define on the cadastral map the exact limits of the territory claimed, as only the ayoréode names are shown, and consequently, another petition was also presented in order to prohibit the development of an area covering approximately a million hectares. The respect for this measure by the so-called »owners« of this area, ensures that a tragedy will be avoided while a study is carried out to find and define the exact land concerned. At present, the Mennonite Colonies and the other »owners« are being informed of the prohibition, and their cooperation is being requested.

As an ayoreo leader said:

»The white men know that it is our land and that our people are there. Why, then, do they invade it and terrorize our relatives? We ask that they respect what is ours and leave our people in peace.«

We can already confirm that the President of the INDI, Mr Federico Doldán, has promised his institution's total support to the totobiegosode struggle. We hope that the country's new leader, Mr Juan Carlos Wasmoy, follows suit. ❑

Second Summit Meeting of Indigenous Peoples

The Second Summit Meeting of Indigenous Peoples, convened by Nobel Peace Prize Winner, Rigoberta Menchú, in her capacity as United Nations Good Will Ambassador for Indigenous Peoples, was held from 2 to 4 October in Oaxtepec, Morelos, Mexico.

Qaxtepec Declaration

First of all, we consider that our condition as indigenous people has steadily deteriorated over the International Year. Evictions continue, as does lack of recognition and the failure to effectively enforce fundamental laws; there is greater environmental degradation and the abuse of our natural resources is worsening. Our human rights are still being flagrantly abused on a massive scale, particularly as regards racism and the persecution of our women.

The enforcement of »structural adjustment« policies, the payment of the foreign debt and, in general, the neoliberal policies applied by the governments of the countries in which we live are having a tremendously negative impact on the health, employment, education and standard of living of our peoples. This makes us the chief victims of these policies.

As a result of the increased awareness and world mobilisation against the celebrations for the »500th Anniversary« (...) many indigenous peoples throughout the world have gained new motivation in their struggle, renewed confidence in their future and have begun to search for allies. We are certain that a United Nations Decade for the Rights of Indigenous Peoples must lead to the prolongation and strengthening, at international level, of this historic mobilisation.

Our analysis and evaluation of the United Nations International Year of Indigenous Peoples reveals that there was, in general, a sorry lack of dedication and follow-up action. Nonetheless, the most important gain our people have made is that there is today a greater awareness both of our existence within those Nations and on the international scene, as well as of the rights which are historically and legitimately ours.

As regards international mechanisms and instruments, the progress made to date was acknowledged, despite its clear limitations. (...)

During the discussion at the Second Summit, attention was drawn to the recommendation made by the World Conference on Human Rights (Vienna, 1993) to the United Nations General Assembly that the latter should declare an »International Decade of World Indigenous Peoples.« The need was reiterated to appeal to the conscience of the United Nations to endorse the proposal as a gesture of solidarity. For our part, we undertake to carry out a far-reaching campaign to disseminate the purposes and goals of the Decade, which we have decided to call: »United Nations Decade for the Rights of the Indigenous Peoples«, and to participate fully in the activities planned in the Decade's Programme of Action.

In the context of these reflections, the Second Summit of Indigenous Peoples: Resolves:

1. To propose to our sister, Rigoberta Menchú Tum, that she participate in the current 48 session of the UN General Assembly, and, as United Nations Good Will Ambassador for the International Year of Indigenous Peoples, formally present the decisions and recommendations of this Second Summit.
2. To establish that our sister Menchú Tum, as Nobel Peace Prize Winner, and in recognition of her indefatigable struggle on behalf of the human rights of the indigenous peoples and her vast experience in the activities of the United Nations in this sphere, should have full moral and technical authority to coordinate the United Nations Decade for the Rights of Indigenous Peoples, and consequently, propose that she be appointed as UN Good Will Ambassador for the duration of the Decade.
3. To appeal to all indigenous organisations worldwide to widely publicise the objectives, aims and strategies of the Decade, through national and regional meetings at the highest possible level, as well as in any other available forum.
4. To establish through this Second Summit, an information and documentation network to be used by the indigenous peoples to help them successfully carry out the activities planned in the Plan of Action for the Decade.
5. To urge all the relevant United Nations bodies and organisations to fully support the Working Group on Indigenous Peoples in the fulfilment of its present mandate, as well as in exploring the channels which could lead to the participation of representatives of indigenous peoples as independent Expert Members of the Working Group.

Likewise, this Second Summit reiterates the need to continue preparing for the planned Decade, in order to achieve the following aims:

1. To ensure the full participation of the indigenous peoples in the different organisms within the United Nations system which deal with the issues which affect our peoples, such as those related to land rights and the environment.
2. To strengthen the Independent Indigenous Fund created during this Second Summit, and administrated by the indigenous peoples themselves.
3. To ensure that at the end of the Decade all Nations inhabited by indigenous peoples recognise in their respective Political Constitutions the existence of our peoples and our inalienable rights, and offer authentic guarantees for the effective operation of our political, legal, economic, social and cultural institutions and the full implementation of those rights. ❑

DECLARATION

CONIVE

Venezuelan National Indian Council Working Group on Indigenous Populations – 11th session, 26 June 1992, Geneva.

Ladies and gentlemen, Mr President-Rapporteur, Members of the Working Group on Indigenous Peoples.

Since it is not possible for a representative of the National Indigenous Council, which comprises thirty indigenous organisations from all over the country, to attend these Working Group sessions on Indigenous Peoples, we have taken the liberty of making the following declaration.

In Venezuela, human rights violations and abuses against indigenous peoples and citizens occur systematically, because the legislation in force is ambiguous on the rights of the indigenous population. Although the National Constitution stipulates the compulsory implementation of a Legal Exception Regime to protect the indigenous population, no specific legislation has yet been created to fully guarantee our rights as peoples and cultures different from mainstream national society. This state of affairs undermines the promotion and defence of human rights, serving instead to legitimize their abuse and create a situation where indigenous peoples have no legal protection.

This lack of protection is exacerbated by the indigenous peoples' unfamiliarity with the different mechanisms of protection and defense of human rights at both national and international level.

During the International Year of World Indigenous Peoples, abuses against our rights have increased, particularly with respect to our rights to life, titles to our territories, and health care. The invasions of our territories and the destruction of their resourses is endangering the physical and cultural integrity of several indigenous villages and communities. The Venezuelan Government, through its agencies, is chiefly responsible for this situation, as the following cases show:

1) In Bolívar State, Cedeno Municipality, the Venezuelan Forestry Service (SEFORVEN) and the Ministry of the Environment and Renewable Natural Resources (MARNR) have authorized the deforestation of 120,000 hectares of tropical forest in the Lote Boscoso Chivapure, thereby endangering the *Piaroas* communities of: *Ahuade-Aje, Huaca-Aje, Chahuainoto, Paru-Aje* and *Ajereoto*, violating the ancestral rights of this indigenous people and the laws regarding the protection of forests and biodiversity approved in the international Conference on the Environment and Development held in Brazil last year.

2) In the Gifontes Municipality, also in Bolívar State, the same institutions, SEFORVEN and MARNR, granted a free loan to the La Salle Foundation for the exploitation of 130,000 hectares of forest territory belonging to the *Akawaio, Arawako, Karina* and *Pemon* communities. This will create grave difficulties for these indigenous peoples who have inhabited these forests since time immemorial.

3) The Ministry of Energy and Mines (MEN) has granted concessions for open cast coal mining in the Sierra de Porijá (Zulia State). This territory belongs to the *Yukpas* and *Barí* peoples, who are seriously threatened since they will be evicted from their lands and exposed to coal dust pollution. The above-mentioned concessions were granted to national and multinational companies such as: Massip Interchem C.A (MAICCA), CORPOZULIA, Carbones de Occidente C.A (CONSULMINCA). This coal exploitation not only threatens the lives of the indigenous community, it will also cause the disappearance of seven rivers which bear three quarters of the sweet water to the Maracaibo lake, one of the largest in the world.

4) 25 years ago, the national agency for the development of the Amazon region, the Guayana Venezuelan Corporation (CVG), built a Dike in the Cano Mánamo, Pedernales Department of Delta Amacuro State, in order to promote large-scale agricultural development. The closure of the Cano Mánamo, which was the second most important branch of the Orinoco Delta, caused a social and ecological catastrophe, since the salinisation of sweet water and the loss of the river's cycles destroyed the flora and fauna in the area. This condemned the *Warao* indigenous people to starvation – hundreds died and others migrated and are today living as refugees on the margins of society. At present, one of these warao indigenous communities, the El Garcero, is once again being harassed by the CVG, which plans to set up an 8,000 hectare rice cultivation project on its land. This would not only rob this community of its land, but also pollute its environment with pesticides.

5) In Apure State, the National Agrarian Institute (IAN) has been promoting the invasion of the indigenous territories, acting in favour of the region's landowners and cattle farmers. Since 1992, these landowners have begun to employ different methods of physical extermination, such as attacks with firearms, torture, poisoning, human hunts, and badly paid forced labour in order to exterminate the *Cuiva* community and occupy »its territory.« In February 1993, the body of **Juan Mencua**, a cuiva who had been missing for over a year, was discovered near Elorza showing signs of torture. On 30 March the same year, gunmen hired by the cattle farmers assasinated a young 17 year-old cuiva named **Tinari** with a single bullet to the forehead. Subsequently, on 15 April, in the Hato de la Pradera on the frontier with Colombia, a group of cuivas were attacked with firearms, resulting in the wounding **of Fredy David Merchan** (18 years) and the disappearance of **Genacho Quiriba** (19 years) whose whereabouts is still a mystery.

The violations and abuses of our human rights by the Venezuelan Government do not stop there. The State's indifference regarding our problems also constitutes a violation of those rights, and the lack of an adequate indigenous policy, especially regarding health, is a true denial of the right to life. Sickness and mortality rates among the indigenous community are high – in March alone in the *Yanomani (Sanema)* community in the high Caura, 12 indigenous people died of measles, not to mention more than a hundred others killed by diseases such as malaria, hepatitis delta, cholera, lesmaniasis, hemorragic dengue, which are easily preventable.

The indigenous organisations which make up this National Indigenous Council together with various pro-human rights NGOs have been appealing to the Venezuelan Government to attend to our situation, but until now no concrete response has been given. The government's indifference to the problems of the indigenous peoples and its refusal to approve the Draft Universal Indigenous Peoples Human Rights Declaration which this Working Group is preparing has been exposed within this Indigenous forum. Likewise, the Venezuelan government refused to revise ILO Convention 107, and has now also categorically refused to ratify Convention 169.

To conclude this declaration, we would ask the Working Group to comment on the flagrant violations which we have reported.

On behalf of the Coordinating Council,
Jesús González
Executive Secretary

Caracas, 26 July 1993 ❑

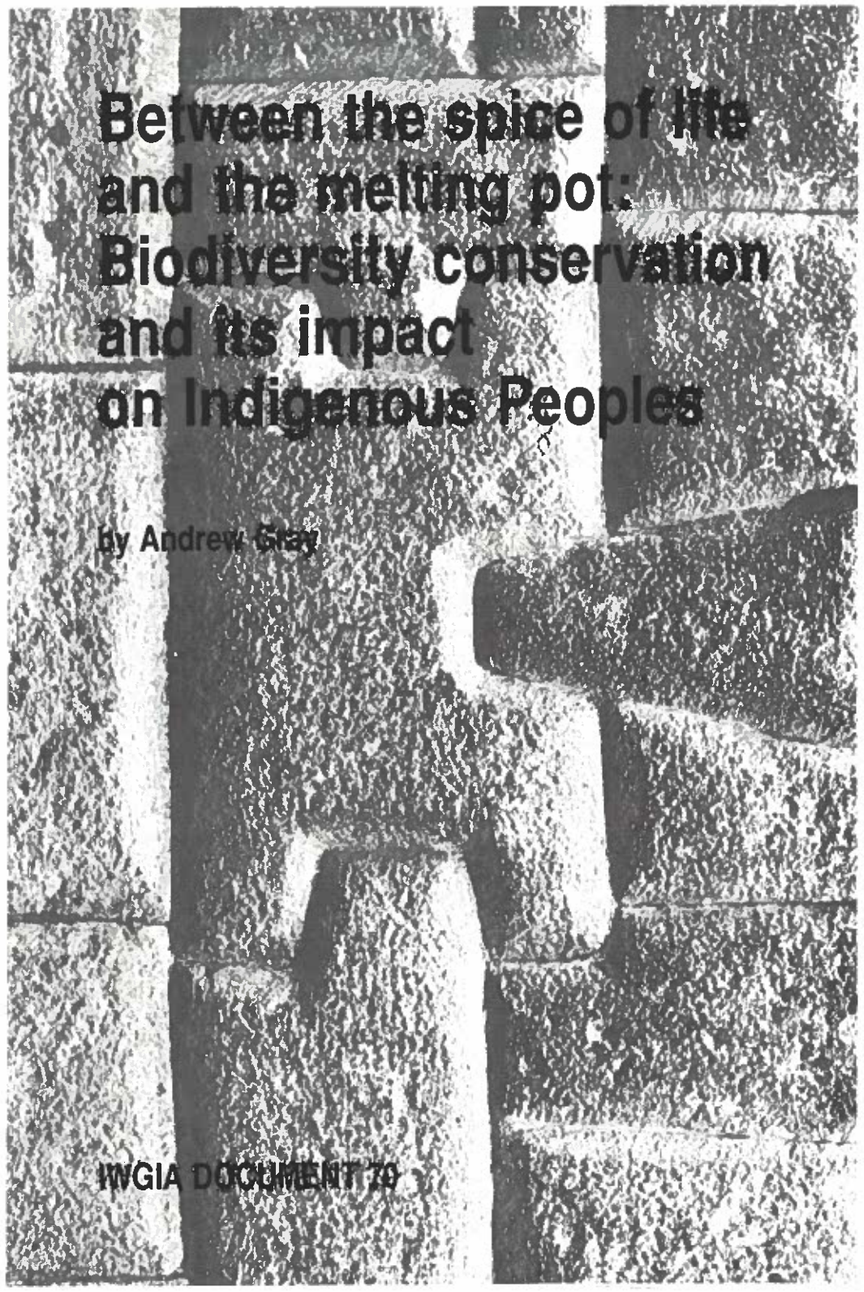
Books Received

Purich, Donald:
The Inuit and their land: the story of Nunavut.
176 pp. James Lorimer and Company, Toronto, 1992.

This book gives an elementary introduction to the history of the Inuit of Canada, their land, and their struggle for self-government. The main emphasis is on the Inuit of the Eastern Arctic, their land-claims and the creation of a new self-governing territory, Nunavut.

Agreement Between the Inuit of the Nunavut Settlement Area and
Her Majesty the Queen in Right of Canada.
282 pp. Indian and Northern Affairs Canada, Ottawa 1993.

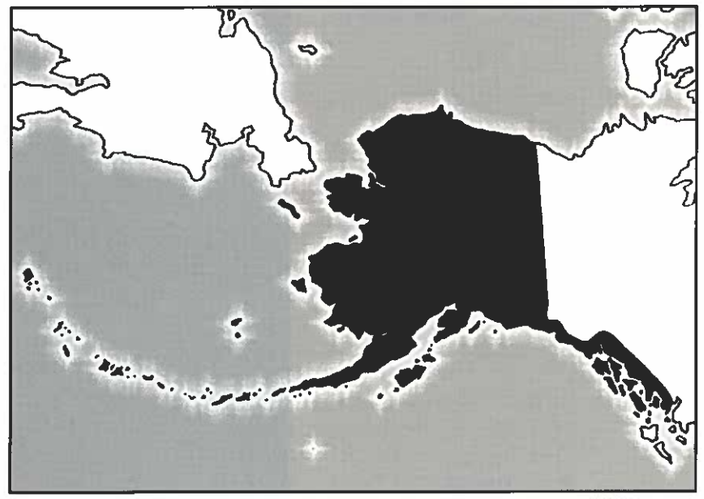
This is the full text of the final agreement between the Canadian Government and the Inuit of the Eastern part of the Northwest Territories, which settle the Inuit land-claims and establish a new territory, Nunavut.



SUBSISTENCE HUNTING

The case of Alaska Iñupiat Bowhead Whaling and the International Whaling Commission

by Mats Ris



Introduction

Few commentators on wildlife management have failed to notice that the International Whaling Commission (IWC) for the time being is currently undergoing a serious crisis. This is not unusual in international resource management, but the IWC is indeed quite different from other intergovernmental organizations in one important aspect: it has been so deeply influenced by Western cultural and political currents that it has become incapable of fulfilling its stipulated obligations.

The cultural conflict in the IWC has developed both within the organisation and vis-a-vis various local whaling communities around the world. Its present position is heavily based on 'The Whale' as a symbolic creation by post-modern Western societies, but also on Western prejudices against people who are hunting whales (as shown by Claus Oreskov and Frank Sejersen in the last issue of *IWGIA Newsletter*). Generally, the whaling controversy today is mainly a clash between Anglo-American urban ways of dealing with wildlife conservation and rural fishing communities traditional ways of utilizing the same natural resources.

Indigenous whalers have been a part of this process over the past 20 years. During this time they have been forced to accept management principles based on prejudices instead of actual knowledge and which have been used as a political instrument against other whaling communities in Japan, Norway and Iceland. To understand how the IWC deals with indigenous whaling, it is necessary to understand how it deals with other forms of whaling.

Background

The protests against industrial whaling started in the early 1970s and especially in connection with the United Nations Conference on Human Environment in Stockholm in 1972. The conference adopted a recommendation for a ten-year worldwide moratorium on all commercial whaling. During the following years the resistance to whaling increased further in many parts of the Anglo-American world, which in turn influenced the membership structure of the IWC. At the turn of the decade the number of new (anti-whaling) members had increased dramatically, which at the time was a necessary prerequisite to acquire a 3/4 majority in favour of a moratorium. By the time the moratorium was finally adopted in 1982, industrial whaling had, however, been in decline for many years and had almost ceased to exist. It was simply not profitable any longer.

A striking feature of the whaling debate today is that, even if the industrial whaling operations have not survived, all the arguments against it certainly have. What happened after 1982 was that a fundamentally different form of whaling became the victim of all the old arguments. To uphold a moratorium on a form of whaling which practically did not exist, international protests and the IWC instead directed attention to small-scale, community-based and family-oriented whaling activities in remote places in Japan and the North Atlantic, without considering what kind of hunting activity they were dealing with.

Early Principles

Much of the controversy within the IWC stems from its limited view of whaling, since it is mainly dealing with only two categories: 'commercial whaling' and 'aboriginal subsistence whaling'. These two categories are considered to be so different in character that they have become a strong management dichotomy for the Commission.

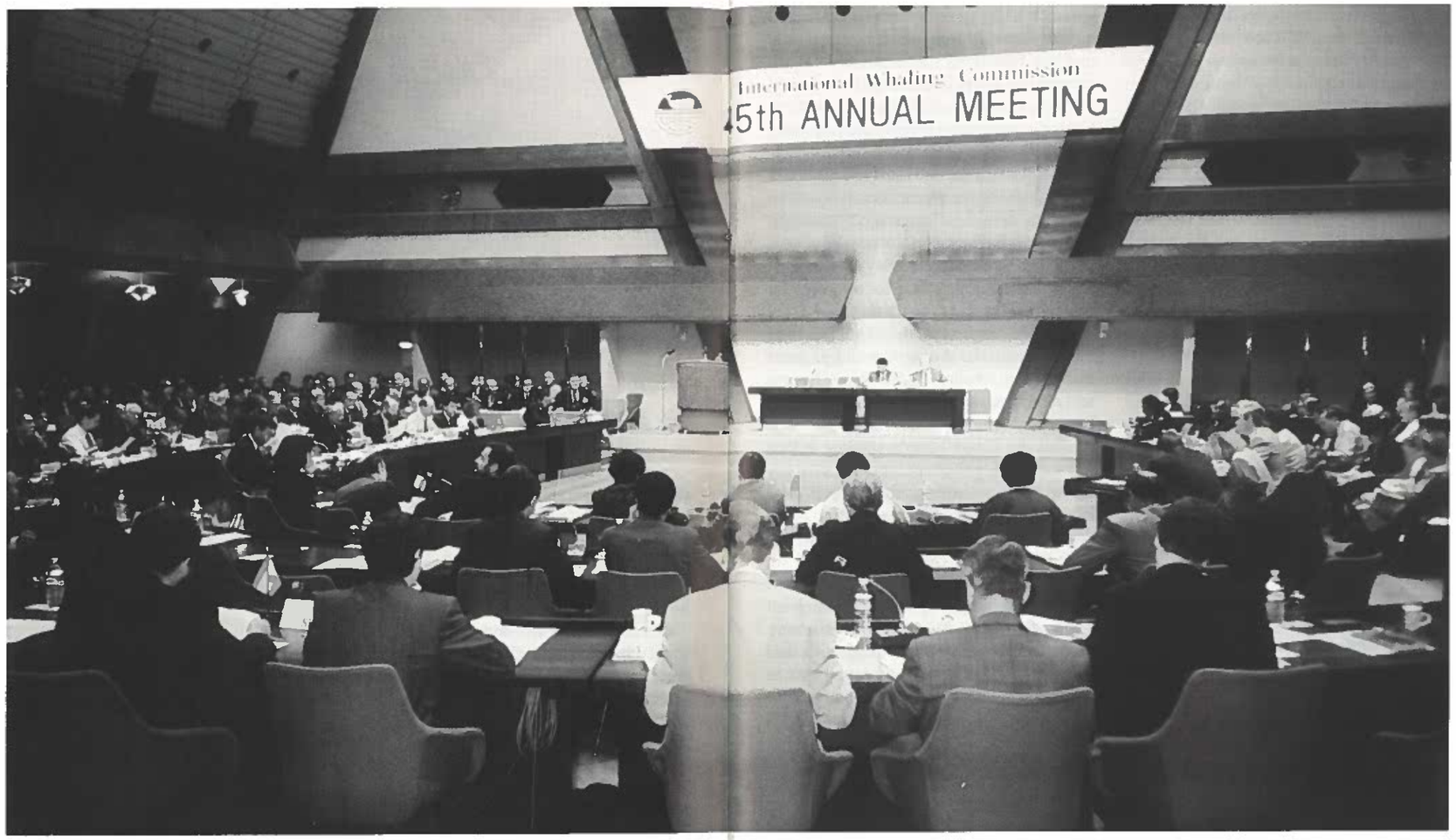
Even though the still current International Convention for the Regulation of Whaling (ICRW) of 1946, as well as its predecessor of 1931, was concerned with the problems of regulating large-scale industrial whaling operations at the time, the remote issue of indigenous whaling was not forgotten. The 1931 Convention excluded whaling performed by indigenous peoples, but on certain conditions. It was presupposed that:

1. They only use canoes, pirogues or other exclusively native craft propelled by oars or sails.
2. They do not carry firearms.
3. They are not in the employment of persons other than aborigines.
4. They are not under contract to deliver the products of their whaling to any third person.

It is obvious that such conditions are aimed at preventing destructive tendencies from developing outside international control. It is noteworthy that the two major 'dangers' are thought to be the introduction of new technology (boats, firearms) and the cash economy (employment, contracts). Later, the first IWC Schedule stated that it is forbidden to catch or kill gray whales or right whales, except when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. It seems that the reason for including indigenous whaling in international agreements was that it is *de facto* a form of whaling (and hunting some protected species), but regarded as so different from industrial whaling that it was not seen as so important from a conservationist point of view.

In the early 1970s, however, the situation started to change. From being a case of exemption, indigenous whaling increasingly became a matter of conservation. In 1970, the United States introduced its Marine Mammal Protection Act (MMPA) and in 1972, the United Nations Conference on Human Environment proposed a worldwide moratorium on all commercial whaling. In 1975, the IWC implemented its so-called New Management Procedure (NMP), thus automatically offering full protection for some commercial whale stocks.

Photo: Mats Ris.



The Bowhead Whale Battle

In 1972, the IWC Scientific Committee raised concerns over the status of the Bering Sea stock of bowhead whales. In 1977 it reported that the original size of the stock had been reduced to 600-2000. In addition, the Commission was worried over the nature of Iñupiat whaling in Alaska. The number of whaling crews and catches began to rise compared to previous years. From an average of 11 whales landed annually in the late 1960s, the number rose to 29 in 1977, and most strikingly, the number of whales killed but lost increased.

The bowhead whales were on the IWC agenda every year between 1972 and 1977 and during this time the IWC repeatedly requested better information from the United States government. In 1977 the Commission viewed the bowhead whale as the most endangered of all species and decided to abolish the exemption for aboriginal subsistence whaling from the Schedule. The existing ban on hunting right whales now implied a zero catch quota.

The United States authorities and the Iñupiat responded immediately. The whaling villages in Alaska decided to set up their own organization, the Alaska Eskimo Whaling Commission (AEWC), to deal with the IWC problem and promote research and better information.

After the 1977 meeting, the United States had to choose whether it should file an objection or not within the stipulated 90 days. After numerous public hearings, a Final Environmental Impact Statement was prepared. It considered not only the importance of bowhead whales for the Iñupiat, but also United States foreign policy in other conservation areas. Only four days before the expiry date, the government announced that no objection would be filed. After the Iñupiat in turn filed a suit against the United States Foreign Secretary, the Court supported the Governments political aspirations rather than defending the subsistence economy of their own indigenous peoples.

By legal proceedings and lobbying, the Iñupiat managed to persuade the United States government to press for some limited whaling at the following two IWC meetings. Against the recommendations of the Scientific Committee the Commission finally accepted a small catch together with a scientific programme and regulatory measures for the hunt.

New Management Principles

In the following years the IWC continued to strive towards management principles for 'aboriginal subsistence' whaling. In 1981 an *ad hoc* working group on the issue agreed on the following crucial definitions:

Aboriginal subsistence whaling means whaling, for the purposes of local aboriginal consumption carried out by or on behalf of aboriginal, indigenous or native peoples who share strong community, familial, social and cultural ties related to a continuing traditional dependence on whaling and on the use of whales.

Local aboriginal consumption means the traditional uses of whale products by local aboriginal, indigenous or native communities in meeting their nutritional, subsistence and cultural requirements. The term includes trade in items which are by-products of subsistence catches.

Subsistence catches are catches of whales by aboriginal subsistence whaling operations.

The report emphasized strongly that the full participation and cooperation of the effected indigenous peoples is essential for effective whale management and the advantage of involving indigenous peoples in the decision-making procedures of the IWC thereby enabling them to see at first hand how and why decisions are taken and that the traditional hunt plays an important role in maintaining the spiritual and social structure of the community. Some non-whaling members of the working group further argued that there are substantial differences between aboriginal subsistence and commercial whaling regarding the need for whale products for direct subsistence use in a traditional cultural context. With commercial whaling, they argued, there is much less direct dependence on whale products in the maintenance of the culture. Sale of products is the primary reason for continued catches not, as in subsistence whaling, to meet immediate nutritional requirements and satisfy important cultural needs. The working group finally agreed on the following objectives:

To ensure that the risks of extinction to individual stocks are not seriously increased by subsistence whaling.

To enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements, subject to the other objectives.

To maintain the status of whale stocks at or above the level giving the highest net recruitment and to ensure that stocks below that level are moved towards it, so far as the environment permits.

At the 1982 meeting of the IWC, the Commission accepted this report and adopted a resolution on its objectives and a proposal on management for indigenous whaling to be amended to the IWC Schedule. Indigenous whaling was now fully incorporated into the management strategy of the IWC.

From Independence to Domination

When we look at international regulation of indigenous whaling during the last 60 years we will find that for the Alaska Iñupiat hunters, whaling has developed from exemption and independence to international regulation and domination.

The important structural changes have not taken place so much within Iñupiat whaling itself but more in recent conservationist strategies in the outside world. When Iñupiat catches began to rise in the early 1970s, it was not a particularly dramatic event as such. Changes occur fre-

quently in subsistence hunting and fishing economies, either depending on environmental or political fluctuations, and hunting communities are constantly solving problems and adapting to new situations. But in the new atmosphere of conservation the IWC found it most appropriate to control all forms of whaling and any increase of any hunt was relevant, even if it was only a matter of another 15-20 whales per year. In other words, the main reason behind the Alaska controversy is not to be found in the sudden change in Iñupiat whaling, but rather in the changes in the IWC (and to a certain extent in United States foreign policy). In this respect, the old exemption clause for indigenous whaling in the IWC Schedule would have been deleted anyway in favour of a more firm and direct control mechanism.

The report of the IWC *ad hoc* working group mentioned above reveals many of the preconceived notions about indigenous peoples and subsistence hunting that prevail among the mainly Western and Anglo-American delegates who together constitute the annual proceedings of the IWC.

One such notion is *domination*. The relationship between the IWC and indigenous peoples is clearly a hierarchical one. The explicit wish for participation and cooperation is useful to the IWC as long as the Inuit are recipients and accept a subordinate role vis-à-vis the IWC. Inuit representatives are never allowed to freely address the various working groups, subcommittees or the Commission itself as equal partners in the 'decision-making' process. The IWC does not recognize indigenous peoples as 'first hand' members, since membership is only open for contracting governments. It is therefore impossible for indigenous peoples to file any objection directly to the Commission.

Another important notion is *subsistence*. The definition above connects 'subsistence whaling' with 'aboriginal' and on the condition that it is limited for 'local consumption' and meeting 'nutritional and cultural requirements' among people who share strong community, familial, social and cultural ties related to traditional dependence on whaling. It is noteworthy that the IWC has avoided defining individual words such as 'aboriginal' and 'subsistence' or even 'commercial' and therefore left them with ambiguous. By using 'aboriginal subsistence whaling' as a counterpart to 'commercial whaling' the IWC has further created an implicit view of subsistence whaling as non-monetary, i.e., one without cash.

By emphasizing the word 'aboriginal' the Commission obviously seeks to exclude other groups from the definition of subsistence. The purpose seems to be to create a sharp border-line between indigenous whaling on one side, and other forms of whaling, such as Japanese and Norwegian family-oriented, small-scale and community-based whaling on the other. Recent anthropological studies have shown that small and remote communities in other countries also share strong social and cultural ties based on whaling.

Community-Based Whaling

The IWC has its origins in the International Convention for Regulation of Whaling (ICRW) of 1946, which deals with the large-scale industrial whaling operations prevailing at the time and contains no direct references to small-scale community-based whaling. The latter form of whaling may look very different due to various social and cultural frameworks but the whaling communities in Norway, Iceland, Greenland and Japan show some common characteristics. They are small and relatively remote; they are dependent on several marine resources for their subsistence; and they generally have access to few land-based resources. Whaling activities in such communities are built up by the same socio-economic principles.

The *technology* used is rather simple. The boats are small (30-110 feet) and are also used for other forms of seasonal fisheries (except for Japan). They carry few advanced instruments and harpoon guns are easily mounted and dismounted on deck. The social *organization* onboard is based on kinship or close personal contacts and the owners of the boats are also members of the crew. Production units are households and income is typically based on a share system. The knowledge required is transferred informally from generation to generation and often directly from father to son. The *distribution* system is characterized both by sales on a cash market and non-cash systems of gifts (meat and blubber) to relatives, through personal contacts, as well as community institutions such as schools, hospitals and old people's homes. This gift-sharing system is especially common in Japan and Greenland. The *cultural* aspect of whaling is expressed by local festivals, ceremonies and traditions (such as culinary dishes, legends and stories).

The combination of all these characteristics of community-based whaling may therefore be seen as a way of maintaining the social structure and local identity rather than striving for maximization of invested capital as in most business corporations. Coastal whaling in Norway, Iceland, Greenland and Japan today is a typical community-based, simple commodity production in contrast to *both* the former large-scale, high-seas industrial whaling operations in the Antarctica *and* to some extent pilot whaling in the Faroe Islands and aboriginal subsistence whaling as performed by Iñupiat in Alaska. In both Alaska and the Faroe Islands whaling is performed outside the regular cash economy due to their very strong principle of involving every member of the community in the distribution system.

The Greenland case of minke and fin whaling is of special interest, since this form of whaling is performed by Inuit hunters but in the same way as in Norway. Technology, organization, distribution and importance for the local community are in many ways similar between the two countries. In spite of this, the IWC recognizes whaling in Greenland as 'aboriginal subsistence' (and therefore permissible) but whaling in Norway as 'commercial' (and therefore non-permissible). This fact leads us back to the IWC.

The Politics of Whaling

An important reason for developing a management regime specifically for 'aboriginal subsistence' whaling may therefore be that such a regime can be a powerful political instrument against other forms of whaling. Several of the members of the Commission have on numerous occasions expressed their sincere support and understanding for the importance of whaling for maintaining the social structure and indigenous ways of life and incorporated these considerations in the management regime. The IWC has, however, denied other 'non-aboriginal' whalers the same management considerations. Most member nations of the Commission have consistently objected to adopting management categories other than the existing ones.

The best example of this political polarization is the Japanese request for a very limited interim allocation quota, due not only to economic, but also social and cultural hardship caused by the present worldwide moratorium on commercial whaling. Japan has for the past six years submitted a considerable amount of documentation to the IWC on the importance of whales for the communities concerned. This is done to convince the Commission that Japanese coastal whaling consists of *both* market-oriented sales *and* important religious, social and cultural obligations. The Commission has repeatedly expressed its sympathy and understanding for the hardships that Japanese whaling communities experience, but nonetheless denied them this modest quota to maintain the social and communal network. The explanation given was that there is a moratorium on commercial whaling and since the IWC does not deal with any other definitions, Japanese coastal whaling must be considered as commercial.

Concluding Remarks

The present management regime for indigenous whaling as created by the International Whaling Commission runs the risk of failing whenever the Commission comes to deal with it in the future. It will fail because the decision-makers of the Commission have incorporated their own preconceived notions about indigenous peoples and subsistence hunting in the management objectives and, furthermore, have used these notions as a political instrument against other whaling communities.

If the IWC wishes to effect better management of 'aboriginal subsistence whaling' it will have to significantly improve its working relationship with indigenous organizations. Such an approach within the IWC will lead to an improved understanding of the nature of subsistence whaling and emphasize local knowledge and skills.

Direct IWC regulation of indigenous whaling may not, of course, be necessarily bad for indigenous whalers as long as the IWC offers them a reasonable quota. Established international management regimes are useful for the regulation of sustainable utilization of any wildlife resource. In the case of indigenous whaling, however, the future problem with the IWC management regime does not lie so much in its scientific language as in its implicit language, expressing preconceived notions about indigenous peoples and subsistence hunting. What is needed in the near future is perhaps a regional regulatory body with members from both indigenous organizations and governments.

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The end of 13 Years of Silence

The Sami Land Rights Issue in Norway

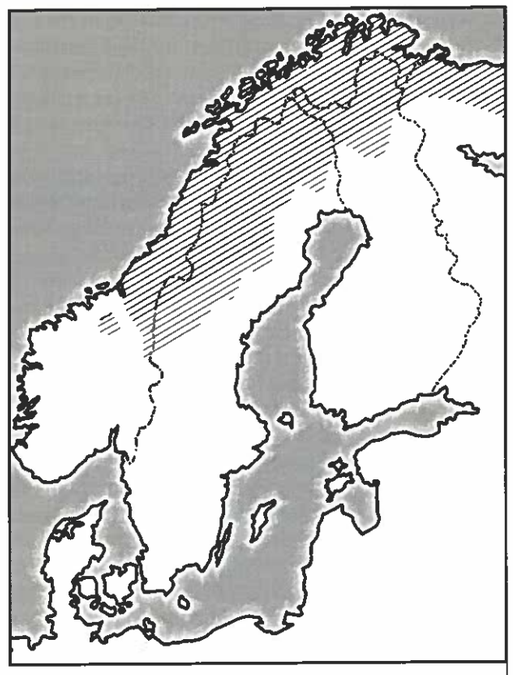
by Terje Brantenberg

On the 8th September this year the newspaper Klassekampen – a left-wing Oslo-newspaper which has survived by its investigative journalism – published for the first time the conclusions of a report from a sub-committee of the Sami Rights Committee, a report which has been in the making since the Committee's appointment in 1980. Under the heading »A HISTORICAL NO TO THE SAMI« readers were informed that a sub-group of the committee – in their 900-page long report – had confirmed the Norwegian state's rights to land and water in the county of Finnmark, the so-called heartland of the Sami. The report states that the Sami have no legal basis for territorial rights as they qualify neither under existing Norwegian law nor the criteria established in ILO-Convention No. 169. This is the first time any information from the Committee has reached the public since its first report (published in 1984) which formed the basis for the Sami Act, the establishment of the Sami Parliament in Norway in 1989 and the current governmental Sami policy. This and the report from another sub-committee (on management of Sami lands) will be published in November this year. The Committee's second and major report of the Committee may be published in late 1994. These reports are under discussion in the Committee and do not represent the Committee's views as such. However, so much has been disclosed that a comment may be warranted.

The Sami Rights Committee (SRC) in Norway

The Committee was appointed in 1980-81 with Carsten Smith, professor of private law at the University of Oslo, as chairman. After three and a half years work, they presented their first report. The Committee's recommendations became the basis for the new Sami Act (1987), for a constitutional amendment (110a) which has the effect of recognising two different ethnic groups in Norway, i.e., Sami and Norwegians and the creation of a Sami Parliament (1989). Moreover, the report drew on international law as the basis for the new governmental policies towards the Sami. One of the principal conclusions of the committee was that the State not only had responsibilities to protect Sami culture, but that the Sami should be provided with means to protect and enhance their own culture. This included safeguarding the 'material interests', e.g., natural resources of Sami.

Professor Carsten Smith resigned as chairman of the SRC in 1985. In October 1991 he was appointed to the position as Supreme Judge of Norway. His successor at the SRC was circuit judge Sverre Dragsten, heading the SRC from 1985-87, now a member of the SRC's Property Rights Group. Sverre Dragsten's presence in the committee is quite significant. Besides being a member of the SCR's Property Right Group, he is also a member of the Committee for Current Law ('Gjeldende rett-utvalget') and chairman of another Government-appointed committee: the Commission for Mountain Areas – 'Høgfjellskommisjonen' (see below p. 10-11). The present chairman, Thor Falck – also a circuit judge – was appointed in 1987. Whereas the SRC took years to finish the first report, the coming report is the conclusion of almost 11 years work.



The first report was a significant achievement presenting a clear majority vote for its major recommendations in spite of highly different and conflicting interests and views represented in the Committee. Carsten Smith's insistence on confidentiality provided the Committee with a basis for developing shared understandings despite the highly politicized issues they were handling.

Since then, confidentiality has been the established practice of the workings of the SRC. Government-appointed committees do not appear to have any fixed standards of confidentiality. The Sami Culture Committee – the second committee formed due to the Alta-conflict – followed a more open policy with regard to the public, by organising local hearings where members expressed highly different political views.

However, Sami politicians and the Sami Parliament have – in spite of a growing impatience over the years – generally accepted this, thus postponing a major political debate on Sami land rights until the second report is published. Sami Committee members themselves have never protested the confidentiality of their work. As expressed by one of the Sami representatives: »We in the Sami Rights Committee have agreed not to make public anything concerning the work of the Committee« (Klassekampen, 8 September, 1993).

The SRC has two sub-committees, focusing on property rights and administration respectively. Both groups have finished their reports which will be published in November this year. 'The Property Rights Group' presented their 900 page long report to the SRC on 22 April this year. The group consist of eight members: Thor Falck, Sverre Dragsteen, Otto Jebens, Stein Owe, Torgeir Austenå, Thor Falkanger (all lawyers) and Gudmund Sandvik (historian). None of them has a Sami background. None of the lawyers are experts in international law, their field being Norwegian property law in general. Four of these academics are also members of the SRC, which has a total of 16 members. Two thirds of these are Norwegians and one third represent various Sami interests.

The second sub-committee – 'the Group for Administration' – also consists of a group of Norwegian legal experts: Kari Husabø (chairperson), Per Abelvik and Leif Kristensen 1. All are members of the SRC. Their report will present an overview of the present system of management of Sami territories.

During the last few years, however, the members of the SRC have discussed proposals for changes in the management of Sami territories. Last February, the newspaper, *Arbeiderbladet*, presented the principal views of the Committee members. Most of the Sami representatives are in favour of delegating management authority to the Sami Parliament. Other members were reported to be in favour of transferring some powers to municipal authorities or to local councils ('bygdelag'). However, a majority of the SRC was said to go *against* transferring managerial powers over Sami territories to the Sami Parliament (*Arbeiderbladet*, 25th February 1993). The SRC will probably present its final report – with recommendations for changes in the system of current law and management of Sami territories – in late 1994. The reports from the two sub-committees will be published in November this year.

So far, the findings of the SRC do not appear to meet the expectations of many Sami. Thus, the Committee's findings may be questionable – or at worst useless – as in terms of cross-cultural relations and political realities they may have solved nothing. The final responsibility for accommodating Sami aspirations lies with the Norwegian Government – and the Sami themselves. However, before we discuss the content and the significance of the report, what was the original purpose of the SRC?

The Mandate of the Sami Rights Committee.

To many the establishment of the SRC represented a final breakthrough in Sami claims for land rights – claims which had been persistent during the preceding three decades. The SRC's mandate was a fairly comprehensive one:

–»*The Committee should consider the general issues concerning the legal position of Sami with regard to the right to and the management and use of land and water. The Committee ought primarily to consider this with regard to the county of Finnmark – not only the interior, but also the fiords and coastal areas – and, where necessary, it should also discuss the same issues for other areas with a Sami population.*

-The report should consider the development of law and current law, as well as the need for changes in the current legal practice.

-The Committee ought to provide a historical description of legal concepts and rules which have been significant for rights to and use of land and water in areas with Sami populations to the extent of clarifying current law and proposing new measures. Likewise, it should furnish a historical presentation of the actual use of land and water in these areas and of possible discrepancies between law and factual usage.

-The report ought to clarify the current legal concepts and current legal rules and legal conditions generally and describe the factual use of land and water in the areas considered« (p. 43).

Besides reviewing Norwegian legal practice with regard to Sami territories, the

SRC was also asked to map the unwritten legal concepts of Sami:

–»*A central task of the Committee is to discuss and reach a decision on the views on the rights of Sami or local population to land and water in Sami areas of occupancy. These views may be traced back to the oldest Sami legal concepts concerning a type of collective right and are, amongst others, described in the thesis of Tønnesen« (ibid).*

The Committee should also consider the significance of international law for the Sami rights issue in Norway:

–»*In the debate on the legal position of Sami, claims have to a considerable extent been made in relation to international conventions, resolutions and arguments based on the Sami's position as an indigenous people or ethnic minority..... The committee should to the necessary extent discuss and evaluate what significance international law should have in designing the Committee's proposals« (ibid, p. 44).*

Unresolved Issues: Sami Legal Concepts and International Law.

What has happened? Regarding the documentation of Sami legal traditions, members of the SMC's Property Rights Group began interviewing individual Sami in Finnmark. Their experience, perhaps not so surprisingly, was that there were highly different views on this amongst Sami. In the report they conclude that this part of their mandate was »difficult to fulfil«. They concluded that there is »no consensus« amongst Sami on traditional legal practices and conventions. They also regretted that they had not been able to document this more fully.

These findings are highly controversial, for many reasons. For one thing, to ask a group of legal experts to venture into the difficult and specialist field of collecting and interpreting oral and customary traditions across historical, cultural, linguistic, and indigenous land/water use frontiers has not had a successful outcome – by the admirably honest admission of those who attempted it. There are probably few issues in indigenous-European relations as problematic as conflicting concepts of the law. Indeed, as the name »Sami Rights Committee« suggests, the issue is central to the Norwegian government's concern for relations between Sami and the Norwegian State. Now, after 13 years and 900 pages, we are apparently none the wiser.

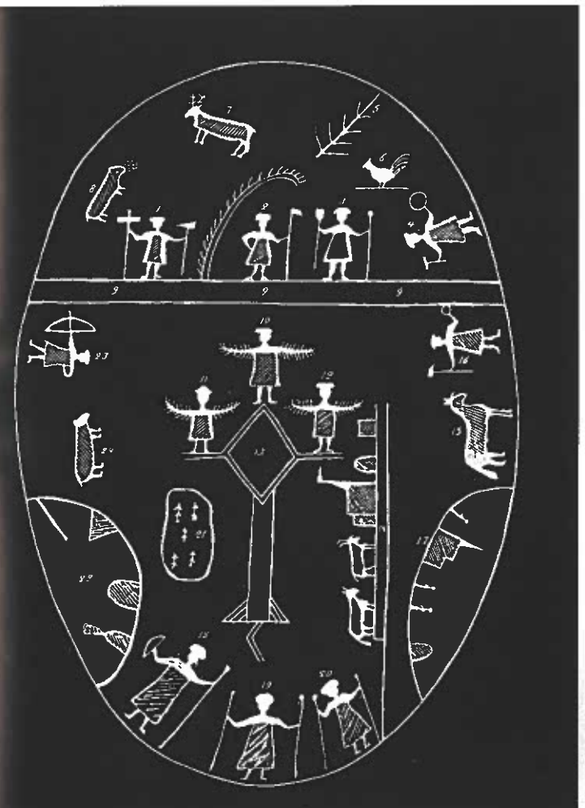
The legal concepts and resource management practices of Sami are still largely unexplored fields. There is no question that serious, properly conducted inquiries into Sami customary tenure and related rights would be very valuable. On other continents these have provided the basis for land claims settlements and have been conducted by non-indigenous specialists and indigenous experts working together. Furthermore, such research is proving to be invaluable in new government-indigenous resource and environment co-management abroad. Today there is a growing expert literature from Northern Norway on both land (notably reindeer-related) and sea (notably fjord fisheries) issues of this type. There is a bright and useful future for Sami research of this type – and it will benefit both Sami and all Norwegians. Meanwhile, this work by the SRC has reminded us of the complexities of the problems involved rather than helping us to solve them.

As to the issue of international law, the report of the Property Rights Group discusses this in a section of some pages. Here they appear to present a different interpretation from that of the SRC's first report. Contrary to the 1984-report, which emphasized that safeguarding cultural interests also implied »material interests« of the Sami, the new report argues that natural/material resources is not necessarily a basis for a people's culture; modern livelihoods are not recognized as part of Sami culture (Klassekampen, ibid). This is a most noteworthy conclusion as it clearly contradicts several statements by Chief Justice Carsten Smith, the former head of the SRC, the most important being a report for the Ministry of Fisheries commenting on the current rights of Sami and their application for the commercial fishery in Northern Norway (Smith 1990). 2

Only one member of the Property Rights Group – Otto Jebens, a barrister-at-law from Trondheim – advocates the views of the first report.

Discussing the current legal practice of to-day, the report also refers to the Supreme Court's decision in the Alta-case as one of the sources for drawing their conclusions 3. However, this decision was made in 1982, i.e. prior to the Parliament's passing of the Sami clause in the Constitution, the passing of the Sami Act and the Norwegian Government's ratification of ILO-Convention No. 169 on Indigenous and Tribal Peoples. The report deals with the ILO Convention's definition in Article 14 of two different categories of indigenous land rights – 'property rights' in areas (Category 1 territories) where indigenous peoples have been the dominant population and the 'rights of usage', i.e. Category

Ole Henrik Magga. Photo: Yngve Olsen



2 territories with coexisting indigenous and non-indigenous land use. The majority of the Property Rights Group sees this particular Article as having little significance for Sami in Norway, as they conclude there are no territories existing to-day where Sami may claim property rights,- i.e. as Category 1 territories.

However, the fact that Norway has signed ILO-Convention No. 169 – and the SRC's long silence – has created a political need for defining the extent and character of Sami land use and occupancy, as expressed in a recent report by Otto Jebens and Johan Albert Kalstad, a report which was ordered by the Ministry for Municipal Affairs. Their report presents a very different view from that of the Property Rights Group, claiming that as many as 35 different municipalities are eligible for indigenous land rights under the terms of ILO-convention No. 169. Svein Roald Nystø, a Sami member of the SRC, presented similar views in a report to the Association for Norwegian Sami (NSR). These findings appear to have been disregarded by the SRC's sub-committee.

The major conclusion of the report is that the State has the property rights to Crown lands in Norway. This has been a legal fact for more than a hundred years. In the county of Finnmark, where the majority of the Sami in Norway live, the Crown Land constitutes approximately 97 per cent of all land,- as well as substantial areas of land in other counties like Troms and Nordland. However, in Finnmark this fact was called into question in 1972 when Sverre Tønnesen, in his dissertation: Retten til jorden i Finnmark ('The rights to land in Finnmark') discussed the legal history of that particular county. His research presented for the first time evidence which questioned the validity of the State's theory of property ownership of this area. The State's property rights were found to be based on a long tradition of common law, reflecting the historical presence of Sami in these areas. However, from the 1840s onwards, legal experts in the central state bureaucracy conceived a theory that Sami were too primitive and nomadic to be recognized as having a system of private property rights. Tønnesen doubted the legality of this take-over.

Thor Falck, chairman of the SRC, has so far been very reluctant to give any public statements on the work of the Committee. However, according to the newspaper, *Nordlys*: »He underlined that the report deals with current law, not what may become legal practice in the future« (Nordlys 9th September 1993). Regardless of the interpretation of the Property of Law Group, one cannot but note that this group of experts presents a narrow interpretation of international law, in contrast to Chief Justice Carsten Smith, who has consistently argued for a much wider interpretation. This is an interpretation which to a large extent has been transformed into governmental policies and laws (e.g. the Sami Act). The fact that legal experts now appear to challenge the views on international law – as presented by Chief Justice Carsten Smith – may pose obstacles to the Sami Parliament's expressed aim to gain influence and a measure of authority over the management of natural resources in Sami areas.

Comments on the Report of the SRC's Sub-Committee

Ole Henrik Magga, newly re-elected as president of the Sami Parliament commented on the SRC's report:

–»*This means we have been made fools of for thirteen years! It is no news that the legal convention of the State is that all belongs to the State. The whole idea behind the Sami Rights Committee was not to repeat what had been legal conventions, but to find better solutions for the future«.*

–»*We hope that the committee will consider the basic issues. It is horrifying if this is going to be their final conclusion. In this the Sami Rights Committee has made no contribution whatsoever. They only repeat how Norwegian law has handled the Sami. The Sami Parliament has to come into the picture. Precisely what authority the Sami Parliament ought to get is too complicated to decide right at this moment. But we cannot accept that Sami have no rights to manage their own situation« (Klassekampen 8th September 1993).*

The newspaper Klassekampen also interviewed lawyer and SRC-member, Otto Jebens – the dissenter from the Property Rights Group – about his opinions on the SRC's work. On the issue of traditional Sami legal concepts, he deplored that so little effort was put into studying Sami legal conventions:

–»*There should have been more than sufficient time, from 1985 to the present. But the majority have not been occupied by this. Thus, I have had to try to deal with this matter on my own«.*

–»*The majority of the Property Rights Group is of the opinion that the property right of the State is an established circumstance. Thus, there is no interest in investi-*

Peoples of the Amazon

The Kamayuras from Alto Xingu, Brazil

Photos: Diego Azqueta Bernar

gating older legal concepts in Finnmark.... I cannot understand how any can say there is no need to study legal concept among the Sami. Without this need, the Sami Rights Committee and the Property Rights Group would surely not have been appointed«.

Steinar Pedersen, former chief advisor ('statssekretær') of Sami affairs in the Ministry of Municipal Affairs, and the present head of the Labour Party in the Sami Parliament, states in the same newspaper:

–»Traditional Sami legal concepts and international law have to be considered. I am of the opinion that the use of non-agricultural land and fish resources ought to be managed within the existing units of local councils, municipalities and regions without any separation between different kinds of people. The Sami Parliament should have a hand in management. But we are doubtful as to whether the Sami Parliament can manage all this single-handed. Different groups of people coexist side by side, and it's difficult to establish a single Sami management body today«.

Steinar Pedersen also states in an interview to the newspaper Nordlys, that:

–»The Property Rights Group has considered the question of current law, which is the basis for Norwegian courts today. Surely the courts have to follow the laws established by Parliament? However, Parliament asked the Sami Rights Commission to do much more than that. It got a mandate that was far wider than describing the present legal condition in Norway. So far, I have not heard that the Committee's report includes anything on the Sami conception of law, nor does the report mention the development in international law. Thus, it has not carried out what it was asked to do by the Norwegian Parliament, and it has not done what we in the Sami Parliament and many others have been waiting for« (Nordlys 9th September 1993).

His proposal to address the situation is as follows:

–»I propose that the Sami Parliament and the County Council ('fylkestinget') of Finnmark appoint a contact group for the purpose of studying the Property Rights Group's report and other documents forthcoming from the Sami Rights Commission. They should do their utmost to reach a consensus before the matter is presented to Parliament and Government. The municipalities, as well as local councils and local groups, should get involved«.

He has no fear of the Sami becoming a minority in this issue, or that the rights of Sami will be run over by all the different interests represented by the combined population of all the municipalities in Finnmark. He states: »No one is harmed by knowledge and wisdom«.

Transfer of Crown Land in Finnmark – Sale or Status Quo?

By a curious coincidence, some days before the SRC's report was leaked to the press, the media reported that the State's property rights to Crown land in Finnmark had been sold unexpectedly! The former State authority managing Crown land in Finnmark – the Office for Land Sale – was closed down and replaced by a new, independent public company called 'The State-Forest Finnmark' or just 'SF Finnmark', which: »... will be exploiting and managing the forests in the county according to economic principles« (*Nordlys* 15th September 1993). The take-over was achieved with a payment of 2,14 million kroner (approximately US$ 0,3 million) to the State, ensuring SF Finnmark all the property rights to the State's forests in Finnmark. The combined value of all Crown land in Finnmark constitute a sales value of 4,3 million kroner (approximately $ 0,61 million) 4.

The President of the Sami Parliament, Ole Henrik Magga, commented on the transaction to the newspaper, *Nordlys*:

–»If the Sami Parliament had known that the interior of Finnmark (»The Finnmarkvidda«) was in a discount sale, we should have got a bank loan and bought it! The State is busily engaged entrenching its property rights, partly by getting an owner's licence on what were previously unalienated lands. Since the Act for Sale of Land was passed in 1965, Sami associations have objected to laws and regulations which imply a change in the legal conditions relating to Sami land. Even the chairman of the Sami Rights Committee, Tor Falck, has stated that the current reorganization is changing the legal status«.

In the same newspaper, Steinar Pedersen states a different view: the sale of State properties is merely a re-organization which will not affect land rights, the sale will not exclude any possible Sami rights:

–»Some years ago the State started reorganizing the management of its forested properties in Finnmark. All State-owned forests in Norway are valued at 128 million kroner. The reason for the very low estimate of the value of the properties in Finnmark is because one doesn't expect any good opportunities for making money here, due to the very fact that people in this county have considerable user rights«.

He added that in transferring the formal legal rights, the State was only specifying the value of the land, nothing more.

The following day (16th September), another piece of contested public property in Finnmark, namely the Alta hydro-electric plant, including the major shares of the Finnmark Hydro Power AS, was sold by the county government to the State. Finnmark county and the municipality of Alta, the major shareholders, could no longer afford the increasing debts of the Alta power station. The Sami Parliament and O.H. Magga were not among the bidders in this sale....

Different Committees – Conflicting Agendas?

The Sami have, since time immemorial, been practising land use and occupancy over considerable areas, particularly in northern Norway 5. The extent and character of past and present Sami land usage in Norway has – until the SRC – never been the object of any comprehensive study corresponding to land claims research as practised in other countries like Canada.

Finnmark has long been and still is the main focus for the Sami land title issue, as expressed in the SRC's mandate. However, what about »the other Sami areas« outside Finnmark, e.g. the counties of Nordland, Troms and Trøndelag?

It is noteworthy that the issue of Crown land and the State's property rights in these areas has been handled – not only by the SRC – but by another committee as well, namely the Committee for State Properties in Nordland and Troms ('Utvalget for statseiendom i Nordland og Troms'). The committee was established in 1971 –

prior to the Alta-conflict and the establishment of the SRC – to clarify the legal basis for the State's claim to land ownership. The task implies considering the system of ownership and user rights to traditional commons in northern Norway. Farmers have long-established rights to use lands extending from the individual farm-lands into the mountain areas. The issues relating to the State's claim to property rights over commons on Crown Land are of long standing in Norway. The first commission – the so-called Commission for Mountains (»Høgfjells-kommisjonen«) – was established in 1908 and focused on the disputes between farmers and the State over commons in southern and central parts of Norway. Northern Norway came last on this agenda, when the other regions had been dealt with by the Commission.

A similar commission was appointed on 22 January, 1981 – during the climax of the Alta-conflict with a series of demonstrations at the construction site of the Alta hydro project – to deal with the issue of Crown Land in Finnmark. The committee's mandate was to consider the possibility of transferring the management of these areas from the State agency to municipal bodies. However, after protest from Sami associations at a possible undermining of the mandate for the already established Sami Rights Committee (1980), the Government shelved the committee just after its appointment. It was finally dissolved in 1982.

The SRC, however, did not preclude the workings of the Committee for State Properties in Troms and Nordland. The SRC's mandate refers to this commission as one of several bodies which the committee should co-operate with in terms of its »...interest to the committee's mandate« (NOU 1984:18, p. 44). In 1983, the Ministry of Justice contacted the SRC for comments on the establishment of a new body: the Commission for Outlying Fields ('Utmarkskommisjonen for Nordland og Troms') – replacing the former committee. This body was set up in 1985 to serve as a special court to organize – on the basis of current law – legal relations between the State and other interests with regard to mountain areas and out-fields in these counties. This involves making decisions on borders between State and privately owned land as well as deciding who may have user rights to State properties. The extent of the land is considerable – State properties constitute approximately 45 per cent of all land in Nordland and Troms counties. The Commission is organized under the Ministry of Agriculture.

The Ministry pointed to »some degree of overlap« between the two committees' mandates, which was not found to warrant any delay in starting the Commission's work. The Ministry also emphasized that: »It is important to note that the Commission's decisions will not prevent the SRC from proposing changes in the legal conditions which the Commission (or eventually by appeals to the Supreme Court) use as their base«(p. 617). The chairman of the SRC supported the establishment of the commission:

–»There was never any intention that the SRC should have any judiciary powers. Nor was it intended that our courts should discontinue their judiciary practice due to the work of the SRC.

The establishment of a commission for mountains will merely constitute a reorganisation of activities within the system of law courts. Its establishment will not entail any overall extension of the authority of the law courts« (NOU:1984:18, p. 65, 617-18).

However, when the SRC was to consider Sami areas outside Finnmark, there would be a need for closer co-operation with the Commission. Until then, as concluded by the chairman of the SRC, the establishment of the Commission would »have a very limited effect on the work of the SRC« (p. 618).

The fact that the Commission has not brought up Sami interests in their dealings with property and user's rights, has – nevertheless – been a controversial issue – leading to indignant protests from the Sami Parliament. In June this year, the Sami Parliament – in a unanimous vote – called for an immediate halt in the Commision's work, pointing out that the Commission had so far shown little or no understanding of Sami interests. In one particular case – concerning Tysfjord in Nordland county, which has a sizeble Sami population – the Commission initially claimed that the local population had *no* traditional common property rights,- an area where Sami can claim exclusive and dominant usage and occupancy from time immemorial (Jebens & Kalstad 1992, p. 10 and 14). Similar cases, and the Commission's demand that Sami should be represented by the solicitor representing the Farmers' Association ('Bondelaget'), was to the Sami Parliament a clear indication that the court was in fact violating the ILO-convention and the work of the Sami Rights Committee. In another recent case from interior Troms, the Commission tried to abolish the long established pasture rights of the Talma Sami herders resident across the border in northern Sweden. However, due to protests by the solicitor Bjørn Daland, representing the Talma herders, the Commission dropped the case (*Nordlys*, 2nd September 1993).

The authorities' responses to these and other protests from local Sami communities, have not calmed Sami suspicions of a hidden agenda in the policies of the State bureaucracy. The Ministry of Justice stated that it cannot interfere with, delay, or stop the proceedings of a court – except by legislation. However, in a letter to the Sami Parliament, the Minister of Municipal Affairs stated that the Commission would not prejudice the SRC's opportunity to reconsider legal matters. The Government, he said, would »to the greatest possible extent« ensure that the Commission gave »preference to cases which would not conflict with Sami interests« (*Nordlys*, 20th August 1993). This is quite significant as it certainly indicates that the Minister – and possibly the Commission as well *-agree* with the Sami that the Commission's decisions may indeed have *consequences* for future Sami land claims – denied by the same Minister. If not a hidden agenda, it suggests a case of overlapping and contradicting agendas, governmental ambiguity and confusion in dealing with Sami interests.

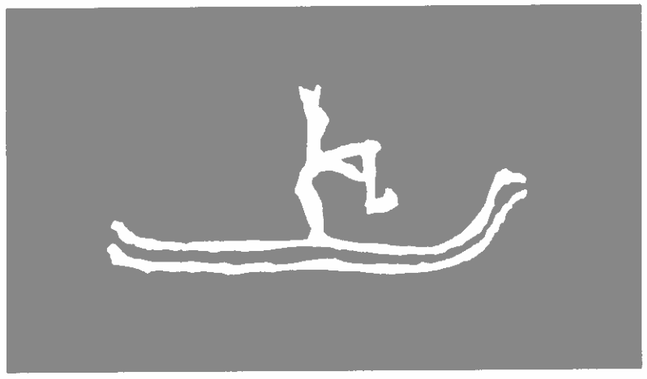
Thus, the relationship between the two bodies – the SRC and the Commission – is not altogether unambiguous. The cases handled by the Commission are seen – by some critics – as being more than a reorganisation of existing legal rights, but confirming and strengthening the State's claim for property rights over traditional Sami areas of land use and occupancy.

The Commission's procedures emphasize private vs State property rights, with an emphasis on farmers' interests in land. This means that other Sami interests in the areas considered are not emphasized. If

legal experts are not troubled by this, Sami locals and the Sami Parliament have expressed concern over having their interests handled by two different bodies, with different mandates and agendas and where Sami interests are being defined predominantly by Norwegian legal experts.

State versus Sami Rights – What about »Native Title« ?

The report of the SRC's Property Rights Group has pulled off a remarkable feat. In their work they have apparently removed all doubts relating to the State's claim to property rights in Finnmark county, which were exposed by the seminal dissertation of Sverre Tønnesen in 1972 and which eventually led to the establishment of the Sami Rights Committee. As we have shown in this overview, the SRC's second report seems to suggest that legal experts and State agencies are reaching conclusions – even making decisions – as if Sami land titles had been erradicated. As illustrated by the Commission for Outlying Fields, State agencies are now making decisions which may have repercussions for Sami land interests.



»Native title« to land and natural resources is a legal concept developed within the British system of common law. The common law of the UK, Canada, Australia, New Zealand etc. does not provide aboriginal peoples with property rights to their territories. However, aboriginal groups in these countries have 'native title' which gives them undefined rights based on 'use and occupancy' since 'time immemorial'. In Canada, *land claim negotiations* have been set up to secure the exchange of this vague right for clear, legally enforced property rights in some areas, and a surrender of native title in the remaining areas, together with a package of cash compensation, environmental powers, economic development funds etc. Native title, then, is strong enough that others fear it, but it is not outright ownership right until it is translated into such through negotiations and legal settlement.

If the State has property rights to traditional Sami territories in Finnmark, Sami may have other, but more limited rights, like common property rights. However, does this mean that the Sami cannot claim any proprietary rights in terms of 'native title'? Does Norway then constitute a case of 'terra nullius'- i.e. that the Sami were not considered as 'owners' of their traditional territories and that in terms of legal theory they were 'empty'? We have to await the report of the SRC's Property Right Group to see how Sami territorial interests have been defined. The findings of the SRC clearly contrast to the findings of legal experts in other countries. In the same circumstances the Canadian and Australian courts have recently made the opposite finding. In Canada, the cases of CALDER (1973) SPARROW (1990) in the Supreme Court of Canada supported the continued existence of aboriginal land title and associated rights despite the fact that governments had been making laws, including property laws. Unless the governments explicitly stated that they were overriding aboriginal title, that title – according to the Supreme Court of Canada – continued to exist. Recently, in an even bigger case in Canada – DELGAMUUKW (GITSKAN & WET'SUWET'EN) – continued aboriginal land title was recognized by the British Columbia Court of Appeal (June 1993).

In MABO (1992), the High Court in Australia also ruled that aboriginal title continued to exist despite the general and property laws of the White Man's governments. Thus, the courts in Canada and Australia say that native title is not lost *unless* a law explicitly stating that it nullify native title is passed, *or*, unless something is done by the new users of land that destroys prior native use rights. Thus, Aboriginal claims to Sydney or Canberra would have no legal basis. However, whether the vast pastoral leases in Australia – covering traditional aboriginal lands – also extinguish native title, is a contested matter – expressed in the current major political controversy between federal and state governments, aboriginal groups and pastoral interests.

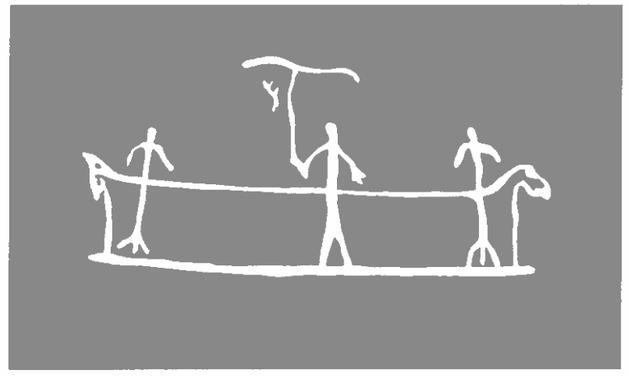
Do these court decisions only deal with the so-called 'traditional' and 'cultural' interests of indigenous peoples? The Sparrow decision in Canada – which concerned *Indian fishing rights* – provides an interesting case of how courts are interpreting »native title« in terms of modern livelihoods. The decision recognized the indigenous right to fish under Section 35 of the Constitution, e.g. that indigenous communitites have a constitutional right to fish for food for social and economic purposes: *»....and that this right must be interpreted liberally to permit their evolution over time«.*

These court cases have *no* direct bearing on Norwegian law except in terms of their significance for *international* law. International law is constituted by international treaties and agreements by national governments and international bodies, but also by the fact that national authorities (legislative, executive and judiciary bodies) may in their respective decisions develop a shared understanding, or common law. Both sets of rules are in principle equally binding (NOU 1984:18, p. 157). Thus, the field of international law is not only constituted by the field of courts and legal experts, it also involves politics and political decisions. The system of international law is a field that is developing. In fact, foreign observers of indigenous issues are increasingly aware of the significance of Norwegian policies on the international scene:

»The Norwegian Chief Justice, in his report on indigenous fisheries accepted by the government (Smith 1991), and the highest courts in Canada and the USA (Rettig, Berkes & Pinkerton 1989, 282) agree that the fishing rights of indigenous peoples take precedence over the fishing livelihoods of non-indigenous people« 6.

The court cases in Canada and Australia show how national authorities have reversed former practices and legal interpretations of 'native title' within the common law-system. These decisions are clearly becoming established as a system within international law for dealing with indigenous issues. The 900 pages report from the 13 year old SRC may certainly present convincing arguments for the State's property rights over Sami lands in Finnmark. This means that under current Norwegian law, if Sami were to present a claim in court for the recognition of their indigenous rights to these areas, they would lose. Under Canadian and Australian law, the SRC finding of 1993, that the making of general laws by Norway has extinguished Sami 'native title' (if that is what it actually says), would be thrown out of the courts, thanks to *Calder* (1973), *Sparrow* (1990), the June 1993 British Columbia appeal court decision in *Delgamuukw (Gitskan and Wet'suwet'en)* in Canada, and *Mabo* (1992) in Australia.

Whether this is a fact or not, it may show that the SRC's report has presented an interpretation of current Norwegian law which seems to be a restatement of long entrenched doctrines, doctrines which are increasingly in conflict with the development of international law. If this is the case, one may indeed question not only the Committee's conception of »current law«, but also how Sami interests have been researched and presented. However, the SRC is not yet finished. It still has »...to consider the need for changes in the current legal practice«. One should now start to question *how, where* and by *whom* this need should be defined.



The Political Significance of the Sami Rights Committee

Making itself invisible to the public, the SRC has in a most remarkable manner been able to handle the major political – and most sensitive and divisive – issues like land rights in terms of its own agenda. However, the long period of 'wait-and-see' has also meant that the difficult issue of Sami land rights has never been a real political issue in Norway. For some, it may have presented a *relief* from not having to confront a major political problem – and a possible nightmare. However, by consigning the land rights issue to the confines of a committee, the general public debate has suffered from a lack of information, as well as uncertainty and ambiguity 7.

This was clearly expressed in the last election (September, 1993) for the Sami Parliament. The election did not generate a clear debate on the issues of self-government, land rights and natural resource management – issues which, nevertheless were constantly being debated. Instead, many candidates expressed ambiguous and sometimes confusing views that – 1) We don't want any separate rights and ethnic divisions – who wants Yugoslavia? – 2) We want the Sami Parliament and a strengthening of its powers and -3) We cannot discuss land rights and resource management until we hear from the SRC.

The confusion also expresses itself in how others interpret Sami politicians. In a TV-debate prior to the election, the president of the Sami Parliament, Ole Henrik Magga, argued for a Sami political agenda, involving the recognition of Sami rights to natural resources in Finnmark and extending the powers of the Sami Parliament into management of resources. His views – long-standing in Sami politics and shared by the majority of Sami politicians in the Parliament – stirred up a hornet's nest in northern Norway. At the regional office of the newspaper Nordlys, Magga's comments on the TV-program led to an immediate storm of angry phone calls,- the largest response they had ever received. People expressed fear and hostility to what they interpreted as a Sami »take-over« and the coming of »ethnic cleansing«: »We will have Bosnia here!« 8.

However, the Sami Parliament does not want any take-over or ethnic cleansing. Sami politicians, well aware of public opinions, have for long emphasized a policy of moderation and reason which may surprise outside observers. As reflected in the political campaign for the Sami Parliament, some may have emphasized moderation to the extent of losing their political agenda. Sami politicians face a serious *dilemma*. Emphasizing sharing and joint interests with the rest of the population, they are also seen by the public to argue for Sami interests, Sami separatism and exclusivity. In handling this dilemma, Sami politicians take highly different points of views, but what is more significant for the public is that the views of politicians are not always clear-cut and consistent. Thus, stressing a policy of moderation has not made Sami issues of self-government and territorial interests less controversial for many – both Sami and Norwegians. Sami politicians are to some extent interpreted as being suspect of having a *hidden agenda* of their own.

The SRC's Carsten Smith report was a break-through in advocating broad support for a new and positive Sami policy in Norway. However, the task of the first committee – in spite of the political turbulence of the Alta-conflict – was basically a *simple* issue. It was a question of acknowledging the existence of two different ethnic groups – Sami and Norwegians – in Norway. Since then, the strategic and difficult issues on the Sami agenda – like land rights and resource management – have been locked up in the SRC.

'Land rights' have long been a muted interest among Sami in the North. However, if land rights were silenced before the last SRC report, they may certainly be a major issue after. If the intention of the SRC was to provide a basis for settling Sami claims, one may question whether this report provides the right answers. What seems to have been emphasized is the evidence of one party, i.e. the Norwegian State – and as we have seen – a narrow interpretation of its relation to the Sami. The Sami claims – in terms of their traditional land use and occupancy and international law – are still a matter of uncertainty

and conflict. Confirming State property rights will not necessarily neutralize and remove the potential for conflict and controversy among Sami and Norwegians or amongst Sami themselves.

The publication of the SRC's second report will herald a new phase in Sami politics in Norway. Land rights have for decades been a central, but distant goal which Sami have worked for – as well as against. Having a definition of current Norwegian law, Sami and Norwegians will now have to consider in earnest the issue of Sami territorial interests – in land, sea and water.

The Sami are often said to have a reputation for endurance and patience. Having waited for the SRC since 1980, they may now appear – at worst – to have waited for something that passed long ago. With the establishment of the Sami Parliament in 1989, one should now seriously question the moral and political rationale for continuing to transform major political issues into a realm of confidential committee meetings dominated by legal interpretations.

The SRC's report may also have a further significance. Norway has made itself one of the leading advocates for indigenous rights abroad, most importantly expressed by awarding the Nobel Peace Prize to an Indian leader of a people who has suffered dispossession and refusal of their indigenous rights. The SRC's report – by confirming State property rights in an traditional indigenous area – may easily be interpreted as a case of Sami rights being extinguished and superseded by Norwegian State laws.

The fact that Sami interests in land and water are still unsettled, may not only damage Norway's position as a champion of indigenous peoples elsewhere. More importantly, it may provide an excuse for other nation states to continue their neglect and abuse of their own indigenous minorities. Indigenous issues are highly internationalized; a court-case which may go against indigenous land rights in one country, is immediately used by those who oppose the same rights in their respective country.

Thus, the SRC's conclusions – whatever they may be – will have a wide political significance, far beyond Oslo and Finnmark. The world cannot wait another 11 years for the next Rights Committee report.

References

1. The only Sami member – Mari Teigmo Eira – left the group late 1992.

2. Smith C, 1990. »Samiske interesser i fiskereguleringssammenheng« (Sami Interests in relation to Fishery Regulations), Fiskeridepartementet. See also: Smith C, 1987 »The Sami Rights Commitee: an exposition«, in IWGIA 1987, 15-16 and Smith, C, 1991 »Saami Parliament and Saami rights – A Minority's History Changing Today's Constitution«, in: Die Bedeutung der Worter, Munchen 1991, pp 483-493.

3. Thor Falck, the present chairman of the SRC, was the judge in the Court of Appraisal in Alta, which dealt with the Alta-case during 1979-80. The claimants, comprising a variety of user's interests like herders, farmers and locals, argued that the Parliament's previous decision to start hydro-electric development of the Alta-Kautokeino river was illegal. The decision was made, they claimed, on the basis of insufficient impact studies and issues which had not been reviewed, like the issue of Sami territorial rights which were still an unresolved political issue and non-existent in Norwegian law. In spite of severe criticism of impact studies, the Court of Appraisal supported the State and the case went direct to Supreme Court which reaffirmed the decision of the lower court, legalizing the development project (1982).

4. What has taken place in Finnmark is part of a total reorganization of the whole State Forests in Norway, with the State remaining as the owner of the properties. Staring a new State authority, the Ministry of Agriculture was asked to present an estimation of the value of the assets of the new body, in terms of the Law for State Agencies. A private firm of auditors was asked to provide a value of the State's assets in terms of the balance of an normal year. In areas where the State had no net income, the value was set to zero. A higher value of assets would mean higher debts to balance the account, thus encouraging a higher level of income and development. In other words, a low value – like in Finnmark – is beneficial for environmental and other reasons. The exceptionally low value of the properties in Finnmark reflects the current low revenue of these properties, not the assets' market value.

5. The present pasture land of reindeer herders, which forms an important part of the total Sami areas of use and occupancy, constitute ca. 40 % of the total land mass of Norway.

6. From: Jull P, 1993: *A Sea Change: Overseas Indigenous-Government Relations in the Coastal Zone, Resource Assessment Commission*, Canberra, page 121.

7. Another case of how Sami political agendas are transformed into committee-issues is the question of Sami interests in the inshore and coastal fisheries. In 1989 and 1990 the commercial fishery for Arctic cod faced a serious crises with a drastic reduction in catches. Responding to new and strict regulations the Sami Parliament asked the Ministry of Fisheries to consider its policies in terms of the new governmental Sami policies, claiming that the interests of the coastal Sami were infringed upon. The Ministry asked Carsten Smith to do a report on this matter (Smith 1990). The Sami Parliament acted on this by demanding in 1992 the establishment of a Sami fishing zone in Finnmark and Norther Troms, for the protection of the livelihood of coastal Sami. This was one of the first major initiatives of the recently established Sami Parliament and the first time the interest of coastal Sami was handled by the Ministry of Fisheries. However, in calling for a separate fishing zone – which would safeguard Sami and Norwegian small-scale fishing interests – the Sami Parliament- instead of setting up a committe of their own – asked the Norwegian Government fo appoint one. The committee was duly appointed (spring 1993) and will have its report ready fall 1994. the committee has signalled a more public approach, starting its work by a series of local meetings in the North.

8. Ragnhild Enoksen, pers. comm.

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7th General Assembly of Indigenous Survival International

GREENLAND

Sisimiut, August 14-18 1993

The 7th General Assembly of Indigenous Survival International took place in Sisimut, Greenland, from 14-18 August this year. The organisation was restructured and Phil Fraser from Native Council of Canada was elected as president.

A number of resolutions were adopted; three of those are reproduced here.

Resolution on Small Cetaceans

We, the Indigenous Peoples, have been depending upon and harvesting small cetaceans in a sustainable way for thousands of years.

We have a fundamental right to control, manage and sustainably harvest the resource of small cetaceans in our waters.

We have the capability, through national, regional and bilateral management bodies to manage, control and harvest the resource of small cetaceans in a sustainable way.

Therefore, we recognize our responsibility for the conservation of small cetaceans in view of a sustainable utilization.

Therefore, we find the International Whaling Commission (IWC) not to be the suitable and competent institution to manage small cetaceans.

Therefore, we urge IWC not to interfere and break the continuity of the existing management bodies by attempting to assume management authority in this field.

Now, therefore, the ISI gathered at its 7th General Assembly declares its support for the regional governments of the Arctic in their present policy of managing the small cetaceans on the basis of regional agreements.

Resolution on ISO/Humane Standards - No. 7

Whereas the Commission of European Communities (EC) has set 1995 as the deadline by which nations exporting 13 species of wild caught fur (EC Regulation No. 3254/91) into the EC, must have either banned the use of leghold traps or secured the use of trapping methods which meet internationally agreed humane trapping standards; and

Whereas, continued access to the European market is essential to the continued viability of many Indigenous communities which produce wild caught furs;

The 7th General Assembly of ISI urges the International Organization for Standardization (ISO) to speedily conclude its development of international humane trapping standards, and to recommend this acceptance by national government, and urges the Fur Institute of Canada to complete its trap research programme.

Resolution on Norwegian Whaling - No. 8

Whereas the United States of America is threatening Norway with trade sanctions in order to force the Norwegian government to stop the harvest of minke whales;

Whereas the USA's objective is to stop all commercial harvesting of whale stocks no matter how many the stocks number, a position not based on scientific, biological arguments or ecological principles, but on "the feelings of the American people";

Whereas such a policy constitutes an attack on the right of coastal communities to the sustainable use of renewable, marine resources and can be seen as an expression of cultural imperialism;

Whereas seals and whales constitute an important part of the marine ecosystem of the North, and a total ban on their management will in all probability have long-term consequences within the fisheries;

Whereas the GATT regulations warrant a closer look at the question of whether the Pelly Amendment, as used in this case, may be in contravention of the international obligations of the United States;

Whereas certifying Norway in such a punitive manner because of a controlled and sustainable harvest of a non-endangered species for food purposes is absurd;

Now, therefore, the 7th General Assembly of the Indigenous Survival International, gathered in Sisimut, Greenland, appeals to US President Bill Clinton to:

1. respect the right of coastal communities to the sustainable harvest of renewable resources in accordance with the Convention on the Law of the Sea;

2. respect Norway's legal right to allocate its own quotas for minke whaling in accordance with the IWC's provision regarding the right of reservation;

3. base US policy in the IWC on scientific recommendations;

4. base US policy on cultural tolerance and, pursuant to Principle no. 12 of the Rio Declaration, not to use trade measures to attempt to force bans on the harvest of certain species upon other countries, on the grounds that they enjoy a particular popularity among the American population.

Noting that the concept of sustainable use of the earth's resources has been the very foundation of wildlife harvesting as successfully practised by Indigenous communities for thousands of years;

The 7th General Assembly of the ISI congratulates the IUCN (the World Conservation Union) for recognizing at its General Assembly in 1990, and in its policy document "Caring for the Earth", that the ethical, wise, and sustainable use of wildlife can be consistent with and encourage conservation;

And, therefore, the ISI urges IUCN to maintain its commitment and support for its "Sustainable Use of Wildlife Programme".

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GREENLAND

Declaration by the Prime Minister on Home Rule

UN Working Group on Indigenous Populations, 11 Session, July, 1993, Geneva

By: Lars Emil Johansen

Madame Chairman, Honourable Members of the Working Group, Distinguished Representatives of States and Indigenous Peoples.

During the eleven years of this Working Group's existence the world has changed radically. Some changes have been positive for our hopes for new global opportunities. Other changes have conjured up frightening monsters that we had hoped belonged to the past.

I am thinking of the changes in the world's block structure which have given a new lease of life to hopes for democracy, equality and human rights. At the same time I am thinking of the racial and ethnic conflicts which have arisen in the wake of the very same changes.

While this Working Group has worked on the creation of paragraphs, which were intended to set minimal standards for the world's treatment of indigenous peoples, it has been proved in several places that the problems this Working Group discusses can be solved.

In those places, it has been shown that the recognition of the indigenous populations as peoples and the respect for the right of self-determination is not destructive for a state's unity.

Unfortunately, developments in other areas have shown that ignoring wishes for new partnerships and self-government between states and ethnic groups can lead to violent conflicts. In the worst cases this develops into war and ethnic cleansing.

Regarding the positive as well as the negative developments, the United Nations is at the centre. It is to the UN that everyone turns when the good must be strengthened and the bad must be stopped. There is no higher place of appeal to the conscience of the world.

The establishment by the UN, of this Working Group in 1982, expresses all the hopes placed in this world organization.

Firstly, the UN took a big and positive step by recognising that the rights of indigenous peoples must be treated as distinct from the minorities issue.

By this act alone, the UN system recognised that we, the indigenous peoples, are in fact distinct peoples and not just subgroups within states.

Secondly, the establishment of the Working Group was an expression of the wish of the UN – and later also of the ILO – for a change of attitude.

This was a wish for a change of past policies of assimilation towards a recognition of our right to separate cultural, lingistic and economic forms of living within nation states.

Thirdly, the establishment of the Working Group was an expression of the recognition of indigenous peoples as members of the global community. It was recognised that we no longer belonged solely to the states in which we live, but that we were distinct cultures belonging to international society.

Finally, we must hope that through the Working Group, the UN can achieve results which will set the standards on how individual states can create new forms of self-government for indigenous peoples. Last week's progress on the draft declaration was certainly an important step towards the fulfilment of these expectations.

Precisely by setting uniform standards for the rights of indigenous peoples the states will achieve a situation where the UN also becomes a place of appeal for them.

It will mean the creation of a third party, in the relationship between indigenous peoples and states, to whom both parties are equal. A new partner to whom both can turn for advice and support.

That is why this declaration by the Working Group is so important for us indigenous peoples as well as for the states we belong to.

During the whole process, it has been a sign of the Working Group's wisdom that it has operated through open meetings where everyone was allowed to speak.

This praiseworthy openness has been an excellent symbol of the wish for a result based on mutual respect.

As the representative of an indigenous people, I wish to emphasize to the Chairman and to the members of the Working Group our appreciation of this attitude.

We have felt a deep respect for the willingness to listen in patience and in understanding to our statements over the years gone by.

No matter what the final result will be of this text of declaration, which we all know must be based on compromises, the process itself has been a big step forward towards making indigenous peoples more visible on the world scene.

I believe that many of us have learned how to become more visible on the international scene. At the same time, we have learned that we too must respect the values and cultural rights of our counterparts.

It is an incredibly complicated process for different peoples to live together in a single state.

In order to avoid war and terror we must seek an understanding of each other's cultures in a continuous dynamic process. This understanding must be based on respect for the individual human being as well as for the peoples. We must build on mutual loyalty based on respect for our differences.

Lack of respect for other cultures, as well as blind self-satisfaction is the seed of any racism.

Madame Chairman,
We are aware that even with a UN Declaration on Indigenous Peoples' Rights, only a few of our problems will be solved.

The solution of the specific problems lies in continuous co-operation and negotiations between the individual peoples and their governments.

Already 14 years ago, Greenland established self-government. A self-government which in virtually every way incorporates all the aspirations of the draft declaration.

I am proud to be able to say that this has not only been of tremendous importance to my people in Greenland, but also to the unity of the Danish Kingdom.

I am completely aware that our model is not necessarily suitable for other indigenous peoples and states.

But, hopefully, these positive results can prove that self-government for indigenous peoples can lead to the absolute opposite of secession from the nation state.

I would also like to point to the positive initiatives taken for instance in the creation of the Nunavut-agreement in Canada and the Sami Parliaments in Scandinavia.

Equally, positive steps have been taken in several places in Latin America, in Australia, and also with the arrangements in the international community which New Zealand has made for the Cook-Islands.

All this proves that positive, just and dynamic agreements can be created between mother states and indigenous peoples. None of these have yet had any negative effect on the unity of the states.

But even when our fundamental rights have been granted and we get new opportunities to develop our communities and economies, we, as indigenous peoples are faced with problems of an international magnitude.

Like all other peoples, we are interested in creating our own economic developments based on an active participation in the international economy.

We need the protection of the international community against the campaigns which are launched against our wildlife-products on purely ethnocentric grounds. Products which are harvested in full accordance with the international standards for sustainable use.

In general, we need the help and support of the world community in order to develop and protect our own economic opportunities on the world market.

Here lies a big task which, unfortunately, can not be solved alone through ILO convention 169 or with the coming UN declaration.

We simply need the UN to maintain and enhance its work with fundamental human rights as well as the rights of self-development for the indigenous peoples.

Madame Chairman,
We are in the midst of the UN year for indigenous peoples. We are grateful that the UN General Assembly decided to proclaim this year and we are well aware that it is to the credit of this Working Group.

But the year must not only become a cultural manifestation of our presence on this globe. It must be used for pointing towards a permanent place for the indigenous peoples in the new world order, which is today being built up with the UN at the centre.

Thus, it is necessary as a specific result of this year to create a permanent institution within the UN which can continue the positive contributions of the Working Group.

I would like to draw your attention to the UN Meeting of Experts on Indigenous Peoples and Self-government which was held in Greenland in 1991.

This meeting developed a series of principles for national as well as international cooperation in relation to indigenous peoples, the Nuuk Conclusions and Recommendations. I know that the Working Group has used these conclusions as a source of inspiration in the drafting process.

When the time comes for the discussion of the Working Group's future role, I feel that the Nuuk conclusions can be an inspiration again.

It is my firm belief that this document can create a valuable workbasis for a new institution within the UN, dealing with the international needs of indigenous peoples.

Madame Chairman,
I started by pointing to the positive as well as the negative developments in the world, which we are witnessing today.

On closing, I would like to emphasize that we, as indigenous peoples, do not have any wish to see new systems based on negative ethnic criteria.

We wish to learn from the positive when it is happening through new regional political forms of self-government, as well as from the negative when ethnic chauvinism takes control.

To this end we wish for the UN's help, so that we, the indigenous peoples, through a peaceful dialogue with our states, obtain the opportunity to show the world that cultural diversity is of benefit to all and is part of the battle for a richer and more peaceful world.

Thank you Madame Chairman.

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SWEDEN

Opening of the Swedish Saami Parliament

By: Claus Oreskov, Mette Duekilde and Peter Bille Larsen

On Thursday 26th August, the Swedish Saami Parliament was opened by Carl XVI Gustaf, King of Sweden. »This will be a watershed in our common history«, he declared. But to the Saami it marked a possibility, at last, to have a say in their own history. Immediately the parliament voiced their disagreement with the minister in charge. With one hand, the Swedish government granted a Saami parliament, with the other it took away hunting rights from the Saami.

The registration of Saami voters amounted to 5390 out of approximately 17000 Saami in Sweden. Considering, that Saami organisations only had a couple of weeks to inform the Saami population about registration, the turnout was high. However, the actual number of voters was 3865.

13 parties, representing a broad spectrum of Saami interests (See IWGIA Newsletter No 2, 1993), sent candidates forward for election. Delegates from 11 of these parties were elected to the 31 seats.

Ingwar Åhren, a delegate from the Swedish Saami National Association (SSR), was elected as president and Lars Jon Allas, from the Reindeer Owner Association was elected as chairman. Whereas it is the president's responsibility to handle political issues, it is the chairman who conducts parliament gatherings. As one of its first acts, the parliament decided to relocate to Kiruna in northernmost Sweden.

Despite the parliament's lack of legal competence in many affairs, it is the only political organ for Saamis in Sweden. But the party electoral programmes showed agreement on several important issues. A general demand was to give greater legal competence to the parliament. This demand was understood as an aboriginal right. Today the Saamis are not recognized in the Swedish constitution as an aboriginal people. This is mainly due to a Swedish fear that the Saami will demand landclaims if ILO – Convention 169 is ratified.

Hunger strike

The publicity of the opening was used to protest against the deterioration of Saami hunting rights. A Saami tent was pitched outside the parliament building housing hunger-striking Saami activists.

The hunger-strikers were protesting against the new administration of hunting rights in the mountain regions. Previously, hunting in these areas was only open to members of the Saami communities. Other Saami and non-Saami could apply for permission to hunt. Now the hunting of small game (especially grouse) has been opened up for anyone purchasing a license.

Two young Saami activists Jørgen Stenberg and Lennart Pittja stated : »*The (Swedish) state has chosen to undermine one of the basic trades of Saami culture – reindeer herding* .» There are two major aspects. Firstly, hunting represents an important supplement to reindeer-herding Saami. Secondly, the presence of foreign hunters and their dogs will disturb the reindeer. The hunting season starts on 25 August and coincides with the gathering of reindeer for autumnslaughtering. A reindeerherd can easily be scattered by one stray dog and several days of work are lost for the Saami. The hunger strike highlights the general feeling amongst Saami: all major Saami organisations have expressed their criticism. But hunting is not the only thing at stake.

The question of land is also present. The government claims to have a right to open hunting on state owned land. Saami, on the other hand dispute the State ownership of Saami land. The parliament expressed their sympathy with the hunger strikers and continued: »*The Saami parliament will immediately begin working with the important question of rights to hunting and fishing on Saami land*[1]» On its opening day, the Saami parliament adopted a resolution stating: »*The Saami parliament expresses its distrust of the government's handling of Saami hunting and fishing rights and the government's action in indigenous questions both nationally and internationally. In view of statements by Per Unckel (minister of Saami affairs) on hunting and fishing questions, the Saami parliament has no confidence in him as responsible for Saami questions.*«

Previously, the State's policy was to give hunting rights only to reindeer owning Saami. This was seen as unjust to other Saami in the area. But instead of solving this question, the government has used the situation to allow hunting licences to be sold freely to Swedes and tourists. However, it is important that Saami communities keep control over the hunting, so they can direct hunters to areas where their presence will do no harm.

Future

The Saami parliament must now find its form in its future work. Ingwar Åhrén, president of the parliament says to IWGIA:« *The first task of the parliament is to get established and to manifest itself as the main political instrument of the Saami. Important working issues ahead are the language question, the strengthening of Saami rights both in relation to hunting rights and the situation of the forest Saami and international questions concerning the future relationship with the EC, co-operation on e.g. Arctic environment in the Barents region.*« The Saami parliament represents a turning point in the relationship between the Saami people and Sweden. However, it did not give the political competence the Saami had hoped for. The future will show if the Saami will succeed in obtaining this competence in their own affairs. This is not only a Saami issue – it is mainly up to the Swedish state.

Note

1. Uttalande från Sametinget 27/8/199.

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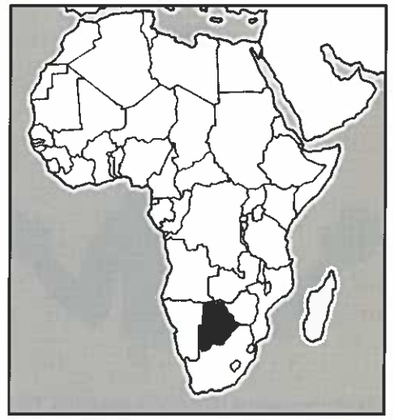
The San of Botswana:



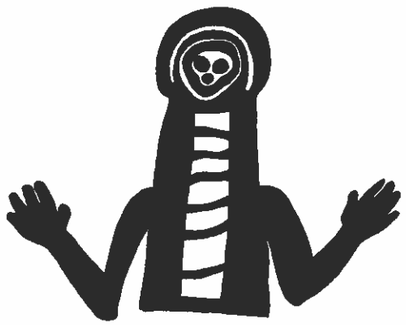
Legal Status, Access to Land, Development and Natural Resources

Paper presented at the Second Regional Conference on Development Programmes for Africa's San Populations held in Gaborone, Botswana 11-13th October 1993

by Batlhalefhi Moeletsi

Introduction

The San, or as they are commonly known in Botswana, Basarwa (1), are perhaps the most widely researched group in Botswana (2). Anthropologists and other social scientists from the continent and abroad have, for a long time, displayed a sharp interest in the origins, lifestyles, features and customs of the San. Researchers have lived among them, learned their languages and documented their way of life. Their rock paintings, language, culture and physical features have attracted so much interest from many quarters that the San were



almost becoming objects for research. Recent, however, it appears research trends are changing direction. The main focus now is not the exotic culture and primitiveness of the small people but an evaluation and examination of their situation in the mainstream societies of the countries in which they have lived for centuries. Questions are now raised: are the San facing cultural extinction? Have they found a reasonabl comfortable place in the independent nations or have they been left out in the cold? How can they be integrated into the mainstream societies without destroying their cultural identity? These and many more questions have been raised.

As the original inhabitants of the Southern African region, the San are also of interest to International Law since they satisfy the requirements of an indigenous people. The fear of International Law is that if indigenous peoples, such as Basarwa, are left to fend for themselves then they are most likely to be victims of cultural genocide on account of their extremely weak position in these societies. It would not be incorrect to say that most Governments in countries in which the San are

found, including the Government of Botswana, have, for a long time, tended to down-play the situation of the San. It is now heartening to see the Government of Botswana (and others) beginning to discuss the problems of the San with the San themselves. In Botswana, there is no doubt that the San occupy the lowest ladder in social stratification (3) and their calls for emancipation must therefore be heeded.

This paper therefore hopes to contribute to the discussion on how the legal, social, political, economic and cultural situation of the San can be addressed so that they too can become accepted and proud members of a unified and yet diversified nation. The paper cannot obviously cover a whole host of problems facing the San of Botswana but it is intended to focus on their legal status, i.e. whether the legal system treats them on an equal basis with other groups. An attempt will also be made to look into the sensitive and thorny question of Basarwa land rights and further briefly inquire, albeit in general terms, whether Basarwa have access to development and natural resources.

Legal Status

There is enshrined in the Constitution of Botswana a Bill of Rights for the protection and enforcement of basic individual freedoms or liberties. In this broad constitutional context, Basarwa, like all citizens of Botswana are entitled to equal treatment by the law and to protection of their individual rights. The Constitution therefore protects Basarwa as individuals and not as a group. It is submitted that the Constitution, however, indirectly places Basarwa, like other non-Tswana ethnic groups, in a position of political and social inferiority. This submission is borne out by provisions of the Constitution which established the House of Chiefs (4) and accorded the Tswana tribes automatic access to it, thus endowing them with political superiority over other groups. By establishing an institution such as the House of Chiefs and explicitly according Tswana tribes a dominant place in it, the Botswana Constitution clearly reflects aspects of tribalism and may therefore be said to be a Tswana Constitution in which other tribes merely seek refuge. It can therefore be argued that, looked against this background, the Constitution rates Basarwa (and other non-Tswana groups) below the Tswana groups. This political empowerment of the Tswana by the Constitution has legal consequences: in effect it means that as a group the Tswana have more legal status in most respects than their counterparts, for example, Basarwa.

The Chieftainship Act (Cap. 41: 01) deriving its validity from the Constitution continues to entrench the political and therefore legal domination of the Tswana (5). According to the Chieftainship Act only the Tswana groups are tribes: the rest are tribal communities. Only the Tswana groups have chiefs; the rest have sub-chiefs (6). The point being made is that here is an example of a piece of legislation clearly engendering tribalism and elevating some ethnic groups over others. If there are these kinds of laws then it cannot be said

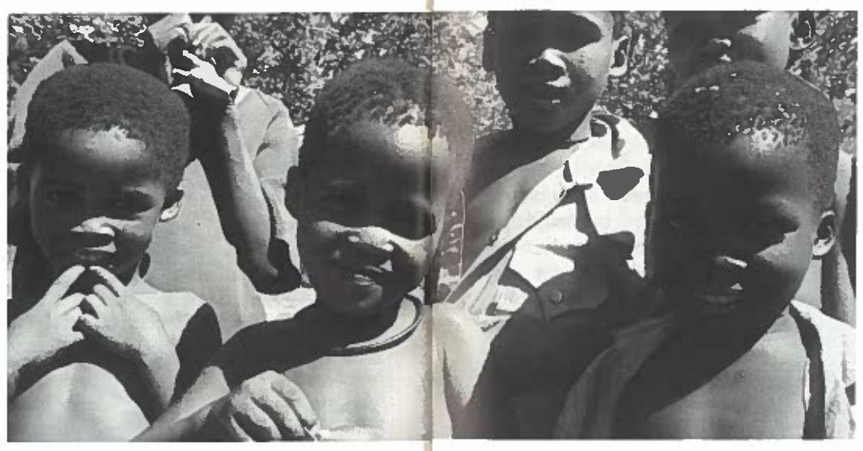


Photo: Frans Welman/WIP

with pride that ethnic groups in Botswana are viewed by the legal system on an equal basis. There is therefore, strictly speaking, no equality before the law. Though the position may be different on an individual basis, it must be remembered that an individual who thinks and is regarded by the law to be from a superior tribe will have more confidence and feel superior when compared one who is from a tribe which is not so recognized.

Assertions that the Botswana Constitution treats every tribe equally are therefore not entirely correct. For the San it can be contended that the Bill of Rights is no more than an empty ostrich egg shell with regard to their weak economic and sociopolitical position (7). The name Mosarwa itself bespeaks the Tswana and other tribes' domination of the San for centuries. The word may thus be used in two senses. It may be used to refer to a San or to a person who is in a servile position (8).

What, then, should be done? It is strongly suggested, as has been said by many, that the Constitution of Botswana should be amended to remove the offending tribalistic provisions in order to render it more progressive. The institution of the House of Chiefs should be demolished and replaced with a more democratic institution the nature of which may be determined after a full study. Alternatively, the institution of the House of Chiefs may be completely destroyed without creating any structure in its place.

Non-recognition of San land Accessibility Rights

The issue surrounding ownership of land anywhere is of considerable importance and sensitivity. Land ownership is very important because a class or group of people which establishes its grip on land will in most cases be in command of the resources of the country and occupy a dominant position in society. It is therefore little wonder that at every seminar, workshop or conference (and so many of them have been held) to discuss the problems of the San, the question of land has been raised and sparked emotions. At a Conference in August 1992 at Gantsi, one militant Mosarwa presented the problem in these terms:

»We have no land rights. We want the land here to be given to the Basarwa to make their own plans. Then we will be responsible for what goes wrong. Before independence you told us that you would help us, and save us from the whites. But now you do not help us. Whatever the Mosarwa says is wrong. But God never gave any person the right to take away other people's land. We should seriously be consulted on this issue, that is the only way to address the problem...« (9).

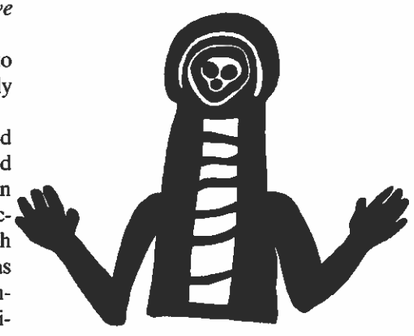
Botswana land laws and policies are primarily founded on the Tswana models of land tenure. This is not surprising; it simply illustrates again the dominant position of the Tswana over other groups. Under the Tribal Land Act – which is the main law which regulates land allocation in tribal areas where most Basarwa are found – land can only be used for residential, arable, grazing and commercial purposes. It is immediately apparent that the Basarwa land rights and uses are not recognized. Nowhere does the land law recognize hunting and gathering as ways in which land could be utilized. It is therefore entirely legitimate to argue that this non-recognition of the San land rights and uses has resulted in the land on which they hunted and gathered being sliced and zoned for commercial cattle ranching or wildlife conservation without consulting Basarwa or at least considering the impact that the cattle industry or game reserves would have on their lives. Basarwa lost their land to the Boers during colonial rule and come independence their situation did not change for the better. This process of dispossession and deprivation of Basarwa land was graphically expressed by one Mosarwa at the 1992 Gantsi Conference when he said:

»During my parents' time there was no independence and no Land Board, but we had more ownership of land than we have now » (10).

While this statement might be suspected to have a ring of nostalgia to it, it is painfully true.

Having noted that the Basarwa land rights and land uses are not recognized when land laws and policies are made, can it therefore be said that Basarwa have access to land? This is a tricky question which must be approached with caution. As far as the Tribal Act (as amended) (11) is concerned, every citizen of Botswana is entitled to be granted rights in land; and ethnicity is therefore irrelevant. The Act therefore treats all citizens equally. Problems which may arise for Basarwa, however, are those with respect to actual land allocations by the land authorities. It is submitted that subjecting Basarwa to equal treatment with other groups creates two problems. First, Basarwa are economically too weak to compete with other groups on an equal basis. Secondly, since their land uses are not recognized they are bound to have limited access to land; for the territories on which they hunted and gathered have been reserved for wildlife and set aside for ranching. Only few Basarwa have cattle and since, at least in some districts, arable farming is not viable in their areas, this therefore means that the majority can only use land for residential purposes. It is interesting to observe that even as Basarwa are busy struggling to acquire land, it is estimated that about 39% of the territory is reserved primarily for wildlife utilization (12).

Basarwa consequently find themselves caught up between wildlife on the one side and cattle on the other. The Government



of Botswana must therefore strike a delicate balance to find a comfortable place for Basarwa where they can reasonably move freely. Policies on commercial cattle ranching and wildlife management must, to strike this balance, be reconsidered in order to address the landlessness of Basarwa. Some of the land used for wildlife can thus be redefined for Basarwa and some of the cattle ranches can be relocated to allow Basarwa free movement.

Finally, it is urged that the Government should carefully examine the provisions of Section 14(3)(c) of the Constitution (13) of Botswana which seem to support Basarwa's struggle to acquire land. It appears in this provision, that the framers of the Constitution had envisaged that the Independent Government would take measures to define territories for the welfare and protection of Basarwa: this is the only provision in the Constitution which recognizes the extremely weak economic position of the Basarwa and attempts to provide something close to affirmative action for them. It is submitted that the Remote Area Development Projects are not what the Constitution had in mind when it provided for the protection and welfare of Basarwa. Section 14(3)(c) should therefore be applied to enact a provision in the Tribal Land Act or any other law which will discriminate in favour of Basarwa in areas other than those dealing with land, and can of course be enacted in line with the constitutional provisions on discrimination (14).

It has been noted above that Basarwa, as a group, occupy the lowest position in the Botswana society and that economically they are also the most disadvantaged. The point has also been, that as a result of their inferior socio-political and economic status and the non-recognition of their land rights and land use patterns, Basarwa's access to land is very limited. It is apposite therefore to turn, at this point to the question: to what extent do Basarwa have access to development and natural resources?

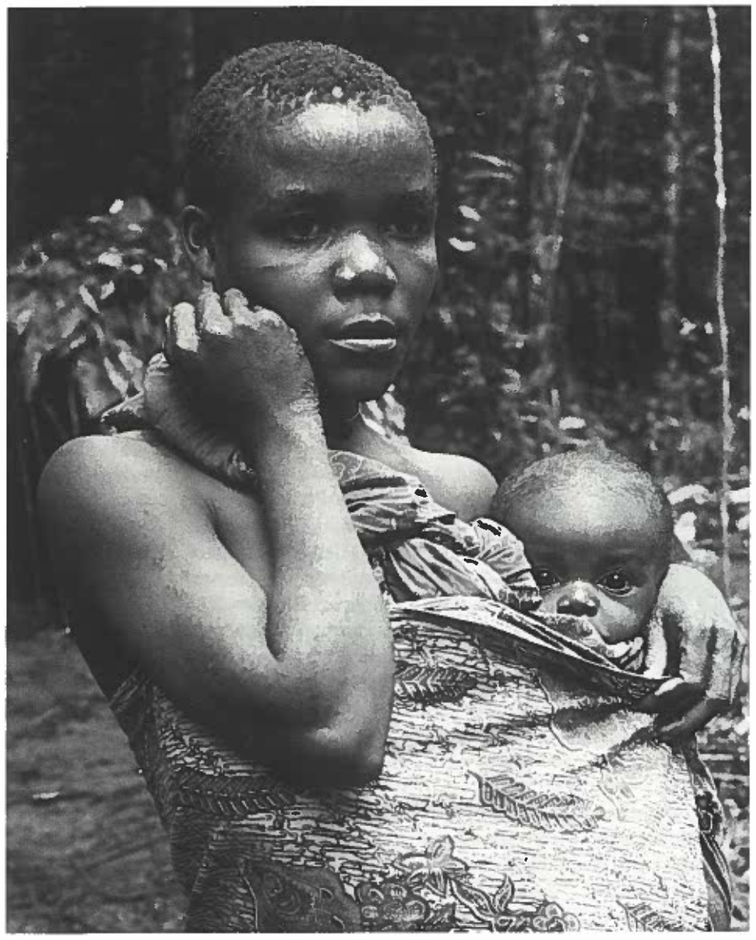


Photo: Espen Wæhle

Access to Development and Natural Resources

Development

In his foreword to the National Development Plan V11 (15) the President of the Republic of Botswana, His Excellency Sir Ketumile Masire, proudly noted:

»This seventh National Development Plan is being published during our twenty-fifth year of Independence. It has been a remarkable quarter of a century, and every Motswana can take pride in our achievements. Per capita income is now about eight times what it was at Independence; life expectancy has increased from 48 to over 60 years and formal sector employment has grown from 25,000 to 198,000 in 1990 and is estimated to exceed 210,000 in 1991. Moreover, the nation's infrastructure, including roads, power, schools, health facilities and housing has sharply increased...«

There is no doubt that Botswana has made great strides in economic development since independence, but very few Basarwa would agree with most of what the President said above. Per capita income could have increased eight times and formal sector employment could have grown considerably since independence but these wonderful achievements have benefited very few, if any, Basarwa. No authority is needed to support the assertion that the tendency of the process of development in this country has been to favour areas which are dominated by the Tswana. The argument, of course, is that development must be taken to people who are more organized and have permanent settlements. Basarwa on the other hand having no organized and permanent villages of the Tswana type and being nomadic, it is therefore difficult for the Government to reach them and bring development to them. The argument is of course without merit. The reality is that the Tswana, who dominate the civil service and the Government, develop their areas first before they can proceed to other areas. Only those non-Tswana tribes whose members hold influential positions in the Government have managed to influence development in their regions (16).

The sad picture therefore is this: the weaker tribes have found it very difficult to attract development to their areas. The economically and socially weak Basarwa have been the worst affected and their access to development has consequently been very limited (17). To them independence has not meant much: it has only meant losing land and facing cultural extinction.

Natural Resources

Basarwa's access to the land resource has been addressed. The focus here is whether they have access to natural resources such as wildlife, water and others. It is contended that Basarwa's access to natural resources has been greatly limited by the expansion of the cattle industry into their territories and the growth of wildlife conservation areas. As pointed out earlier, almost 40% of the territory of Botswana is taken up by wildlife. The result is that hunting and gathering being their way of enjoying natural resources, Basarwa now find it very difficult to access these resources; they can only hunt subject to a licence and they can only gather and search for water where they are allowed to go.

Conclusion

In sum the following points can be made:

1. The Government must seriously address the plight of Basarwa. Unity can only be achieved and maintained if the interests and reasonable demands of non-Tswana ethnic groups are recognized. The Government must not always wait until pressure has been brought to bear upon it. People and organisations calling for the amelioration of the lives of Basarwa should not be treated with hostility for they mean no harm. National unity cannot be achieved and maintained at the expense of weaker minority groups.
2. There is no doubt that Basarwa are the most exploited, downtrodden and subjected people in Botswana today and it is therefore suggested that the Government must enact laws that discriminate in their favour e.g. the Tribal Land Act can further be amended to reflect affirmative action for Basarwa.
3. At every workshop, seminar or conference that is held, Basarwa are heard complaining about their state of landlessness in territories that are theirs by traditional occupation. If we are agreed, which I think we are, that Basarwa's complaints regarding land are genuine, then why not embark on an intensive study to determine how the land question can be addressed? It is only when Basarwa have land that they will regain their confidence and be proud participants in the development of Botswana and obviously this sense of security will help them adapt to the changing times so that they can enter the mainstream society as a culturally distinct group.

Notes

1. The words San and Basarwa will be used interchangeably throughout this paper
2. Robert K. Hitchcock. Socioeconomic change among the Basarwa in Botswana: An Ethnohistorical Analysis. EthnoHistory 1987 Vol. 34:3
3. Hitchcock. ibid. Since their contact with Bantu Basarwa have been enslaved or reduced to a state of servility or serfdom.
4. See Section 77 et seq of the Constitution of Botswana
5. E.g. most of the members of the Customary Court of Appeal are from the Tswana tribes.
6. Section 2 of the Act.
7. In fact an empty ostrich egg shell may be more useful for it may be used as a container.
8. Similarly the Tswana use the work Mokgalagadi in two senses viz to refer to a member of an ethnic group called Bakgalagadi or to a servant or serf.
9. Notes from the Gantsi Conference.
10. Notes from the Gantsi Conference.
11. On 30th August 1993 the Tribal Land Act (Cap.32:02) was amended to remove the word tribesman and in its place the word »citizen« was inserted. The Act has not yet come into force but the meaning is clear to any citizen of Botswana, Basarwa included, entitled to be granted rights in land in any tribal area. The point made in the discussion is however, that to Basarwa this amendment may make no difference since it does not effect any change in the institutions that have power over land allocations. These institutions will obviously continue to be dominated by non-Basarwa.
12. National Development Plan V11, p. 301
13. Section 14 (3) of the Constitution provides as follows:

    »Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section [i.e section 14 (1)] to the extent that the law in question makes provision....for the imposition of restrictions on the entry into or residence within defined areas of Botswana of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well being of Bushmen«
14. See section 15 of the Constitution
15. N.D.P. V11:xxi
16. This conclusion is based on personal observation and investigation of the situation is required to confirm the statement.
17. The Remote Area Development Policy appears to be doing the best in the circumstances to bring development to the targeted groups most of which are Basarwa. One wonders what the Government would have done if NORAD had not assisted.

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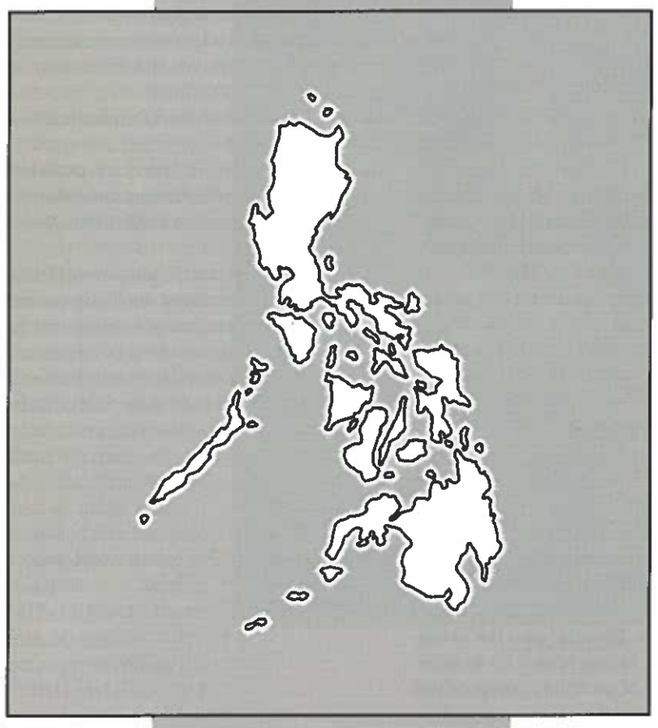
The T´boli Struggle for Ancestral Domain in the Southern Philippines

by
David Hyndman and
Levita Duhaylungsod



Indigenous peoples in Asia Pacific have largely been misrepresented so that their cultures have sometimes been viewed as static, if not atavistic, amidst the political and economic forces impinging on them (Hirsch 1990:58). However, they are neither apathetic nor do they collapse suddenly and completely when their cultures and homelands are invaded. Many of them rise beyond being »victims of progress« (Bodley 1987). Different modes of resistance and adaptation are evident which, until fairly recently, have not been given their due ethnographic recognition. New modes and forms of responses are continuously emerging and being waged by indigenous peoples across Asia Pacific. Their marginalization is a historical and geographic phenomenon but so are »demarginalizing processes« (Hirsch 1990:59).

In the Philippines, indigenous peoples' movements are flourishing and converging into a strong political struggle to assert their identity and self-determination. The Philippines, is a society that is not only marked by class, regional and urban-rural stratification but also significantly, by a sociocultural plurality of indigenous peoples. Its acknowledgement is essential in understanding the indigenous people's struggle for the retention, reclamation and control of their ancestral land. Mindanao, the southern island of the Philippines, is homeland to both Lumads and Muslims, the Lumads are a generic reference to all non-Muslim indigenous peoples.

Most indigenous people's homelands in the Philippines are destroyed by capitalist exploitation. Internal colonialism, peasant and colonial invader and settler capitalist are descriptive terms for the frontier competitors in the Southern Philippines today. The T'boli (Fig. 1) and other indigenous Lumad peoples distinguish themselves from peasants and from the Muslims in Mindanao. Some settler capitalists in the T'boli homeland are similarly peasants disenfranchised from their original places and are capable of fair and respectful relationships towards their indigenous neighbours. However, for the most part they act to the contrary and look down on the T'boli because of the pervasiveness of the dichotomy of »civilized« and »primitive« peoples. Such hierarchical distinctions have culturally oppressed indigenous peoples. The T'boli and other indigenous peoples elsewhere in the Philippines suffer everyday discrimination and exclusion, even from equally impoverished lowland settlers.

Much of what is written and propagated about the T'boli in southern Mindanao focuses on the `ornamental' dimension of their culture, the most popular of which is the Catholic priest Casal's (1978) study of T'boli art. Even the studies on the processes of socialization during the T'boli life cycle (Buhisan 1985) and on their headdress (Tubao) »get-ups« (Aparente 1986) trivialize T'boli society. Casal's work is the closest approximation to a T'boli ethnography but it was seriously compromised by his inattention to the dynamics of change affecting T'boli society and his fascination with »recording only the tradition within the T'boli socio-cultural structure« (1978:-204). It is therefore not surprising that when the T'boli are referred to, what is usually sketched is a portrait that conjures up images of their intricately designed t'nalak cloth, colourful beads, embroidered blouses and brass jewellery.

This fossilized conception of T'boli culture misrepresents and diverts the reality and predicament of the T'boli society. Lost to this picture is a dynamic people that has survived the historical intrusions of colonialism. The T'boli have persisted as a distinct people amidst the expanding state and world capitalist system; yet, as a people with history (Wolf 1982), the T'Boli are misunderstood and denigrated as little more than tourist attraction 'art'.

The T'boli are the dominant indigenous people inhabiting the frontier of South Cotabato and the recently subdivided coastal province of Sarangani. Provincial Planning and Development Office (PPDO 1988:-19,23) estimates, based on 1980 census figures, indicate the population of the T'boli, ranges from 46,000 by language to 60,000 by municipality, whereas estimates of two prominent T'boli leaders, George Tanedo and Dad Tuan, range from 150,000 to 500,000, respectively. The former Presidential Assistant for National Minorities (PANAMIN) figure in 1983 was also 150,000 and is probably the most reasonable estimate of the number of T'boli living in South Cotabato in 1993.

Ancestral Domain and Capitalist Expansion

In the 1950s, Mindanao was touted as 'wilderness', untamed, unknown and unclaimed. Such images inspired the government-induced massive migration of Ilocanos from northern Luzon and Visayans from the central islands (Fig. 1) to Mindanao and lured agribusiness corporations to invest technology and capitalist ventures.

The state wrongly identifies these lands as uninhabited. The institutionalization of land laws from the time the United States acquired sovereignty over the Philippines did not carry any recognition of the communal ancestral domain laws. State laws and policies have since then been discriminating against the Lumads. Ancestral lands have become public lands rendering the indigenous peoples virtual squatters in their homelands.

The 2000 km^2 heartland (Casal 1978:43) of the greater T'boli homeland is formed by a triangle between the towns of Polomolok, Surallah and Kiamba (Fig. 2). They distinguish themselves into T'boli Mohin who are located in the coastal municipalities of Maitum, Kiamba and Maasim and the T'boli S'bu who are in the mountains of Lake Sebu and T'boli municipalities (Fig. 2). The Cotabato Cordillera which extends along the coast for more than 190 km, rises abruptly from the sea in the T'boli homeland, extends inland for over 55 km and averages some 1200 m above sea level in elevation. Rainfall along the coast and in the mountains averages 2500 mm annually, but falls to half that in the Allah Valley (Wernstedt and Spencer 1967) portion of the T'boli homeland. The rich mountains, are now facing serious threats due to advancing frontier exploitation by various invader groups.

The Spaniards and the Americans never succeeded in colonizing the Muslims or the T'boli. However, the immediate postwar period of the 1950s witnessed the massive movement of Visayans and Ilocanos following the postcolonial government's transmigration programs in Mindanao. As lands became classified as public domain

or titled to colonial invaders, it was underpinned by legal arrangements of the state that denied recognition of ancestral domain title of the T'boli. They were increasingly marginalized between the Ilocanos taking their land on the coast and the Visayans taking their land in the interior Allah Valley.

Internal colonialism alongside the relentless expansion of the world capitalist system has become the principal force that tries to completely subjugate the T'boli people and exploit their homeland in south Cotabato. The constant search for new resources to be appropriated has led to the expansion of frontier exploitation from the coast to both sides of the mountain frontier of the T'boli homeland. Settler capitalism, gold mining (Duhaylungsod and Hyndman 1992a), timber and rattan cutting, livestock operations, transnational agricultural land conversion and crop intensification and the controversial perpetration of the Tasaday hoax (Hyndman and Duhaylungsod and Hyndman 1990; Duhaylungsod and Hyndman 1992b) have all marginalized and displaced the T'boli people because their resources have become commodities expropriated in capitalist production that leave no benefits to them at all (Fig. 3). Indeed, the scenario in South Cotabato has become »lands at risk, people at risk« (Anderson 1987) with the extent and rate of plunder posing serious threats to the ecology and culture of the T'boli.

Initially, the interior mountains of the T'boli homeland provided a cultural safety valve in which the T'boli managed to continue with their kinship mode of production wherein food, goods and services only circulate reciprocally within their communities. Today, with interior lands no longer available for further retreat, the T'boli find themselves directly confronted with and enmeshed in the capitalist mode of production. Kinship and capitalist modes of production are not complementary relations. For the T'boli, the ethos of private, individual accumulation of material wealth and commodity form of exchange completely undermine the cultural fabric that insured the survival not merely of individuals but, more significantly, of the community. The clash of kinship and capitalist modes of production places the T'boli in a serious cultural dilemma for which they are unprepared but are now suddenly forced to cope with. The general pattern of their response is resistance and wherever possible, further retreat.

The expansion of the state and resource exploitation on the frontier between indigenous and invader in South Cotabato continues to be a conflict between kinship and capitalist modes of production. The expansion of resource competition has gone hand in hand with militarization, hamletting and counter-insurgency programs against the resistance of indigenous nations, especially the T'boli. The T'boli have lost much of their ancestral homeland but they are also actively resisting transformation from »tribal to peasant«, which Schlegel (1979) asserts has already reconstituted the nearby Tiruray as virtually indistinguishable from the mass of the peasant class in the Philippines. The aggressive and systematic encroachment of different groups of invaders was not couched in the gentleness for which the T'boli have been extolled.

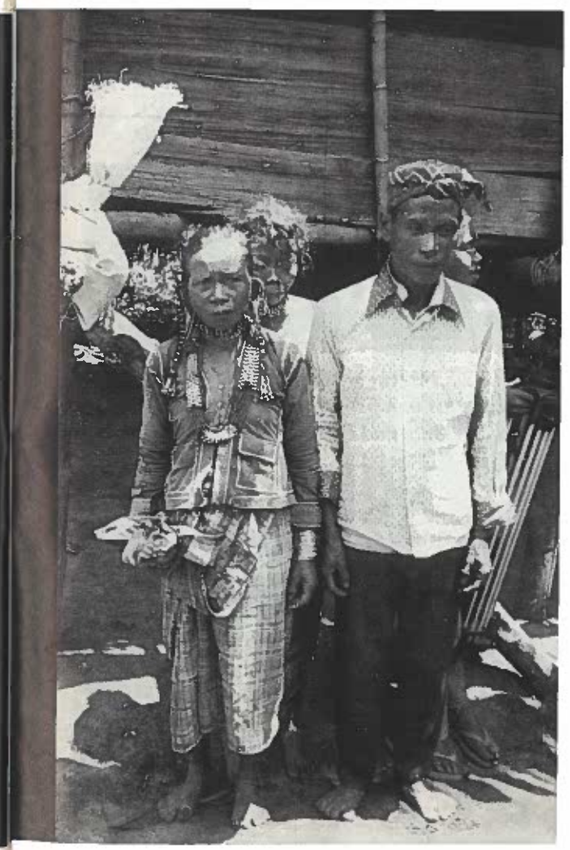
Lumad-Mindanao: Indigenous Peoples Unite

The National Federation of Indigenous Peoples of the Philippines (Kalipunan ng mga Katutubong Mamamayan ng Pilipinas) (KAMP) started with their first national meeting in December 1987. The second national KAMP congress was held in January 1989 in Quezon City, Metro Manila and the next is scheduled for 1994. Lumad-Mindanao is in the national federation together with nine other regional alliances (SAMAKAP, KKSM, SKSM, NAGTAGBO, CPA, KKMI, LAKAS, SPMM, and SAKABINSA) representing some 10-12 million indigenous peoples across the Philippines. In addition to uniting indigenous peoples, KAMP serves as the organizational center for projecting their struggles and developing solidarity linkages within the Philippines and on the international level.

Like all other indigenous peoples in the Philippines, the Lumads of Mindanao have been historically and continuously »minoritized and dehumanized« (CCA 1983). The common experiences of disenfranchisement through the clash of social systems and modes of production have conscienticized the Lumad peoples of Mindanao to collectively articulate their rights and work for self-determination and resource control. Indigenous peoples have been struggling in various forms and resisting organized onslaughts on their cultures and resources. During the martial law regime of Marcos the pressure on indigenous peoples of Mindanao intensified further and this catalyzed the more unified and wider movement known as Lumad-Mindanao. The term Lumad, which came into use only in the last fifteen years, is the generic name used to refer to the 18 distinct indigenous peoples of Mindanao, generally referred to by outsiders as non-Muslims (Rodil 1990:5). Literally, it means indigenous or 'grown from the place' (Agbayani 1990). The term is also an acronym for Lumadnong Alyansa Alang Sa Demokrasya (Indigenous Alliance for Democracy) and adapting it as the name of the alliance has brought forth a strong assertion of their cultural identity and cohesion as indigenous peoples of Mindanao.

T'boli leader Datu Galang and his cousin in 1986. A few days later accompanied Unger and Ullal to the »Tasaday« caves and finally a few weeks later participated in the »Tribe That Never Was« ABC-TV documentary.

Photo: J. Moses.



Lumad-Mindanao began in 1983 as a mere support group composed largely of advocates from the religious sector. As invaders expanded and expropriated more indigenous peoples' homelands in Mindanao, the Lumad political movement also grew and became militant and increasingly articulate of their rights. In 1986, these common struggles were forged into what is now Lumad-Mindanao. It became a coalition of local and regional all-Lumad organizations whose determination is to defend their ancestral domain.

The decade of the 1980s saw Lumad movements flourishing across Mindanao. In 1985, indigenous peoples of southern Mindanao organized themselves into a regional alliance called ALUHAMAD. The acronym stands for Alyansa sa mga sa Habagatang Mindanao (Southern Mindanao Alliance of Lumad) and had representation to Lumad-Mindanao. It consists of nine indigenous peoples whose homelands are located within the five provinces of southern Mindanao. The T'boli together with the B'laan formed KALUHAKU (Kahugpungan sa mga Lumad sa Habagatang Kotabato) in 1991, which stands for United Organization of Lumad in South Cotabato and is politically aligned to ALUHAMAD.

KALUHAKU and ALUHAMAD now politically support the historic T'boli struggle to regain their ancestral domain lost to Ansa Farms. In 1962 Ansa Farms, owned by Chinese businessman Antonio Nocom, alienated land to the Laconon T'boli community (Fig.3) by tricking three T'boli leaders to sign ready made documents by means of thumb prints. On the basis of these deceptively signed documents, Nocom was able to legitimise Ansa occupation of the Lakag homeland, but the T'boli kept returning despite harassment, demolition and court orders. The T'boli unsuccessfully approached the government for redress throughout the 1960-70s and their own powerful political leader, former Mayor Mai Tuan, even harassed them. In October 1985 over 300 families were driven from Lakag and their homes and crops demolished by military and Civilian Home Defense Forces (CHDF). In 1990 after 500 T'boli families reoccupied Lakag their homes and crops were again destroyed by Ansa armed cowboys and Civilian Armed Forces Geographical Units (CAFGU's). On the 7th of January, 1992 the T'boli again reoccupied their Lakag homeland within Ansa ranch. Over 500 families returned and affiliated to one of five T'boli leaders according to methods of mass mobilization for reoccupation of ancestral domain learned during their participation in KALUHAKU and ALUHAMAD meeting of 1991. The reoccupation has endured and as of mid-1993 the Lakag T'boli have successfully harvested three crops of corn and two of upland rice.

Across the T'boli frontier today are various localized, culturally specific but determined struggles to assert rights to their homeland. Unlike previous reoccupations, the T'boli are empowering themselves through active participation in the LUMAD political movement. Increasingly the T'boli are realizing their common interests with the other LUMAD indigenous peoples. Their kinship mode of production attached to their ancestral domain is a strength the T'boli use to mobilize their resistance to encapsulation within the state and the capitalist world system. The KALUHAKU is but one manifestation of the ideology of place and homeland translated into social and political action for change.

[IWGIA Document No.73 by the same authors gives a comprehensive account of the plight and struggle of the T'boli people]

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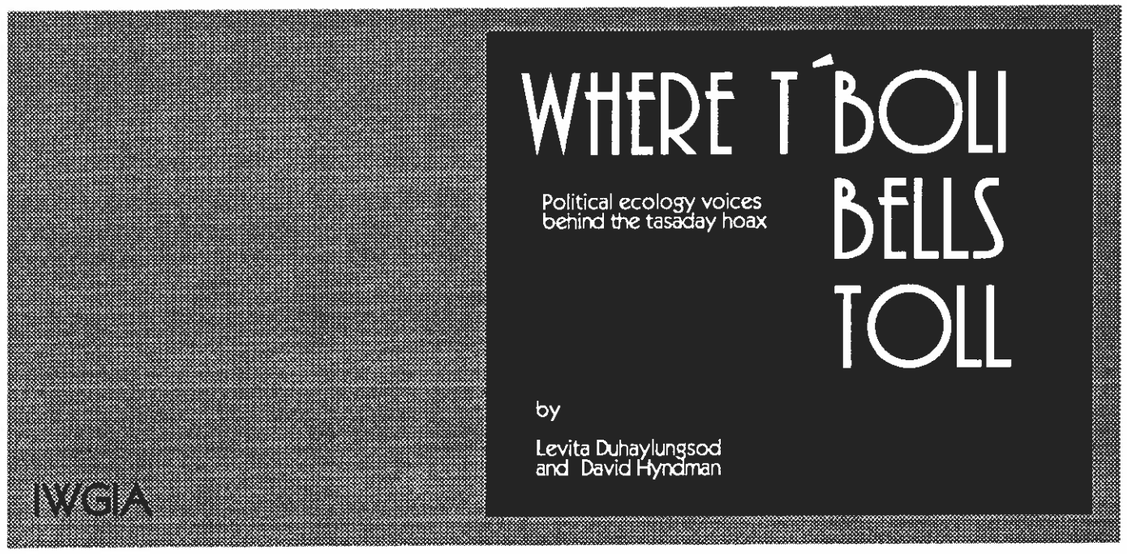
DOCUMENT 73



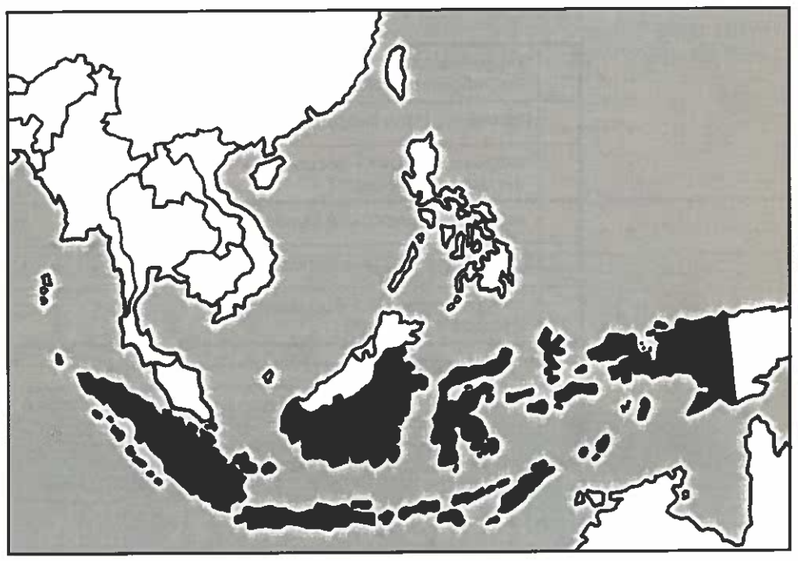
DOCUMENT 73

MALAYSIA
the Jeli incident

Following repeated encroachments into their traditional lands, the *Jahais* of Kampung Sungei Manok, Pos Rual in Jeli, were engaged in an encounter with six Kelantan locals recently. Four of the encroachers succumbed to injuries sustained in the skirmish. Nine Jahais have been charged with culpable homicide not amounting to murder.

The Jahais, an ethno-linguistic sub-group of Negrito (or Semang) Orang Asli, are one of the earliest peoples in Malaysia. They number about 870 today and live in the northern parts of Kelantan and Perak. The community in Kampung Sungei Manok is one of five which, since 1972, have been asked by the Department of Orang Asli Affairs (JHEOA) to relocate in the Pos Rual area. In 1976, the land was approved for gazetting as an Orang Asli reserve but to date it has not yet been gazetted. However in 1988 a total of 1,630 acres were given TOL (Temporary Occupation Licence) status by the Kelantan government.

Since the late 1970s however, the Jahais have had to contend with encroachments onto their lands, first by loggers and later by non-Orang Asli settlers from neighbouring districts. According to reliable sources, in 1980 and 1990 in particular, non-Orang Asli settlers had encroached and 'acquired' parts of Jahai lands.



Events leading to the Incident

Since late 1972, some 20,000 hectares of 'state lands' have been encroached upon by illegal settlers in Kelantan, especially in the traditional Orang Asli areas of Gua Musang, Kuala Krai and Jeli. This was due in part to the PAS-government's policy of giving district offices the authority to approve land applications involving less than 4 hectares each. As such there was a surge of land applications in the state, especially in areas where forest lands were made more accessible by logging tracks. The areas around Pos Rual were not spared.

In March this year, there was a cholera outbreak in the settlements which claimed the lives of six Jahais. The Jahai of Kampung Sungei Manok were asked by the JHEOA to vacate their settlement in an attempt to stem the disease. They stayed in Jeli for about a month.

The Incident

Soon after they returned to their settlement, i.e. on 25th April 1993, a Kelantan local came to the settlement and aggressively asked the Jahai to move out of the area, claiming he had bought the land and that the land was now his. The Jahais stood their ground, despite the abuses and threats levelled at them. He gave them one day to move out and warned them that he would be coming with his friends the next day. The Jahais had a meeting that night and decided that they would not move.

At about 10.15am on Monday, 26 April, six of them came in a van to the edge of the settlement (the press reports, however, maintain that there were 5 of them altogether). The supposed 'leader' of the group called out for the headman in an angry tone. Two of them then went to the settlement proper, brandishing long knives. The 'leader' of the group insisted that the Jahais move out that very moment.

The situation was very tense and highly charged, though the Jahais made attempts to reason with the intruders. However, when the 'leader' kicked the *penghulu* causing him to fall and a young Jahai of 19 was cut on his left arm, drawing blood, the other Jahai men came to their defence and engaged in a fight.

Officially, the charge sheets and the press reports state that three of the intruders died as a result of injuries sustained and blow-dart poisoning. However, our initial investigations reveal that four actually died as a result of the incident. At this juncture, we can only speculate as to why information on the death of the fourth is being withheld.

As soon as the incident happened, one of the Jahais went, with the JHEOA teacher from Pos Rual, to make a police report, as well as to inform the JHEOA office in Jell. While he was at the latter, the police went to the settlement and made eleven arrests.

In Court

The eleven were held in remand until the first mention in the Kota Bahru Sessions Court on 11 May 1993. Two were released then: the *penghulu* and the lad who was hit on the arm.

The remaining nine were charged with culpable homicide not amounting to murder under Sections 304 and 34 (common intention) of the Penal Code. Bail of RM5,000 each in one surety was set by the court. However, being unable to raise the amount, they were to remain in remand until the second mention on 23 May.

By then legal assistance for the nine Jahais had already been organised. However, it was only at the third mention on 29 May (to hear an appeal for a reduction in bail and to decide the lawyers for the accused) that the nine were released on bail – in the form of property charged to the court – was posted by a local businessman known for his concern for the Orang Asli.

The Issues

While the case pending in the court is one of culpable homicide not amounting to murder, we believe that there are more issues at stake.

For one, encroachment into Orang Asli lands is a long-standing issue, with the authorities reluctant or unable to take any action. In some cases, it is theft of their forest resources (timber, rattan) and their fruits (especially petai); in most others, it is the theft of their traditional lands. Orang Asli have made many complaints to the relevant authorities (including the JHEOA, the district office and the police). Unfortunately, there has been no concrete move made to protect their rights.

The Jeli incident is therefore an important test case for the Orang Asli. It promises to discuss pivotal implications for Orang Asli rights to land and to protection from the various laws and government agencies.

An Appeal

The 79 Jahais in 19 families are still residing in their settlement, and are determined to protect their land. The threat of a conviction – and possible jail terms of up to 20 years – however still looms over the nine accused.

We are fortunate to have the services of two lawyers who are not only very capable but, more importantly, who feel for the Orang Asli. However, we will need funds to meet the costs involved in seeing the case through. The nine accused, some families and witnesses need to be ferried (in hired vans) to Kota Bahru, about 200km away, and provided board and lodging during the hearings (which expect to be held over an extended period). There are also court fees and other incidentals involved.

For this purpose we are setting up THE JELI FUND. It will oversee the expenditures incurred in this case. In the event of any funds remaining after the conclusion of the case, they will be used for other legal cases involving the Orang Asli.

We think it is time that the courts are used to seek redress for the Orang Asli. We hope you will support us in this regard.

Kindly make your contribution payable to COAC SERVICES and send it to: 86-B Jalan SS24/2, 47301 Petaling Jaya Malaysia.

Source: Center for Orang Asli Concerns. 26 April 1993. ❑

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ARGENTINE

Guarani People March Against Apartheid

by
Brian Keane and Marina Zurkow

On 15 September 1993, some 400 Guarani men, women and children will leave their villages and begin a nearly 300-kilometre march to Posadas, the capital of the province of Misiones, in northern Argentina. When they arrive, they will set up camp in the Plaza 9 de Julio, in front of the main government building, and begin a hunger strike. They plan to remain there until the government repeals Law 2727, which institutes a system of apartheid, and is being used to fracture the Guarani culture and destroy the unique rainforest ecosystem in which they live.

There are approximately 6,000 Guarani People living in the province of Misiones. Despite heavy pressure by the enveloping society, they have maintained their traditional political, economic, cultural and social systems.

Since the 1980s, the government of Misiones has steadily intensified the exploitation of natural resources on Guarani territories, with logging, mining, tourism and the construction of hydroelectric dams. The land that the Guarani depend on for food, shelter and medicine is being destroyed at an alarming rate. This has produced a dramatic rise in child malnutrition and outbreaks of non-native illnesses to which they have no immunity.

In an effort to defend their territories and their culture, the Guarani have been urging the government to recognise their rights as indigenous peoples, and develop their lands in a rational and sustainable manner. In 1986, indigenous leaders proposed the sanction of a law (law 2435) that would recognise the land rights of the Guarani and give them a degree of autonomy and self-determination within Argentina. In June 1987, in a progressive act of legislation, Law 2435 was sanctioned by the Parliament of Misiones.

But lamentably, seven months later, there was a change in the political authorities in Misiones. The new Governor, Dr. Julio Humada, acting solely on behalf of business interests, immediately deregulated Law 2435, and in June 1988 stopped all emergency assistance to Guarani communities. As a result, over 35 children and several elders died of malnutrition.

In December 1988, the Parliament of Misiones passed Law 2727, or the 'New Law of Aborigines', which put all Guarani communities under direct control of the state, with no respect for their traditional social structures. It is the politics of apartheid.

For the Guarani, Law 2727 has meant deforestation, colonisation, violence, displacement, poverty, malnutrition and disease. Although the situation has recently been denounced at the United Nations and in the European Parliament, the government of Misiones continues to destroy the Guarani and force them off their ancestral lands.

Logging companies are encouraged to illegally clear-cut Guarani territories, communities have been burned to the ground, and communal gardens are being destroyed. Those who try to speak out against this violence are threatened, beaten or illegally jailed. At present, an outbreak of tuberculosis is sweeping through several Guarani communities; at least 19 children have died.

In spite of appeals made by Guarani leaders to the governmental authorities – the provincial government of Misiones, the Ministry of Public Health, and the Office of Guarani Affairs – medical assistance has been denied. (As one functionary pejoratively noted: »Those who have died are only Indians«).

Feeling that they have exhausted the possibility of a negotiated settlement, and fearing for their future, the Guarani have decided to march on the capital. It is critical that the international community bear witness to this march, as death threats have been issued against Guarani leaders. International attention will pressure the Argentinean government to repeal Law 2727 and restore Law 2435, ensuring the Guarani's human rights, and the protection of their rainforest from exploitation and destruction.

Source: Third World Network.

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Declaration of the International Indigenous Aids Network

Berlin/Germany, June 11, 1993

Whereas, 1993 has been declared the »International Year of Indigenous Peoples« by the United Nations and

whereas, indigenous peoples face enormous problems, including poor health status, legalized oppression, and the destruction of traditional cultures, languages and economies, and

whereas »Ethnic cleansing« goes on not only in the former Yugoslavia, but continues for indigenous peoples everywhere, and we understand the pain of violence and discrimination on the basis of race and colour, and

whereas HIV/AIDS is a global problem of enormous proportions, and to date national governments, donor agencies nor AIDS service organizations have assumed responsibility for assuring access by indigenous communities to prevention information, care services and other resources and

whereas alcohol abuse and other drug abuse is killing our people, and

whereas, self-esteem and cultural affirmation are basic ingredients in HIV/STD prevention and

whereas, our traditions and traditional medicines are a valuable resource not only for ourselves but for humankind, and

whereas many indigenous cultures value Two-Spirit or gay/bisexual/lesbian men and women as part of traditional society and

whereas, HIV/AIDS does not discriminate on the basis of nationality, tribe, clan, family, sex, race or sexual orientation.

Therefore be it resolved that, the International Indigenous AIDS Network gathered at the IXth International Conference on AIDS in Berlin, Germany, pledge to continue our work to bring to the world's attention the urgent need for indigenous communities' self-determination in HIV prevention and care, and

Therefore be it resolved that, national governments, multi-lateral donor organizations, national, regional and community-based AIDS organizations must actively support access to HIV information, care and resources for indigenous communities throughout the world **now**, and

Be it further resolved that, the indigenous people gathered in Berlin for the IXth International AIDS Conference in Berlin declare their support for and solidarity with Turks and other people of colour living in Germany and call upon all Germans of good-will to oppose racism and violence against non-Germans with all their might, and

Be it further resolved that, effective prevention of and care for HIV/AIDS in our communities will require a return to traditional cultural values; and we appeal to indigenous communities and leaders everywhere to recognize the threat of HIV/AIDS to our survival and join us to protect the future of our peoples.

❑

ISRAEL

We want to return to our home at Nagab Mount where we have lived for generations

To all concerned with human rights,
To all who may have influence on the Government of Israel,

Yesterday, August 29, 1993, in the early morning hours, a violent eviction was carried out against seven families of the Bedouin Al-'Azazme tribe, which has resided in the Negev mountains near Sde Boker for generations. Their ancestors' graveyards testify to this.

The eviction was carried out by heavy forces of the Nature Reserves Authority (the 'Green Patrol'), secured by policemen and even members of the I.D.F. All this happened in spite of explicit promises by Housing Minister, Benjamin Ben Eliezer, who had said earlier that the residents

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would not be moved unless an alternate site had been found in the same area, with their consent.

The one hundred person eviction contingent – among whom there was not a single policewoman – dragged old women, physically harming them, frightened small children and brutally destroyed the tents. An atmosphere of terror prevailed: old women fainted and children cried out of fear. The broken and torn tents were loaded on two lorries, together with the residents' few belongings, and taken to an area near Ramat Hovav, Israel's national chemical dumping ground, where the air is heavily polluted. The women and children remained alone on the old site, as the men had to go to the new site to watch over the belongings.

The heads of the families, among them a widow woman, came to Jerusalem today to stage a sit-in opposite the office of Prime Minister Yitzhak Rabin. They demand the opportunity to return to live on the original site, which the government has no plans for anyhow. This has been checked by ASDBRI's planning advisor. The only plan is the ethnic cleansing of the Naqab/ Negev from its Arab Bedouin residents

We appeal to the Governments of the United States, Great Britain and France, to the Governments of Egypt and to all the world's governments that have friendly relations with Israel, to intervene immediately to stop this ethnic cleansing taking place through the concentration of the Bedouin population in seven townships where the residents will have no sources of income.

We call on Knesset members and public figures in Israel to come and hear our problem. We are settled in front of the Prime Minister's office until we have been promised to be returned to our original home, to live in security and tranquillity alongside our Jewish neighbours.

Source: Association for Support & Defence of Bedouin Rights in Israel. ❑

GREENLAND Aasivik

Aasivik is a Greenlandic cultural event, a summer camp which has taken place every summer since 1976. According to the original concept of Aasivik, all communities from around the coast of Greenland met in summer camps to gather supplies for the winter in the form of food, utensils and other materials. During the Aasivik there were exchanges also of a spiritual, cultural and political nature, as well as other aspects of community and social life. There was an opportunity to become acquainted with new people and exchange experiences with old friends and relatives.

The Aasivik concept was almost forgotten due, amongst other things, to urbanization and the introduction and advancement of a monetary economy. These and other aspects of development created the situation whereby the entire population ceased to meet in Aasivik.

During the sixties and seventies, as the Greenlandic people began to consolidate their identity, Aasivik was redeveloped as a cultural and political forum. Some aspects of the Aasivik were reestablished in a way which fitted into our contemporary lifestyle. The existing arrangement takes place every summer in a location chosen by participants of Aasivik the previous year and in close negotiation with the local authorities.

In the current Aasivik, local and international issues of relevance to Greenland and the Greelandic people are discussed and dealt with from a Greenlandic perspective. The most prevalent issues are our standpoints regarding ownership of land and its resources, and the retention and further development of our culture and language.

During Aasivik there is a chance to experience the newest developments in Greenlandic cultural life in art, music and theatre and Aasivik has also been instrumental in pioneering the reintroduction of other cultural elements of Greenland which were in danger of disappearing such as kayak contests and drum dancing.

Aasivik has a tradition of inviting different interest organizations from all over Greenland to discuss the different themes. Since Aasivik is also promoting the interests of other indigenous peoples, representatives from Inuit in Alaska, Canada and Chukotka have been invited to attend and to perform, and indigenous representatives and supporters from Samiland in Northern Scandinavia have attended as well as Indians from North and South America and other places.

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The theme for Aasivik '93 which took place in Iterlassuaq in the Municipality of Sisimiut was the »UN International Year for Indigenous Peoples«

The following recommendations were reached unanimously by the participants:-

I. »Indigenous peoples are the ones who from time immemorial have occupied their land, and are distinct from other peoples as to their languages, cultures, their identity, and are distinctive from the States they inhabit, and are not part of the decision making process in these states.«–

Even though Greenland has a Home Rule Arrangement, we regard ourselves as indigenous people and therefore the same as other indigenous peoples, and it is only when we obtain full sovereignty that this will change.

II. We will insist on the indigenous' point of view concerning the collective – and not only the individual – ownership of land and resources and this must be included in the definition of indigenous peoples.

III. Participants of Aasivik '93 will strongly recommend that the Home Rule Act of Greenland and the following Enabling Act be discussed and studied as to how they are judicially secured.

IV. In the UN International Year of Indigenous Peoples the participants of Aasivik '93 will support the Greenlandic Government since they proposed Saami representation in the Nordic Council and recommend that this issue be thoroughly worked on.

V. We do not accept the suspicion that we are racists when defending our own interests, and will recommend to our fellow countrymen that the opposite is not recommendable, either, but that the principle of equality is to be achieved.

VI. Our understanding as individuals and our identity must be followed by the further development and retention of our language. It is not acceptable if monolingual people in Greenland have less opportunity in society.

In the future it needs to be examined which foreign language will be given first priority, but the Greenlandic language is the main language.

VII. In the UN International Year of Indigenous Peoples the participants to Aasivik '93 recommend that the Greenlandic Parliament and Government recommend to the Danish Parliament and Government, once again, to adopt ILO Convention No. 169, which is the Convention dealing with the rights of Indigenous Peoples.

VIII. In the UN International Year of Indigenous Peoples the participants of Aasivik '93 recommend that the report on the eleventh session of the UN Working Group on Indigenous Peoples be approved.

We also support the recommendation that, starting from January 1994 be called »the International decade of Indigenous Peoples«, dealing with the situations of the indigenous peoples, in collaboration with the indigenous peoples. In these ten years there needs to be established a forum to discuss the situations of the indigenous peoples within the United Nations.

From the resolution from the World Conference on Human Rights in Vienna approved June 25th 1993, we especially support paragraph 11 with the following wording:-

Paragraph 11

»The World Conference recognizes the inherent dignity and the unique contribution of the indigenous peoples to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full free participation of indigenous peoples in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous peoples, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous peoples, on the basis of equality and non-discrimination and recognize the value and diversity of their distinct identities, cultures and social organization.«

The main objective will be that any peoples in the world – whether states or otherwise, have the right to self-determination, the right to develop according to their own linguistic, cultural and ethnic principles, have access to control their resources, and the right to live according to their own code of justice.

The next Aasivik will be in Northern Greenland in Ilulissat. For further information contact:-

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