

## In this number



1. Greenland  
2. Mexico

3. Peru  
4. Paraguay

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## Contents

## Editorial

by Ulf Johansson Dahre  
Page 2

Do joint decision-making boards enhance chances for a new partnership between the state and indigenous peoples?

by André Hoekema  
Page 4

Indigenous Peoples, Self-Determination and the Unfounded Fear of Secession

by Steven M Tullberg  
Page 11

## Greenland

## Home Rule

by Tønnes O. K. Berthelsen  
Page 14

## Mexico

The Power of the Powerless in the New World Order: A View from Chiapas

by June Nash  
Page 22

## Canada

## Nunavut

by Jens Dahl  
Page 30

## Photo essay

by Rune Eraker  
Page 31

## Peru

Can Forestry be a Strategy for Indigenous Self-Development in the Amazon Basin?

by Søren Gram and Jakob Klint  
Page 38

The Harakmbut People Reclaim their Traditional Culture

by Héctor Sueyo  
Page 42

## Paraguay

The Indigenous Peoples of the Chaco and the Denial of their Land Rights

by Stephen W. Kidd  
Page 46

## East Timor

Conference in Iserholm, Germany

by Torben Retbøll  
Page 52

## Philippines

Indigenous Peoples and the Land Question

by Yul Caringas (KAMP)  
Page 56

## SHORT NEWS

Page 60

## Editorial

This issue of *Indigenous Affairs* addresses the question of self-determination and indigenous peoples. Its appearance coincides with the beginning of the 'International Decade of the World's Indigenous People'. The decade is intended to focus on different and urgent indigenous peoples' issues. Of these, a principal controversial topic is the question of self-determination: are indigenous peoples entitled to self-determination and if so, what does it really mean?

Self-determination is a goal which is difficult to define and to oppose. It can mean the right of a people to choose their own form of government within existing borders as well as the right to independence from a colonial power; it can mean the right of ethnic minorities to restructure national borders or it can mean the right of a political unit within a federal system to secede from the federation and become an independent sovereign state; it can also mean the right of a minority or indigenous peoples within an existing sovereign state to a greater degree of self-government.

The concept of self-determination also creates tension with other internationally recognized concepts such as inviolability of national borders, territo-

rial integrity and non-intervention in the internal affairs of other states. The policy of the United Nations, the decolonization process aside, is to abstain from intervention in internal conflicts regarding self-determination. Self-determination has been accepted as a right of peoples in colonies but not as a right of minority peoples in independent sovereign states.

Fortunately, the international community's ideas about self-determination is changing. Self-determination might today not only refer to overseas colonial situations, but also to conflicts within sovereign states. The Draft Declaration on the Rights of Indigenous Peoples as agreed upon by the members of the UN Working Group on Indigenous Populations expresses in Article 3 that «Indigenous Peoples have the right of self-determination» without conceptual limitations.

However, significant concern has been raised about the language in Article 31 of the same Draft Declaration: «Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs». This may be interpreted as a significant limitation or it may only stipulate one of the possible forms of

self-determination. The reality so far is that if self-determination is going to be accepted as a legal right of indigenous peoples, it must be accepted that its applications have to be contextual.

The core problem, as states are interpreting it, is if self-determination of indigenous peoples means a right to secede from the states in which they are living. As the Australian delegation stated at the 10th session of the Working Group in 1992: «Many states clearly have a problem with the language of self-determination in this context.» The same delegation later made it clear that they were referring to self-determination in its «more contemporary understanding». In an unpublished paper the Canadian Government has said that: «Indigenous peoples have the right to self-determination within the states in which they live.» This could also be interpreted as acceptance of internal self-government and denial of external self-determination.

The ongoing process in the United Nations and the increasing number of agreements between indigenous peoples and governments show that self-determination is in a period of transition of meaning from a decolonization concept to a mechanism of conflict resolution within existing national borders.

by Ulf Johansson Dahre

Self-determination stipulates the right of peoples to determine their collective political destiny. But in a post-colonial context the idea of self-determination has evolved into a more general notion of internationally validated political consultation. A political framework is emerging through examples such as the Misquito Autonomy in Nicaragua, the Greenland Home Rule, the Nunavut Agreement in Canada, and the Sami Assemblies in three Nordic countries. These developments mark a period of transition in the application of the concept of self-determination. It may now be seen as a process of conflict resolution within independent states resulting in self-government.

As the debate in the UN Working Group on Indigenous Populations has shown, the question of the contents and the beneficiaries of self-determination are closely linked. Furthermore, if self-determination is seen in a context of arrangements within existing national borders, states are more likely to accept the use of the concept of self-determination.

This tendency of seeing self-determination as a mechanism for conflict resolution within existing national borders is what marks the transition of self-determination from a legal rule to a political

framework. Fortunately for peace, but unfortunately for legal clarity, most of the challenges of indigenous peoples' self-determination struggles are being managed by a process of conflict resolution without reference to the language and procedures of international law. This may not be the best or the ultimate goal of indigenous peoples, but it is a step forward.

What will happen in the future and what status will indigenous peoples have in relation to self-determination? The redefinition of the right of self-determination in the context of indigenous peoples will probably be recognized as an international legal right in the future, expanding the notion to refer to situations within existing national borders. This will include not just legal statements but also the process of political negotiations, as numerous cases around the world have illustrated. The change in the content and beneficiaries of self-determination is due to the transition from a colonial to a post-colonial world. The right of self-determination is being reinterpreted in practice to become an instrument for national and regional conflict resolution standards. □

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# Do joint decision-making boards enhance chances for a new partnership between the state and indigenous peoples?

by André Hoekema

## Introduction

In this paper I want to deal with one aspect of institutional arrangements for self-government exercised by indigenous peoples. In almost all such arrangements I know of, national governments reserve for themselves the ultimate responsibility and ultimate decision-making power in matters like the following: management of natural resources, land-use planning, creation of nature reserves, granting of mining concessions and determining the conditions under which mining activities can take place. All these matters relate strongly to crucial elements of the life of an indigenous people over which they certainly want to have control and treat as their own. For example, the land base always ranks as topic number one in the struggle for self-government. Control over land and territory, including at least renewable but preferably also non-renewable resources, is crucial for their survival as a distinct people able to conduct their own life. As they say in Nicaragua: no *autonomía sin economía*. The struggle for land often forms the first step in a broader struggle for economic, cultural and political autonomy within the dominant state. For obvious reasons this topic provokes the most bitter fights between the indigenous people claiming full control over a vast track of land and national government wanting to keep sovereign power over what are commonly called crown lands, i.e. state-owned property. The main issue concerns who controls the largest part of the traditional indigenous land in matters like its rational use of it for daily subsistence, commercial

exploitation of resources, ecological conservation measures to prevent species from dying out or to prevent outside people coming in and depleting that resource, granting of concessions for large-scale mining and logging operations, and determination of the conditions under which those concessions may be given, as well as the assessment of whether a proposed development or mining operation violates these conditions or not.

At best, the national State is prepared and willing to grant full control over just small portions of land directly around the villages and fields of the indigenous communities. In exchange for giving up any aboriginal unwritten claim to territory, the people obtain full title to a relatively tiny lot of land, often excluding subsurface deposits, but occasionally including those for a still smaller part of its new land base (like the Nunavut agreement in Canada, see below). For the remainder of the territory, mixed regimes are set up.

The most likely outcome of protracted negotiating is an expression of the willingness by the State to accept participation of indigenous representatives in the process of making decisions about, e.g., regulations involving the use of renewable natural resources (forests, land, water) and sometimes as well in the process of determining and assessing the effects of mining or commercial logging operations on the life of the local people. Sometimes, representatives of indigenous people are allowed to take part, as advisors, in the decision-making process about granting mining concessions.

In various systems of self-government, a provision is made for some form of

sharing control over the greater part of the traditional territory by way of formally organized and guaranteed mechanisms of coordination between national authorities and the leadership of the indigenous people. The typical example is the wildlife management boards and a plethora of other boards instituted in the Nunavut agreement concerning the Northern Territories of Canada and various other Agreements struck in Canada, such as the James Bay and Northern Quebec agreement. It stands to reason that in view of a principle of partnership between national states and indigenous peoples - as is sometimes called for in the old treaties, like the Waitanga Treaty<sup>1</sup> - indigenous peoples would be better off having full sovereign control over their traditional territory. For various reasons, however, that is not the arrangement likely to be wrestled from the state. Joint decision-making boards with ultimate responsibility vested in a national minister are the most probable compromise.

The national State, under such systems, binds itself to consider seriously the outcome of a joint decision-making body in a consultative status. The typical form is a body in which half of the seats belong to representatives of the self-governing group and the other half to state officials and non-indigenous representatives. Sometimes, an independent chairman is present.

Within those bodies, fierce debates and struggles are to be expected as the respective interests tend to be antagonistic, and connected with this, the underlying concepts and views tend to be highly divergent. This can be illustrated with an anecdote drawn from my experience last

year (Dec. 1993) in the Mosquitia area of Honduras where the Miskito Indian nation and other indigenous peoples are fighting for land. Two national agencies claim competence in the regulation of the «tierras nacionales» (crown lands) which, not surprisingly, cover almost all of the lands used by the indigenous peoples. The local head of one agency said that in terms of «uso racional» (rational use) the indigenous peoples did an excellent job, and there was nothing to worry about. His colleague from the other agency, with its headquarters next door, said that «rational use» in his view had an objective meaning deduced from sound forestry principles and that certainly the way the Indians used the land and forests could not be described. He called the local people depreducers. So, should the Honduran government decide that the present time calls for the meaningful participation of indigenous people in conducting their own affairs and that therefore a joint body should be set up to regulate jointly the rational use of the resources, there will be conflicts. In admittedly very vague terms, they instituted just that in the concept of a law providing for a vast «reserve» that covers an area in which a distinct indigenous Indian people now live (the Tawahka Sumu).<sup>2</sup>

With regard to these joint management boards I want to put two types of questions:

1. How effectively does this device of power-sharing lead to a genuine, meaningful and long-term system of self-government?
2. What type of legal or otherwise formal regulation or agreement provides better conditions for such a new partnership in matters of resource management?

For practical purposes I shall restrict myself almost completely to systems of joint management of natural (renewable) resources. Thus the far more difficult and conflict-prone topic of granting mining concessions (and sharing of revenue from it) will not be handled in full. In passing, I would like to note that the way the control over such mineral deposits is regulated forms the acid test for any self-government arrangement.

To answer these questions, I shall look through the scarce literature in which experiences with this type of body are documented, mostly literature on Canada. Also, I shall discuss some legal provisions that create such bodies, and elaborate on some weak and strong aspects of those legal provisions in terms of chances for meaningful participation. To prevent misunderstandings some other preliminary remarks may be useful.

1. Although the management of natural resources is the most important aspect of any scheme of self-government by an indigenous people, it does not by any means exhaust the vast range of topics to be included in any serious arrangement for self-government. As to provoking examples, the law creating the San Blas comarca of the Tule people in Panamá only numbers 39 articles and can be printed on about 8 rather small pages, and the *Estatuto de la Autonomía de las regiones de la costa atlántica de Nicaragua* has 45 articles, some of which do contain multiple subheadings and subdivisions, but the Nunavut Agreement pertaining to the Eastern Part of the Northwest Territories in Canada numbers nearly 300 pages with thousands of articles, whereas the concept of a law implementing the Nicaraguan *Estatuto de la Autonomía* already covers 33 pages with 89 lengthy and complex articles. From this brief overview, we can appreciate at least in quantitative terms that I am dealing here with a tiny part of what would be called a serious arrangement of self-government.

2. The analysis will concentrate on the level of formal, mostly legal arrangements, but it will not be an exercise in comparative law. Rather, I want to focus on the question: are some legal provisions better suited than others to promote and enhance the long-term pursuit of indigenous self-governance? What provisions are more effective in promoting the cause of self-government, and why? Thus, I have to base my account on evaluations of the practical experiences of indigenous peoples with that sort of coordinating body. So this paper is an exercise in the anthropology and sociology of law perceiving legal arrangements as one, admittedly just one, condition of failure

or success of systems of self-government. It is my contention, however, that the legal element forms an indispensable part in any effective system of self-government. It makes for stability and continuity in the efforts to get that system going, it provides for means of seeking institutional support in case of conflicts, especially when a national court system or, better, a special court has jurisdiction over the behaviour of the national government. It rallies under its banner forces supportive of self-government in the national society and symbolically underpins the mission of the nation to turn itself into a really pluralistic and multi-ethnic whole. On a more prosaic plane we may note that having a law means having procedures that even in stormy weather and adverse conditions keep participation going, unless full dictatorship holds sway.

3. This approach also intends to draw attention to themes that should be included in any comprehensive visual documentary on weak and strong points of existing systems of self-government. We should most definitely include in such an educative documentary a visualization of the ways in which those wildlife management boards proceed, concentrating on the question of whether real power-sharing takes place or whether a coordinating committee is used just to ratify decisions taken elsewhere within the state apparatus. Also, we want to know and to show how relations between the indigenous representatives on the board and their own people develop in the course of the board's life. There is a widespread fear that an indigenous alienated elite will form during the implementation of a self-governing scheme, partly because of the very structure of those boards and their procedures.

I now turn to the two questions stated earlier.

## I. What can be learned from experiences with those boards?

It will be useful to have a common view on the basic features of the sort of boards I have in mind. Here the Nunavut agreement in Canada serves us best.<sup>3</sup> As far as I know it contains the most elaborated scheme of coordinating efforts on wildlife management, water management, land

use planning, etc. Its article 5 for instance, on wildlife, numbers not less than 196 provisions or subheadings. Its total of 42 articles fills a book of 280 pages. It provides Inuit leadership a right to participate in a series of new institutions to manage land, water and wildlife and to evaluate the impact of resource development throughout the whole territory of Nunavut and offshore. Now, this scheme has yet to be put into practice, but in view of its quite elaborate structure, we may use the Nunavut Wildlife Management Board as the prototype of a modern, fully fledged Board of the sort I want to discuss. So let us begin with a short presentation of the main features of that board.

#### a. The Nunavut Wildlife Management Board (NWMB)

Article 5.2.1. reads:

*«There is hereby established on the date of ratification of the Agreement an institution of public government to be known as the Nunavut Wildlife Management Board (NWMB) consisting of nine members (...).»*

Membership is equally divided between Inuit leaders and members appointed by the national or provincial authorities (four of each). From nominations provided by NWMB a chairperson is appointed as member number 9.

Article 5.2.33:

*«Recognizing that Government retains ultimate responsibility for wildlife management, the NWMB shall be the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife and have the primary responsibility in relation thereto in the manner described in the Agreement. Accordingly, the NWMB shall perform the following functions:*  
*-participating in research;*  
*-conducting the Nunavut Wildlife Harvest Study;*  
*-rebutting presumptions as to need;*  
*-establishing, modifying or removing levels of total allowable harvest;*  
*-ascertaining the basic needs level;*  
*-allocating resources to other residents;*  
*- establishing, modifying or removing non-quota limitations;*

Article 5.3.9. :

*«After receiving a decision of the NWMB pursuant to section 5.3.8, the Minister may:*  
*a. accept the decision; or*  
*b. disallow the decision in accordance with section 5.3.11.*

Section 5.3.11. requires that any disallowance takes place within 30 days and with reasons given in writing.

From this point in the procedure onwards, in cases of a conflict the matter has to go back and forth between the Board and the Minister for another tour of consideration until the moment of a final decision eventually made by the Minister.

It is important to draw attention to one of the principles that govern this article on the NWMB as expressed in 5.1.2. (g):

*«The wildlife management system and the exercise of Inuit harvesting rights are governed by and subject to principles of conservation.»*

This principle, together with two others, forms the only criteria the Minister may use to override the Board's decisions. It is said in 5.3.3.:

*«Decisions of the NWMB or a Minister made in relation to part 6 [that regulates the harvesting over the whole territory] (author's comments in brackets) shall restrict or limit Inuit harvesting only to the extent necessary:*  
*a. to effect a valid conservation purpose;*  
*b. to give effect to the allocation system outlined in this Article, to other provisions of this Article or to Article 40 [which regulates harvesting by other aboriginal groups];*  
*c. to provide for public health or public safety.»*

Precisely by tying the hands of the Minister to this extent, the system lends itself to a rather tight judicial control not unlike the way the European Court of Human Rights exercises control whether the escape clauses in the Treaty of Rome (European Convention on Human Rights) are used properly by the national states or not. In the Agreement no special judicial bodies are set up, but recourse can be had in the ordinary judicial system.

The other boards basically adhere to the same pattern.

#### b. The Denendeh Conservation Board

What are the experiences with this sort of Board? Evaluation materials on those coordinating bodies are scarce, to the best of my knowledge. I came across some interesting studies, however: one by the ex-president of the so called Denendeh Conservation Board in the Western part of the Canadian Northern Territories, John Bayly,<sup>4</sup> one by a Canadian anthropologist, Harvey Feit, as well as another one by a lawyer, Andrew Chapeskie, on administrative structures set up by the James Bay Cree and Northern Quebec Agreement, also in Canada.<sup>5</sup>

John Bayly served as the chairman of the Denendeh Conservation Board, a board that functioned for four years from 1987 to 1991. The Dene nation, living in the western part of the Northwest Territories of Canada, in the course of prolonged negotiations over a land claim accepted the institution of the so-called Mackenzie Valley Renewable Resources Management Advisory Board, later renamed Denendeh Conservation Board.

As its title indicates it had an advisory role, to advise the minister, in this case the minister of the Northwest Territories, not the Federal Canadian Minister, on renewable resource policy and legislation: e.g. matters like the prevention or control of non-Dene hunters that entered the area with small aeroplanes to flush game, particularly moose (a species of elk) and to hunt them down. This, local people felt, gave non-Dene hunters such an advantage over water-borne hunters and favoured the high-income hunter so much that the Board advised a strong measure to be taken against this practice. The Board consisted of ten members plus a chairman. Five members were appointed by the minister, the five others by the local indigenous leadership. The Minister voluntarily agreed to consider all the recommendations and report back as soon as possible. If the Minister wanted to disagree, an exchange of views was provided for. Should the Minister stick to his disallowance, he had to inform the Board in writing and give reasons.

Although the Board had some successes, the overall picture is gloomy according to John Bayly, who documented many cases on which the Board took action. Gradually, the Board became so busy with following the Ministers agenda, acting upon matters put before them by the government, and trying to outdo the bureaucracy in skills and to triumph as people able to put out state laws, that «The Denendeh Conservation Board became more like an agency of State and less a useful tool for its aboriginal sponsors» (p. 47 original paper). He continues: «As the Denendeh Conservation Board turned its face towards the devices of the State and tried to acquire for itself some state-like powers it turned its back on the priorities and approaches of the Dene (...) and their folkways which were preferred and recommended to it by Dene groups who initially saw the Board as an extension of themselves rather than an extension of the state» (p. 47 and 48).

Nobody mourned the disbandment of the Board in Oct. 1991. The main causes of the demise of the Board can be summarised as follows (paraphrasing Bayly).

As a board you can have an easy success the moment an issue is non-controversial, but the moment the issue in question is controversial or not high on the national political agenda, negotiations between the board and the national bureaucracy tend to continue endlessly. All sorts of formal problems not brought in for the rather uncontroversial case appear. Ministers claim not to have competence, utter legal niceties, ask for further study, and the board becomes sucked into a morass. Meanwhile, this consumes a lot of energy, while the stalling of the process cannot be explained to the Dene nation that eventually finds itself at odds with its own representatives.

In particular, the Board failed to address management issues in an informal way, refraining from seeking state laws and regulations and instead investing more trust in the local communities and in local informal solutions. An example of such informal undertakings is the way another Board handled a problem. That Board, the Porcupine Caribou Management Board, informally promoted a boycott of local communities against people selling caribou antlers, which was leading to the unnecessary killing of caribous both by local and by outside people.

They alerted public consciousness through a wide variety of informal, educative means.

The lesson is that if the national bureaucracy opposes plans persistently, they have it their way easily. Trying to negotiate their consent consumes years and years of most precious indigenous time, will not meet with success and, most crucially, will neither promote recognition and use of aboriginal ways of resource management nor spread knowledge about it in public, both aboriginal and non-aboriginal.

#### c. James Bay and Northern Quebec Agreement

Harvey Feit, in his article<sup>6</sup> on the wildlife management board set up in the context of the James Bay and Northern Quebec Agreement in favour of the Cree nation, discusses the failure and successes of the Board in five points:

1. What the basic rights of native hunters are;
  2. How to manage wildlife;
  3. How to allocate resources among conflicting users;
- and two other points.

As in the Nunavut Agreement it was accepted by the provincial and national State that the Cree<sup>7</sup> would enjoy hunting rights over the whole area, also on so-called crown lands. Normal practice up to that time was that the Crown could and would one-sidedly change such rights at will. But in this agreement the right to harvest everywhere, at all times and by means of their own choice was recognised in such a way that no governmental authority could alter or constrain it. There was only one restraining clause, which is also in the Nunavut arrangement: the right to harvest is subject to the principle of conservation. So, that right may be limited, but only for that reason and only through the procedure laid out in the agreement. Recourse in the event of a breach of the agreement was to the courts.

Basically, the government would allow the Cree themselves to manage the natural resources, in their own traditional ways that in normal times had functioned quite well. But as Feit notes, «Means were still needed to regulate non-Cree users and the effects of this use on wildlife» (o.c.:

81). To manage resources in that broad sense, the Cree needed the government. Numbers of hunters, times, places and sizes of catches had to be regulated (a quota system, for example). After quite a quarrel over the final decision-making authority on this point, a joint system came into being, a coordinating commission with equal representation from the two sides but, as in the Denendeh case, only with a consultative status. Also, a complex procedural system of consultation had to be followed before the advice of the committee could be overruled.

Feit, like Bayly, signals the plethora of procedures in which the system tends to drown, as well as the point that in contested cases the governmental representatives can drag their feet and do just nothing. He concludes: «Inaction has become a major tool of the government for avoiding their legal obligations, thereby making it more difficult for the Cree to bring court challenges based on contentions that government has acted in violence of the Agreement» (p. 82). Moreover, many times the government did not have conservation interests in mind, but for political reasons favoured non-Cree users.

All in all: «while some improvements have occurred as the process has been longer in place and as experience with it develops, it has nevertheless remained a largely paternalistic and only sometimes responsive process». A firm and loyal commitment of governmental agencies to this form of new partnership seems to be the essential condition for its success (as Feit rightly tells us, p. 83 - just following procedures and rules never does the trick), but that commitment is often lacking. Without that commitment from the national bureaucrats, any legal structure to regulate relationships between indigenous peoples and nation states, but particularly those of an advisory nature, will fail to deliver its promise. So far, that summarises Feit's general assessment of this management resources board.

Chapeskie<sup>8</sup> also assesses the responsiveness of consultative joint decision-making bodies to local indigenous needs and local chances for determination of their own development. He focuses on the way the James Bay Agreement «coordinating committee for hunting, fishing and trapping' is organised structurally

(section 24.4 of the Agreement). This device, like the commissions for economic development, environmental protection and administration of justice, basically performs an advisory function (although on some topics it has regulatory power of its own). Thus, it is meant to influence the decision-making process within the national government, without actually challenging the authority of the government to legislate or regulate<sup>9</sup> As a rather formal committee, created after long, technical, and somewhat bitter negotiations in which technical consultants played a large part, this body fosters Euro-Canadian ways of thinking about resources management and promotes the coming into being of a Cree elite that risks being alienated from the local harvesters. Decisions are made along procedural lines and in terms that are alien to the local people. The structural factor here is the professional status of the participants in decision-making. Because university-trained technicians, consultants and advisors do not feel comfortable any more with informal and locally differentiated practices, the latter are marginalised in good management practices.

«However, not only are Committee decisions which might conflict with customary practices of harvesting and management structurally removed from the life-space level, the effective control of the power to make those decisions within the (...) committee (...) appears to have moved to those indigenous people who possess the skills to work within the technocratic idiom. Further, because State managers are most comfortable working within State resource management paradigms, do they not have a structurally entrenched advantage in the decision-making process concerning resources management in this setting?» (p. 11)

So, Chapeski feels that the way the coordinating committee is organised will:

- foster a European style of thinking about resources management, and therefore
- produce a Cree elite that possesses the very skills needed to deal with the matter in that way, and therefore
- cause a social split in the Cree community as well as
- neglect the local customary wildlife management practices and knowledge that hitherto prevailed among the Cree.

All this in spite of the fact that the James Bay and Northern Quebec Agreement explicitly wants to maintain and strengthen «indigenous culture and traditions especially as they relate to the customary activities of hunting, fishing and trapping» and as such meant a giant step forward compared with older schemes that completely ignored local practice and knowledge, such as the Alaska Native Claims Settlement Act (Chapeski, o.c.: 208 ff, and 209).

Without offering alternative schemes, Chapeski keeps asking if it is possible to open up spaces within such a coordinating structure «for the application and on-going development of customary indigenous resources management systems at the life-space level» (p. 212).

On a more general level, we may stress the extremely important issue that it is difficult to find indigenous persons sufficiently skilled for or at all interested in sitting on those type of bodies.<sup>10</sup> Thus, automatically a special brand of technical advisers and consultants takes over. Devolving administration to an aboriginal people therefore runs the risk of not meeting the needs of the indigenous people involved.

In order not to complicate matters further, I am not going to enter into the notorious problem of the lack of governmental personnel or even lack of governmental will to enforce any regulation promulgated as a result of a board's advice.

To conclude, I shall once more borrow a perspicuous thought from Harvey Feit. He concluded with a very important remark. Those systems in which there is joint consultation under the umbrella of the government's ultimate authority generally only do their job insofar as the regulation coincides with governmental interests. Therefore, it would be much better to recognise the full responsibility of both parties in the agreement and enter a government-to-government relation. All coordinating efforts then will have to face the fact that neither can overrule the other. This gives sufficient leverage for indigenous bodies to participate effectively in decision-making. Their notorious sense of realism prevents them from thwarting the coordinating efforts unfairly.

#### d. Greenland

The case of Greenland provides us with an interesting example of a scheme that possibly fares better than any of the ones discussed above. In the negotiations leading to the Greenland Home Rule Act no. 577 of 29 November 1978, one of the most controversial issues was the right of ownership to underground mineral resources. A compromise was struck: in matters of preliminary study and prospecting regarding mineral resources as well in mineral exploration and exploitation, both parties involved, the Greenland government as well as the Danish authorities, have to decide jointly if and under what conditions to go ahead. Thus, either party has a veto right. This is stipulated in the autonomy statute of 1978 (section 8, no. 2). In matters of hydropower, however, the powers of decision are vested solely in Greenland. From informal practice since 1988 and a formal law of July 1, 1991, a rule has been laid down as to the division of net revenue from these mineral exploitations: it is to be divided equally between the two parties up to a certain sum. The attribution of the excess sum has to be negotiated.<sup>11</sup> In practice, a mixed commission has been set up with equal membership of Greenlanders and Danes to decide such matters. Although up to the present time no extraction of mineral resources has taken place, exploration for oil, platinum, gold and other minerals is in progress.<sup>12</sup> We will have to wait a bit longer to assess the practical feasibility and results of this way of sharing power, but providing both parties with veto rights over such operations seem to be a far more effective contraption to guarantee a new partnership than lesser forms of participation from indigenous representatives.

A point worth consideration here is whether in such a scheme resort must be made available to an independent judicial or mixed judicial-political body to solve possible stalemates. The composition of such a body must be tuned carefully as things can go wrong again: such bodies tend to be biased in favour of the national interest groups.<sup>13</sup> In matters of renewable resource management, like the preservation of wildlife, protection of the environment, etc., the Greenland Authorities have the ultimate responsibility.<sup>14</sup>

Also, I expect interesting result from the self-determination experiments now being waged in the USA, but for the moment I am not aware of reports specifically on the experiences with possible joint committees that act as a consultant to federal or state resource management authorities.

#### e. Panamá

As for the Kuna or Tule and *Emberá comarcas* in Panamá, the official regulation of the Comarca *Emberá* authorizes the Dirección Nacional de Recursos Renovables (RENARE), a state agency, to care for conservation and rational use of renewable natural resources «conjuntamente con» (jointly with) the Comunidad *Emberá* (Art 19, law 22 of 8 Nov. 1983, Gaceta Oficial 19976, 17 Jan. 1984).<sup>15</sup> The same provisions can be found in the concept of a law to institute the *Guyamí* comarca (Ngobe). In the older Kuna regulation no such clause can be found; as a matter of fact, no mention is made at all of this topic. It would not surprise me if the central authorities felt that it is within their competence to regulate one-sidedly matters concerning the rational use of natural resources. Ironically this often means doing nothing and letting invaders have their way, cutting down trees, depleting rivers of fish, digging for gold and spilling mercury into the rivers, condoning the massive entry of non-indigenous hunters with sophisticated equipment to hunt down wildlife, etc. Sometimes it even means harassing the indigenous people themselves by forbidding traditional practices, which amounts to catching the small fish, while letting the big sharks roam freely.

#### II. Pros and cons of the legal structure of these boards

The example of the *Emberá* comarca in Panamá forms a ready transition to the second and last question. Are there better and worse ways of legally instituting such boards?

Obviously, the provision in the *Emberá* law will prove troublesome. Just to state that a responsibility is shared amounts to saying nothing and evades the question. This phrasing is, weak as it is, may be a symbolic step forward in a long battle over power and as such can only be evaluated within the context of the

local conditions. However, in itself, this provision legitimizes complete control by the State over the natural resources, provided some token consultation takes place. The topics to be dealt with are not specified, a procedure of how to do these things «together» is not spelled out, nor is the strength of both parties in terms of casting votes; no jurisdictional provision is to be found or implied that would give an aggrieved party access to an independent court or an institution of arbitration capable of shielding itself from the bureaucratic interests of the national representatives or from their clientele relationships. Nor is there any guarantee that the offended party can resort to publicity to try to appeal to public opinion. All is left to the goodwill of the national authorities, and that really is a very weak base for the constitution of a new partnership.

In many countries joint coordinating bodies in natural resources management, etc., are being formed. Cases in point are Venezuela and the Philippines. In an existing self-governance regime in Nicaragua, implementation is still lacking, and the mixed bodies that are provided for have yet to be instituted and regulated. It should be possible to compare those texts as well as other ones to see if they provide for a viable system. In this respect, let us have a closer look at the Venezuelan draft. In my translation, the relevant paragraph reads as follows<sup>16</sup>:

Article 25:

«The state through its competent branches and agencies will recognise and guarantee the right of indigenous peoples and communities to occupy, to enjoy and to use the collective lands either owned by them or in their possession, with its forests, waters and other natural resources, within the terms of this law.

*The Consejo Nacional de Asuntos Indígenas CONAIN will establish guidelines as to the ways the use and enjoyment of the forests, waters and other natural resources may take place, in accord with the principles of sound ecological practice («ecosofía»), with the ecosystem in question as well as with the ways of life of each people and community in particular.»*

In article 51 the composition of CONAIN is spelled out. Five representatives of the President and various Ministries sit on it together with four representatives of indigenous peoples. No independent members are provided for. The council clearly represents the national and official point of view better than the indigenous point of view. Resource management rules will be laid down by this body (art. 52 - 7).

Here we find just the sort of body I discussed earlier, with all the pros and cons that go with it. On top of the fact that its composition is biased towards the national point of view, no procedural requirements are laid down that at least would see to a serious consideration of the indigenous point of view in case the «national» and the indigenous members oppose each other as two blocks. Neither can the aggrieved party have resort to an independent judicial or arbitration body.

In view of all that has been said so far, I cannot be optimistic about the result in terms of a new partnership as regards clauses in a Russian Federation draft law on the legal status of indigenous peoples of the Russian North (which is not an official draft, but a proposal from anthropological circles). One of those clauses reads:

«Indigenous peoples of the North, especially small ones, have the right to:

- (...)

- participating in elaboration of the programmes which contemplate sitting and development of industrial installations on the territories of traditional management»

(part of article 8).

However, another paragraph in this article strikes a different tone:

«Indigenous peoples of the North (...) have the right to

- concluding treaties and obtaining licences on exploitation of regenerating natural resources in places of their traditional nature management».

Of course, much depends on the question of who is going to decide how to define those «places of their traditional management» and how well the implementation will be carried out, but in

principle we do encounter so it seems an unrestricted right to exploit their own renewable resources themselves and to ward off non-indigenous initiatives if they do not accord with the indigenous view. The Russian draft on almost no occasion enters into details as to procedure, decision-making powers, ways to enforce broadly formulated rights, etc. This is a pattern that one meets very often indeed. Risks are extremely high that such schemes only create some token participation by and consultation of indigenous representatives in matters that deeply affect their lives.

The Nunavut Agreement in Canada does far better, provided that you accept or are forced to accept the dominant position of the national state in matters of management of natural resources. It provides for precise specification of the subject matter, the parties involved, the division of competences, an elaborate scheme of procedure, publicity and judicial review, including the possibility of suing the Canadian government with some chance of success for breach of the agreement and particularly neglect of its duty to collaborate in measures protecting the natural resources and preventing depletion of the land, wildlife, etc. especially by outsiders. The sitting-still of national bureaucrats to a certain extent can most probably be overcome.

But the Nunavut Wildlife Management Board suffers from the same drawback I discussed earlier. Ultimate decision-making power rests in the hands of the national Minister. We have to face the definite risk that indigenous leaders will spend an enormous amount of time in trying to keep up with the national and provincial governments agendas and to outdo the bureaucrats in relevant skills. As access to the ultimate decision-making power is still divided unevenly between both parties, one has to expect that Inuit proposals, if contrary to Euro-Canadian views and interests, will not stand a good chance of being successful. Moreover, chances are that local management knowledge will not be used as a source of valuable information. Eventually, the aboriginal representatives and their consultants will form an urbanised elite that alienates itself from the rest of the population. If responsibility over matters of management of natural resources is not handed over completely to the indigenous authorities, no deve-

lopment will take place in the local style of regulation, in the local style of persuading people to use natural resources rationally. Local knowledge and practices of wildlife management will not be used as they could be, time will be wasted in extremely drawn-out procedures. In the long run people will turn bitter. No sustained and harmonious partnership between the two nations can spring from it.

#### Notes

- 1 The 1840 Treaty between the Maoris of New Zealand and representatives of the British Crown in New Zealand which stresses the partnership between the Crown and Maori (albeit in puzzling wording). See Ian Macduff, «Biculturalism, partnership and parallel systems: the context of Maori rights», in: W. Twining (ed.) *Issues of self-determination*, Aberdeen University Press, Aberdeen 1991 : 102 - 114.
- 2 See Peter H. Herlihy and Andrew P. Leak, The Tawahka Sumu: a delicate balance in Mosquitia, In: *Cultural Survival Quarterly*, 14 (4), 13-16
- 3 Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada. Indian and Northern Affairs Canada, Ottawa 1993. There is also a French version.
- 4 John U. Bayly, The Denendeh Conservation Board: an experiment in aboriginal resources and environmental management. Paper presented at the 13 th int. congress of anthropological and ethnological sciences, Mexico City 1993, commission on folk law and legal pluralism. See the collection of papers for the commission.
- 5 Harvey A. Feit, James Bay, Cree self-governance and land management, In: E.N. Wilmsen (ed.), *We are here, Politics of aboriginal land tenure*. Univ. of California Press, Berkeley, Los Angeles, London, 1989: 68 - 98  
Andrew J. Chapeskie, Indigenous Law, State Law, renewable resources and formal indigenous self-government in northern regions. In: *Commission on Folk Law and Legal Pluralism, Proceedings of the VIth int. symposium, Ottawa, Canada, Aug. 1990, Vol 1*, Under the presidency of Harold W. Finkler. Some interesting remarks can also be found in the article by Andrew Chapeskie on: Indigenous Law, State law and the management of natural resources: wild rice and the Wabigoon Lake Ojibway Nation. In: *Law and Anthropology, Internationales Jahrbuch für Rechtsanthropologie*, #5, VWGö-Verlag, Vienna, 1990: 129 - 166.
- 6 See footnote 5 before.
- 7 Agreement also pertains to Inuit communities, but the story remains basically the same.
- 8 See his article (1990) mentioned in footnote 5.

9 Here Chapeski quotes from: *Negotiating a Way of Life: Initial Cree experience with the Administrative Structure Arising from the James Bay Agreement*, Montreal, ssDcc inc. 1979: pages 95 and 96. This report was prepared for the Research Division, Policy, Research and Evaluation Group of the Department of Indian and Northern Affairs, Ottawa. It is explained in this report that the Cree negotiators preferred to have as much participation in the management structures as they could politically grab, instead of being satisfied with a restricted, residual decision-making power in matters of purely local significance.

10 Compare the exclamation by one of the speakers during the Seminar, an Inuit: we all wanted to have those councils, but nobody came forward to sit on them.

11 Greenland Home Rule Authority, The Ministry of Finance and Economic Affairs, *Information Memorandum on Greenland*, Nov. 1992: 3 and 4.

12 Greenland Home Rule Authority, The Ministry of Finance and Economic Affairs, *Information Memorandum on Greenland*, Nov. 1992: 4.

13 In the Greenland Home Rule Act a special body with a special procedure is set up to settle matters concerning the respective jurisdictions of the home rule authorities and the Danish authorities (section 18). Obviously, stalemates in joint decision-making about mineral exploration, etc., cannot be presented as a doubt about the respective jurisdictions, but the section 18 model could be copied for solving stalemates in the joint decision-making process.

14 See on the experiences so far: Finn Breinholt Larsen, «The quiet life of a revolution: Greenlandic Home Rule 1979 - 1992». In: *Etudes Inuit Studies*, 16 (1992, 1-2): 199 - 226; published by Université Laval, Pavillon Jean-Durand, Québec, Canada).

15 See F. Guionneau-Sinclair, *Legislación Amerindia de Panamá*, Universidad de Panamá, Centro de Investigaciones Antropológicas, 1991: 126 ff.

16 See Proyecto de Ley Orgánica de comunidades, pueblos y culturas indígenas. Already discussed and approved for the first time on 12 Nov. 1991 in the Cámara de Diputados and since then transmitted to the Permanent Commission on Social Affairs (Subcommission of Indigenous Affairs) of the Cámara. On October 8, 1992 this draft law was presented to the Cámara de Diputados for a second round of discussion. □

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# INDIGENOUS PEOPLES, SELF-DETERMINATION AND THE UNFOUNDED FEAR OF SECESSION

A great deal of heated debate has been generated over the demand by indigenous representatives for use of the term *indigenous 'peoples'*, instead of the term *indigenous 'people'*. At the 1993 Vienna World Conference on Human Rights, the controversy and public protest about this issue included posters and T-shirts emblazoned with the disputed 's'. One commentator has called the Vienna debate on indigenous rights «the Battle of the 's'». "Today, that battle continues over the Draft UN Declaration on the Rights of Indigenous Peoples (which uses 'indigenous peoples' throughout) and with respect to the text of the final document for the Cairo International Conference on Population and Development (in which the 's' is still being debated).

It is obvious that semantics and symbols matter greatly in this and all other political/legal fights, but the 's' is neither a talisman that will liberate indigenous peoples nor the key that opens Pandora's box and dismembers the state sys-

by Steven M. Tullberg

tem by authorizing indigenous secessionism. We need to move the debate from what appears to be a dispute about semantics, to the underlying issues. What is really energizing this fight?

### The myth of the disappearing Indian

The fight over the 's' is fundamentally about self-determination. From the point of view of most indigenous peoples, the discussion about self-determination begins with the demand that they be recognized as the nations, tribes, communities, peoples – political, cultural, social, economic collectivities – that they have always been, that they still are, and that they intend to be for generations to come. This point is often overlooked by non-indigenous people who usually have security and dignity in their own societies. In contrast, indigenous peoples are acutely aware of powerful forces that have long asserted that indigenous peoples would and/or should disappear – through assimilation, social darwinism, termination or worse.

In the United States, the significance of the myth of the disappearing Indian was highlighted in a lecture that US Supreme Court Justice John Marshall Harlan delivered to law students at George Washington School of Law in 1898:

*[The Indian race] is disappearing and probably within the lifetime of some that are now hearing me there will be very few in this country. In a hundred years you will probably not find one anywhere... It is as certain as fate that in the course of time there will be nobody on this North American continent but Anglo-Saxons. All other races are steadily going to the wall. They are diminishing every year.*

For lawyers and policy makers especially, it is important to note that Justice Harlan was not an evil man. He is revered as 'the Great Dissenter' whose dissents in early civil rights cases laid the theoretical basis for *Brown v. the Board of Education*, the 1954 Supreme Court decision outlawing racial segregation. Justice Harlan simply accepted the common wisdom of his time, which had determined that Indians were not going to survive in their struggle against a superior white race. The constitutional rights of Indian tribes and nations were unim-

portant for lawyers and courts because these indigenous peoples had no future. Legislation based on this belief that Indians are an inferior and a disappearing race instituted two of the most disastrous periods of US history for Indians: the Allotment Era of the late nineteenth and early twentieth centuries and the Termination Era of the 1950s. The foundational laws and policies for these eras were expressly designed to 'break up the tribal mass' and to accelerate the inevitable disappearance of Indians from the political and legal framework of the United States.

In one form or another, indigenous peoples from around the world share this history. By law and policy – and often by violence – national governments have tried to eradicate the indigenous collectivities inside their state borders. So when state officials talk about 'The Indian' or use the language which addresses indigenous peoples in only a generic sense or only as so many individuals, alarms go off in indigenous communities. To many indigenous people, such language suggests that the forces supportive of forcible assimilation are still hard at work, still waiting for their opportunity to make the myth of the disappearing Indian a reality. Those forces are adamantly opposed to anything that might strengthen indigenous tribes, nations and communities.

### The self-determination alternative

When he formally declared an end to the destructive Termination Era of U.S. Indian policy, President Richard M. Nixon announced in 1970 a new policy of Indian self-determination. Although often honoured in its breach, self-determination has ever since been the signal term of reassurance for Indian tribes and nations in U.S. Indian policy – reassurance that they will survive as self-governing peoples and distinct cultures. President Bill Clinton pledged his support for «sovereignty and self-determination of Native American tribal governments», and he told a recent White House gathering of tribal leaders that «our first principle must be to respect your right to remain who you are and to live the way that you want to live.»

When the international community declared an end to the European colonial

era it based its decision on the right of self-determination. All liberation struggles of our time have championed self-determination.

For indigenous peoples and for other peoples who have been subjected to colonialism or to other forms of undemocratic and oppressive dominion, self-determination is the word that captures the essence of their aspirations to survive and to prosper with freedom and dignity. For peoples, self-determination has the significance that equal protection has for individuals.

Given the widespread acceptance of self-determination as a human right, those who refuse to embrace this terminology have the burden of justifying their refusal.

### The rhetoric of indigenous independence and the reactionary fear of secession

The objective of the overwhelming majority of indigenous peoples around the world is autonomy within the framework of existing states. However, some indigenous rights advocates argue that their struggle is for independence, for full statehood. Typically, these claims are rhetorical and unrealistic, without grounding in international law and practice. Reacting to the marginal rhetoric of indigenous independence and to their own concerns and losing dominion over indigenous peoples (and over indigenous lands and natural resources), some state officials have concluded that self-determination for indigenous peoples cannot be endorsed, because it would inevitably lead to secession. They conclude that use of the world 'peoples' must be barred because of its link to self-determination in Article 1 of the two International Covenants on Human Rights:

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

Because of this language, they argue, the right of self-determination would grant indigenous peoples the right to secede. To ward off precedents that might strengthen the indigenous self-determination claim, they insist that the 's' must also be stricken from international pronounce-

ments such as the final declaration of the Vienna World Conference on Human Rights and the final document for the Cairo International Conference on Population and Development. They fear any terminology that might tend to uphold indigenous self-determination. The decision of the UN Working Group on Indigenous Populations to incorporate the identical language of Article 1 into the draft Declaration on the Rights of Indigenous Peoples ('Indigenous peoples have the right of self-determination...') has intensified this fear.

### Self-determination does not equal secession

A careful reading of international law shows that there is no foundation for either the notion that the right of self-determination promises independence or the notion that the exercise of self-determination necessarily results in secession. The key to this analysis is to understand that self-determination means, in essence, that every people has the right to be in control of its own destiny. The specific legal and political relationships that achieve this end vary, depending on all of the circumstances of the peoples and the governments involved. Self-determination requires remedial measures when a people is denied the right to determine its own destiny. The range of remedial options depends on the specific nature of the violation and the specific circumstances of the people whose right to self-determination is denied. There is no automatic remedial option, certainly not secession.

The remedy for denial of the right to self-determination is not simply a matter for the people concerned to choose at its discretion. Rather, the evolving international standards are applied to determine what options are appropriate. The remedy for peoples subject to classic colonial dominion is not the remedy for other peoples who have been unable to exercise fully their right of self-determination. There is a broad range of remedial options that enhance autonomy and democratic self-government without threatening the territorial integrity of existing states. In this regard the United States has much to teach the world about its failed experiments in forcible assimilation and termination and about its relative suc-

cess in promoting indigenous self-determination at home.

### Indigenous peoples should not be the exception to the right of self-determination

The United States and other countries with serious commitments to human rights should resist efforts that would, in effect, amend the International Covenants by making indigenous peoples an exception. Policies and arguments that all peoples, *except indigenous peoples*, have the right of self-determination cannot be acceptable. Also unacceptable is the suggestion of some countries that an express proviso be adopted declaring that indigenous peoples' right of self-determination does not include the right of secession.

Restricting or qualifying the rights of indigenous peoples would perpetuate the historic problem of declaring that there are two classes of people in the world. The first, superior class is all of the non-indigenous peoples, whose right of self-determination is unqualified. Some of these non-indigenous peoples legitimately aspire to full statehood. The second class of peoples is indigenous peoples, whose rights by definition would be qualified and expressly inferior to all others. This discriminatory construct is inherently offensive to indigenous peoples and violates the principle of equality on which much of international law is based.

Second, although the vast majority of indigenous peoples are committed to creating a better future for themselves within the existing state framework, that should not blind us to the possibility that a small number of colonized and victimized indigenous peoples might meet the same test for full independence that is applied by international law to all other peoples. (Over 130 new states have come into existence since the founding of the United Nations, and no one suggests that the process of declaring new states – which inevitably involves the dismembering of old ones – is completed.) If a self-determining indigenous people meets the same test for statehood that applies to all other peoples, is there any principle of law or human rights that would justify denying them this entitlement?

Third, the spectre of rampant indigenous secessionism is an imaginary pro-

blem. It is a straw man that opponents of indigenous self-determination have put up and knocked down again and again, without convincing effect. Experts in international law and human rights have not bought it. Neither have a number of forward-looking governments. Indigenous peoples find the argument against self-determination particularly offensive because an utterly marginal, hypothetical situation is being used to foreclose serious discussion and progress on the development of important international human rights standards. Needless to say, governments with the worst indigenous rights policies and practices are generally the most adamant against any language recognizing indigenous self-determination.

### Support self-determination for indigenous peoples, support human rights

Just as national legislation and decisional law give evolving meaning to equal protection, so too international law and practice are giving meaning to self-determination. Countries with forward-looking human rights policies have no good reason to fear supporting equal protection for all indigenous individuals and self-determination for all indigenous peoples.

The United States and other leaders in human rights have finally begun to make serious advances in their analysis of these long neglected human rights issues. They are beginning to come to grips with the reality that indigenous tribes, nations and peoples are vital participants in the world's national and international systems, and that they will continue to be so in the future. Recognition of their right to self-determination is a challenge and an opportunity to establish a more just and productive relationship between indigenous peoples and states. Candid and principled use of the term 'indigenous peoples' would be another step forward, because it states the obvious and challenges us to get on with the work of making self-determination a reality for all of the peoples of the world.

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## Introduction

The first of May 1979 was a remarkable day for all Greenlanders. A new era began. On that date a slice of political power was cut off from the Danish government and handed over to the Greenlandic politicians. More than two hundred years of colonial rule and some twenty five years as a Danish province was ended when Greenland became an autonomous region within the Danish Realm.

The inception of Home Rule came after a decade of political mobilization and ethnic radicalization and by the time the first Home Rule government took office the Greenlandic public had great expectations for it. The first ten years of Home Rule were evaluated favourably by a majority of the electorate; the drab realities of political life have obviously not worn away popular support to the political leadership.

But no government can afford to rest on its laurels. Since the late 1980s Greenland has experienced a downward economic trend and the Home Rule authorities' efforts to turn the tide have until now been in vain. An ambitious new industrial programme has been launched to

governance? What has been accomplished within this set-up? Moreover, this paper will describe and discuss the work of the Home Rule Commission, the role of the Realm and Home Rule, the Home Rule powers, the scope of the Home Rule and international relations and the economy.

For reasons of space, it will not discuss political parties, industrial policy, the 'Greenlandization' debate during the 1970s/1980s, the debate on regionalization and social problems etc. Nor can it consider interesting issues such as the significance of the 'invention' of the Greenland Home Rule for other indigenous peoples, the scope of Home Rule or whether it be could exported to other societies.

## Background

When Danish sponsored missionaries found not Catholic Vikings but heathen Inuits occupying Greenland in the 18th century, trade and Danish administration followed. The Danish influence on the society was very progressive for its time, although its policies were sometimes inappropriate if well meant. The Danes particularly wanted to maintain the traditional seal hunting culture and protect the inhabitants from the evil in-

the country up, it is fair to say that Greenlanders are a new nationality. Today the Inuit roots and way of life thrive in the sleek lines and high design of the Danish modern style (Jull, 1991:37).

This situation continued until 1940 when Denmark was invaded by Germany in the second World War. Greenland was forced to turn to North America for markets. The export of cryolite mined at Ivittuut ('grassy site') continued and was the primary source of income throughout the war years to pay for essential imports. Energy was supplied in part by coal mined from deposits at Disko Island. Greenland found itself suddenly in contact with the outside world, on the air routes to Europe from North America (*Grønland*, 1991:2,14).

Greenland's exposure to American material culture during the war created new demands and, in addition, the country got along quite well without complete dependency on Denmark (op.cit.: 1,37). When the war ended, Greenland was reunited with Denmark. Representations were made by Greenlanders to abolish the monopoly of the Royal Greenland Trading Company (Kongelige Grønlandske Handel)<sup>1</sup> and to permit more local authority over administrative af-

subjects, but not foreigners, to establish commercial enterprises in the country and export its products.

This evolutionary process continued. In 1953 the Danish Constitution was amended to include Greenland as an integral part of the Kingdom of Denmark, with equal rights. Greenland ceased to be a colony. As Danish citizens, Greenlanders elected two members to the Danish parliament.

In the following years, in order to fulfil the goals of the new order (of greatest possible equality) which were primarily set by Danes, development was initiated and tremendous efforts were made to modernise the country. Spending was funded by the Danish government and concentrated on construction, social services including health and education, communications and transport. Much attention was paid to encouraging the fishing industry based in the icefree ports of the Southwestern coast. A policy of gradual urbanization was encouraged and many small outposts were abandoned (from 1960-70 25 settlements were abandoned and about ten in the next decade, Schram, 1990:20) in favour of movement to larger communities.

housing on rocky arctic coasts, Danish modern 'everything'— which left most of the local people startled and disoriented. Social problems multiplied and some remain critical. It became clear to the Danes that the powerlessness of the local people had become the root ill.

This state of affairs led local political leaders to conclude that the rate of progress needed to be reconsidered and slowed. Their change in attitude was a reversal of the policy adopted after the second World War when the emphasis had been on undertaking measures that would enable Greenland to become rapidly integrated with the rest of the world (*Grønland*, ibid.).

In the fall of 1972 the Greenland Provincial Council (Landsrådet) informed the Minister for Greenland that, in the Council's opinion, the time had come for a commission to study in detail the issue of giving the Provincial Council an influence upon, and a joint responsibility for, the development of Greenland.

negotiations in February, 1975.

Against this background, the new Minister for Greenland, Jørgen Peder Hansen, established the Commission on Home Rule in Greenland, in October 1975. The Commission concluded its work in June 1978 by submitting a report containing proposals for a Home Rule Act with adjacent consequential statutory provisions. All the statutes proposed were adopted unamended by the Danish Parliament on November 17th, 1978 (Conf. Act no. 577, Nov 29, 1978, *Lovtidende*). On January 17th, 1979, the population of Greenland voted in a referendum for the Home Rule Act to come into force in Greenland on May 1, 1979. The result was 70.0 per cent for and 25.8 per cent against, out of a total electoral turn-out of 63.3 per cent (Foighel, 1980).

## The Commission on Home Rule.

The background for the work of the Commission was influenced by three major elements:

(1) Due to its political composition<sup>2</sup> the Commission had to find a political solution which could prevent relations between Greenland and Denmark from breaking down; on

# GREENLAND HOME RULE

by Tønnes O.K. Berthelsen (KAKA)

reduce dependency on the fishing industry, but the outcome is still very uncertain. Furthermore, there is growing popular discontent due to a number of cases where the new leaders have mismanaged their responsibilities. In the years to come, the political leaders will face some tough challenges. They need to strengthen the country's economy as well as changing their own image in the eyes of the people.

This paper offers an analysis of Greenland Home Rule. What is the set-up of

influences of European urbanization or industrialization.

Danish church, state and trading post personnel took local wives, so a new class grew up using and following a European way of living and who were not always enthusiastic about the hardships of sealing as a full time way of life. This 'mixture' community has played an important leadership role in Greenlandic politics and continues to do so. With the considerable miscegenation of the post-war era, when many Danish workers built

factories. Following a visit to Greenland in 1948 by the Danish prime minister, a Royal Commission of Danes and Greenlanders was appointed to advise on appropriate changes.

In concord with «Greenland's own wish» (former minister Moses Olsen) partial self-government was introduced. The Greenland Provincial Council was given sufficient autonomy in West Greenland to govern in a fashion similar to a Danish county. Greenland as closed trade monopoly was abolished to allow Danish

The pace and scale of these changes meant that much of the work was done by Danes, who came to represent almost one-third of the labour force. To attract Danish labour, pay scales were considerably higher for Danes than Greenlanders, even for the same kind of work. Greenlanders were recipients rather than participants in the process of change (*Grønland*, ibid.).

The speed and scale of the building resulted in a new society – the concentration of the population, apartment block



The Minister Knud Hertling (a native Greenlander) decided to establish a Home Rule Committee consisting exclusively of Greenlanders. Having worked for two years, the committee submitted a preliminary report and suggestions for

the contrary, it had the potential to contribute to the creation of a new basis for strengthening the ties which hold the two parts of the Realm together.

The fact that it was justified in terms of critical relations between Denmark and Greenland in the early 1970s stems from a number of circumstances:

First of all, one may point to the fact that the evolution which had commenced some 25 years earlier involving a

mutual wish for equality in terms of social status, education, housing and other matters changed Greenlandic society in major ways and in comparatively few years. The efficiency and speed with which the changes took place had created uncertainty and insecurity in many, which again created dissatisfaction and strains in relations between Greenland and Denmark. However, even though the development went ahead, the Greenland influence was seen to decrease correspondingly. In other words, Greenland felt that equality was hardly a reality. As we used to say: «One was a tenant in one's own country».

Secondly, the referendum in 1972 regarding the European Community played a role. The result was that only 28.4 per cent wished to join the EC. The votes cast in Greenland were combined with the votes in the rest of Denmark, so that Greenland became included in the Danish EC-membership. For the first time, the Danish Government engaged in a Greenland policy which many conceived as contrary to the wishes of Greenland. This created a feeling of powerlessness.

Finally, the fact that concessions for the exploitation of oil off the coast of Greenland were given in the spring of 1975 (Hes-selbjerg, 1976:14), created some disturbances, although the decision had been approved by a majority of Greenlandic politicians. The concession also created expectations regarding a change in relations between Denmark and Greenland.

(2) The commission was furthermore obliged to find a solution which could be implemented by Greenlandic politicians at a time when Greenlandic society had become complex, but did not have the required number of educated Greenlanders. The Greenlandic politicians themselves wanted to be responsible for legislation and administration.

(3) Finally, the work of the Commission was influenced by the distinct and obvious limitation, accepted by both parties, that the arrangements to be established would have to be in conformity with the Danish Constitution. Amending the Constitution was out of the question (Foighel, *ibid.*). The report of the Commission, as well as the bills contained therein, are actually

recommendations to the Government and the Greenland Provincial Council.

With the above in mind, the following discusses the position and the terms of the reference of the Home Rule within the Danish Constitution.

### The Danish Realm and Home Rule.

Danish and Greenlandic members accepted that Home Rule should be within 'the framework of the unity of the Realm'. This principle is derived from article 1 of the Danish Constitution.

The assumption that national unity was to be preserved implies that with Home Rule established, Greenland still remains a part of the Danish Realm, that sovereignty continues to be exclusively with the authorities of that realm, that Home Rule for Greenland is not established through a treaty based on international law, but exclusively on the basis of Constitutional Law through a Danish act. By means of this Act, the Danish Parliament delegates a certain, precisely defined, part of its competence to Home Rule and that only part of the competence of the authorities of the Realm may be delegated to Home Rule just as only fields which pertain exclusively to Greenland but not to the Realm as a whole or to other parts of the Realm may come under Home Rule (Foighel, *ibid.*). Consequently, national unity means that certain fields, for instance security, foreign policy and currency policy must remain with the authorities of the Realm, and it will not be possible to delegate unlimited fields to Home Rule.

However, implied in national unity is also a significant, although somewhat diffuse, assumption of a political moral nature regarding mutual solidarity between the various parts. This, among other things, involves mutual support and a willingness to take the interests of the Realm into due account in major issues. So, the principle of maintaining national unity excludes the formation of a federation.

Against this background one may describe Home Rule as a particularly qualified type of self-government. Self-government means a statutory delegation of certain powers, so that parliament and government refrain from legislating or administering certain fields, but leave this to local organs, for instance municip-

pal self-government. The characteristic feature of Home Rule consists in the powers which have been statutorily transferred being, in terms of their area, identical to the powers exercised by the national authorities in other parts of the Realm. As far as municipal self-government under the Constitution is concerned, the limitations upon the national authorities which the various types of self-government involve may be classified as functional ones, whereas the limitations upon the powers of the national authorities under Home Rule are territorial ones, the powers being limited to that part of the Realm which does not come under local Home Rule. In other words, the difference between municipal self-government as established by the Constitution and Home Rule is a significant one.

### Home Rule powers

The main purpose of Home Rule is to transfer (delegate) powers and consequently responsibility from Danish political authorities to Greenlandic political authorities, which shall administer not only such community tasks as are taken over from the state, but which shall also establish rules to be applied in administration and have independent financial responsibility for carrying out the various tasks. Consequently, the main task has been to try to implement this purpose by creating the framework (the rules) in the Home Rule Act for exercising this responsibility and for the establishment of the competent executive organs.

The Home Rule authorities comprise a popularly elected 'Landsting' (Greenland Assembly) and a 'Landstyre' (Greenland Executive) elected by the Assembly. The size of the Landsting has varied over the years and is currently 31 members, chosen on a basis of proportional representation. All Greenlanders or Danes resident and over 18 years are eligible to vote. Four political parties gained representation in the 1995 election. The two largest are the Siumut ('Forward') Party, with 11 seats and the Atassut (Unity, between Denmark & Greenland) Party, with 10 seats. Other parties represented are the Inuit Ataqatigiit (Inuit Brotherhood), which has 6 seats, and the Akullit Partiaat (Centre Party) with two

seats, and one seat is taken by a West electoral list.

The Landsting is the supreme political authority for areas which have been transferred to Home Rule and as such stipulates regulations/legislation for the areas subject to Home Rule. The Landsting also holds financial responsibility for areas subject to Home Rule. Legislation adopted by the Landsting is called a 'Landsting Act'.

The Landstyre undertakes the everyday business of Home Rule and implements the resolutions passed by the Landsting. The Landstyre is responsible for the Home Rule administration. Each Landstyre member holds day-to-day responsibility for a particular area of authority, although all important decisions are made at sessions of the Landstyre, which holds joint decision-making authority.

### The scope of Home Rule

It follows from the principle of national unity that certain fields cannot be transferred to Home Rule authorities. This applies particularly to such fields as Constitutional Law, the administration of justice, external relations, national finances (including the Central Bank and its functions) financial, monetary and currency policy, defence policy, criminal proceedings and imprisonment as well as fundamental principles regarding the law of persons, family law, inheritance law and the law of contracts (*Prospectus for Greenland Home Rule Authority*, 1987).

The fact that these fields cannot be transferred to the Home Rule authorities does not, however, prevent the continuing adoption of specific provisions, or 'Greenland Acts', having due regard to Greenlandic conditions. However, it is up to the national authorities to adopt provisions which do not deviate from the legal position in the rest of the Realm to any greater extent than is necessary, having due regard to special local conditions.

In fields which are transferred, and where Greenlandic self-financing is not possible, the Danish Government should grant subsidies for such tasks. On this basis the Act establishes the following distinctions:

a) Under Article 4 of the Act, Home Rule authorities are able to take over fields in which the Home Rule are able to finance, with the effect that Home Rule will take over legislation and administrative power regarding such fields as well as the inherent expenses. Upon consultation with Home Rule authorities, national authorities may decide that such fields shall be transferred to Home Rule authorities, with the same effect.

b) In areas where government subsidies are required, the power to establish rules cannot be transferred to Home Rule in quite the same manner as in areas financed by Home Rule authorities. In subsidized fields it is necessary to transfer powers by means of specific authorizing acts for each and every field by means of which Parliament establishes a framework by way of a few main principles for the field in question, but otherwise leaves the more detailed regulations to Home Rule authorities, including regulations regarding internal administration.

An authorizing act of this nature must evolve from negotiations between Home Rule authorities and the government regarding the extent of the authority, the timing of the transfer powers and the size of the government subsidy. In drafting Section 5, emphasis was put on creating the greatest possible security, so that the possibility of Home Rule authorities taking over fields financed through subsidies should not become an illusion through a future political development. Consequently, it has been assumed that Home Rule authorities have a right to take over fields in question, even though they are financed through Danish subsidies. This was a crucial point throughout the debate in the Commission for the following reasons: if for instance it were possible that the transfer of a field in the situation under discussion could take place only by agreement, rather than on the basis of a unilateral Greenlandic demand, it would be possible in practice to deprive Greenland Home Rule of any meaning, at least for a number of years.

As already mentioned, the main issue and a matter of principle has been the principle of undivided legislative power

and power of the purse. In subsidized fields the power of the purse rests with Parliament. Consequently, the power to adopt acts in this field must remain with Parliament. There is, however, in principle nothing to prevent the Assembly from issuing regulations.

### International Relations

The decision-making authority in foreign policy matters lies with the Danish Government, although the Home Rule system provides the guarantee that the Greenlandic authorities must be consulted on foreign policy matters of special significance for Greenland. A position has been established for a special expert in Greenlandic affairs in the Royal Danish Ministry of Foreign Affairs and the Home Rule authority may station attachés at Danish embassies abroad.

The Home Rule authority may take part in international negotiations concerning matters of significance for Greenland and may also be authorized to negotiate in its own right, with the assistance of the diplomatic services.

Greenland is an independent tariff area. Import tariffs and rules concerning imports and exports are laid down by the Greenland Landsting (Assembly). In this respect the remaining fields of the Realm are considered to be abroad.

In accordance with the Home Rule Act, such as bills and proposals for administrative directives in general, requiring the approval of the Danish Parliament, and which particularly concern Greenland, are submitted to the Landsting for opinion.

Denmark's participation in international organizations does not automatically include Greenland. After a referendum in 1982, Greenland in fact chose to withdraw from the European Community (EC), with effect from February 1st, 1985. Greenland thus gained the status of Overseas Countries and Territories (OCT) in association with the European Community.

In harmony with this, and as described in the protocol to the treaty amendment on Greenland's withdrawal, products originating in Greenland were granted preferential access to the Community without tariff and quantitative restrictions, also for those products encompassed by an Common Market scheme for fisheries prod-

ucts, although on the condition that the Community continues to hold satisfactory access to the Greenlandic fisheries zone, within the framework of the fisheries agreement.

In accordance with the ten year fisheries agreement entered into in 1985 between Greenland and the EC in November 1986, consultations were held on fisheries in 1987. Agreement was reached on a scheme equivalent to that in force in 1986, since the status of stocks continued to bar the Community from access to cod off West Greenland. The Community has thus gained access only to the species described in the fisheries protocol, primarily rosefish/redfish, shrimp and capelin. As 'a quid pro quo', in accordance with the protocol, the EC makes an annual payment to Greenland of ECU 26.5 million for the first protocol period and ECU 34.5 million (*Fiskeriprotokollen*, 1989) for the last period. The duration of the protocol was 5 years and it expired on December 31st, 1994.

The renegotiations for a renewal agreement have just begun and have already come into the debate on Greenland's association with the EC. The majority of Western European countries have joined the EC, or are about to join. Others like EFTA countries and most recently the EEA agreements have resulted in expanded political and economic cooperation which could disturb the overall balance of the market. This could make it rather complicated for Greenland if it chooses not to participate in this particular market.

In congruence with the Nordic Cooperation Agreement – the so-called Hel-singsfors deal – the Greenland Executive participates in the work of the Nordic Council. The Greenland Assembly is represented by two members in the Danish delegation to the Nordic Council.

The Greenlandic members participate in Nordic Council's economic and cultural committees respectively. Moreover,

the two members participate with three other members of the Greenland Assembly in the 'West Nordic Parliamentary Cooperation Council' (*Kalaallit Nunaat*, 1992/1993).

Greenland is a member of the Inuit Circumpolar Conference (ICC), which comprises Inuits of Canada, USA (Alaska), Tjukotka Peninsula in Siberia and Greenland. For more than 15 years the ICC has encouraged cooperation be-



Photos: Tønnes O. K. Berthelsen

tween the Arctic states and the indigenous populations of the Arctic, especially in connection with issues relating to the environment (Aqqaluk Lyngé, 1992). Since 1983 the ICC has held 'Non Governmental Organization' status at the United Nations.

Both the ICC and the Home Rule Government of Greenland have been actively involved from the beginning in the Rovaniemi process or 'Finnish Initiative'. The Home Rule participates officially as a part of the Danish delegation, while the ICC and the Saami Council



have achieved permanent observer status as NGOs (*IWGIA Newsletter* No.1, 1992).

Generally, Arctic cooperation is developing rapidly. In 1991 the foundation of International Arctic Science Committee (IASC) was laid. In the same year an Arctic Environmental

Protection Strategy (AEPS) was established with participation of the eight Arctic countries. Its aims are monitoring and awareness of environmental disasters. Finally, work is going on to establish a new Arctic Council concerning superior economic and political discussions on the evolution of the Arctic. Greenland has bilateral agreements on fisheries and hunting with Norway, Russia, Iceland and Canada. These agreements are 'scope-agreements' containing typically the principals of cooperation but not concrete quotas.

almost every field of responsibility that was transferred to the Home Rule there was also an annual block grant. Without these grants the standard of living in Greenland would have decreased dramatically.

In 1979 the Danish Government paid almost 80 per cent of the Greenlandic public spending. The share has since then been considerably reduced. This cut is a consequence of the fact that Government spending in fixed prices, to a great extent, has been constant over the entire period, while the total public spending has increased significantly. The additional spending has been financed through a radical increase of taxes. The Danish Government is still financing more than 50 per cent of public spending in Greenland and there are no signs of changes in that relationship yet (Larsen, 1992).

The national purse experienced a serious liquidity crisis in 1987 due to bad budget management. As a consequence, stricter spending policies were implemented, which in turn has slowed down enterprising activities and led to an increase in unemployment and bankruptcy. Bankruptcies expanded during the 1980s and numbered approximately 40 both in 1991 and 1992 (Lyck, 1993). In addition, a number of municipalities have had problems controlling their economies which has resulted in a worsening of the economic crisis. Furthermore, the falling revenues from fisheries, as well as the closing down of the lead/zinc mine in Maarmorilik in 1990, have been perceptible. Real wages have decreased in almost every occupational field since the beginning of 1980s, and this trend can be expected to continue in the years ahead.

The Danish government's spending in Greenland amounts to 2.9 million Danish Kroner (1 USD = 6 DKK) annually. The overall subsidy from the Danish government totals approximately DKK 52,000 per capita in Greenland (Larsen, 1992).

GNP at market prices has been estimated at DKK. 6,123 million in 1992. The GNP per capita was DKK. 111,090 (the total population was 55,117 at 1 January, 1993). The actual Greenlandic GNP is larger than estimated because production from the traditional fishing and hunting industries evades assessment.

Compared to other Nordic countries the GNP in 1989 looks as follows

Country	GNP per capita/DKK.
Greenland	124,400
Denmark	150,200
Finland	168,900
Iceland	125,600
Norway	158,300
Sweden	163,000

Source: Danmarks Statistik, *Tiårsoversigt 1989 (10 Year Survey)*.

As we know there have been some fluctuations since then. Suomi and Greenland in particular have, for different reasons, experienced remarkable decreases in their GNP.

### Conclusion

Home Rule was introduced on May 1st 1979 in accordance with the Home Rule Act (Act No. 577 of 29 November 1978) passed by the Danish Parliament and based on the recommendations of the Home Rule Commission (Report No. 837/1978). This report described the contents and the extent of the powers which could be delegated to the Home Rule (i.e. the Landstyre – the Home Rule Government – and the Landsting – the Home Rule Parliament) and suggested a time schedule for their implementation. Fourteen years have gone by since its introduction and, except for some responsibilities of minor importance, it is correct to say that today the Home Rule is fully developed according to the Commission's plan. Survey 1. shows a list of the responsibilities taken over by the Home Rule. If compared with the Annex of the Home Rule Act and the time schedule for transferring the fields mentioned in Survey 1, it is obvious that the Home Rule has undergone a speedy and comprehensive development, which has even exceeded the Commission's expectations.

Has the speed of transfers been too quick? One of the main reasons for introducing the Home Rule of Greenland was that development during 1950s and 1960s had been going much too fast. The speed of transfer of responsibilities to Greenland after implementing the Home Rule have has, ironically, been even quicker. Nevertheless, according to Premier Lars Emil Johansen, in a radio in-

interview: «Greenlandic authorities have been better in managing the development than the Danish authorities back in their governing time». The major difference is that the responsibility now lies in the hands of the Greenlandic politicians. The distance between the governing and the governed has minimized culturally as well as geographically. This has contributed to a much higher degree of legitimacy of the political regime.

According to the Home Rule Act, the Home Rule authorities do not have the ability unilaterally to enter into agreements with foreign governments. Nevertheless, the Greenlandic politicians have managed to influence the various international relations in which Greenland is participating.

Greenland's continued economic dependency on Denmark moves the dream of an independent Greenland far into the future. About 50 per cent of the Gross National Product is generated from Denmark. Expenditures by the Danish state pertaining to Greenland include payments for services made available to Greenland as well as capital transfers for investment purposes. The result is a disposable GNP per capita in the order of DKK 111,000 per year. This is a comparatively high figure. However, the high disposable per capita does not give an accurate impression of the standard of living in Greenland. The Arctic climate, combined with the large distances and low population density results in considerable additional costs compared to other countries in order to maintain a uniform level of public services.

The accomplishments of the Home Rule authorities must be described as impressive. This naturally raises the question: what now? What is going to happen in the future? Positions range from the moderate 'Home Rule has now got its framework with Greenland as part of Denmark with clearly defined powers which have to be utilized in accordance

with the intentions', to the radical 'Home Rule was the first step on the way to recognition of Greenland as a fully independent state'.

Concerning the latter position, Hans Pavia Rosing, member of the Danish Parliament for the Siumut Party, declared to the Danish public that, within the next 10-20 years, Greenland must seek a much more relaxed association with Denmark. This statement was quickly refuted by the Premier Lars Emil Johansen, «It is not just a matter of the three billion Danish Kroner which we receive from the Danish State each year. No, this is much more deeply rooted. We have several hundred years of co-existence, family ties, friendships and human relationships», and he continued, «I one day may entertain the possibility of a 'Federal State', consisting of Denmark, the Faroe Islands and Greenland... but this pushes us far into the next century» (Buchardt, 1992).

Other factors could have been discussed in this conclusion such as continuing low educational levels, barely fluctuating resources which are damaging some sources of income, the lack of language abilities which results in a huge dependency on Danish-speaking experts and produces barriers to English-speaking experts such as doctors, lawyers and other academics. Today only very few Greenlanders speak English and this limits further development regarding participation in international trade, politics, research and so on...

#### Footnotes:

1. The Royal Greenland Trading Department had overall responsibility for the economic and commercial affairs of the island. It was established in 1774 by the Danish state.

2. Commissions composition: Five elected by the Greenland Provincial Council,

the Greenlandic members of the Danish Parliament, 7 members elected by the Danish Parliament and a Chairman elected by the Minister for Greenland.

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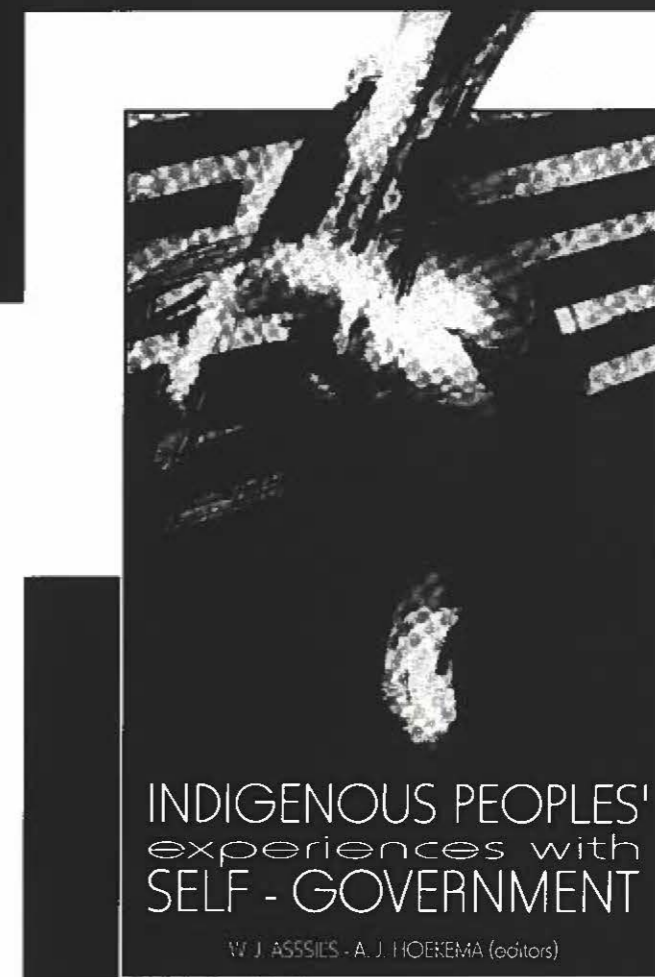
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by June Nash



# The Power of the Powerless in the New World Order: a view from Chiapas

On the eve of the first anniversary of the North American Free Trade Agreement and, simultaneously, the uprising that became known as the Ejército Zapatista Liberación Nacional (EZLN) in Chiapas, Mexico is confronting the collapse of the neo-liberal economy pieced together by President Salinas de Gortari. The measures he took - privatization of industries, 'reform' of the agrarian law that was the cornerstone of the 1917 Constitution, the liberalization of trade confirmed in the North American Free Trade Agreement - all seemed to ensure the restructuring

of the economy in accord with the neo-liberal model. On New Year's morning of 1994, his last year in office, when the agreement was to go into effect, the uprising of indigenous people in Chiapas shook the fragile structure that was to launch Mexico as an emergent financial market. The uprising set in motion a democratic movement in Mexico that poses an alternative to the monopoly of power by the Party of the Institutionalized Revolution (PRI - Partido Revolucionario Institucionalizado).

Paradoxically the process of integration in world markets gives power to

those marginalized by the global economy. In the events that shook the global financial system, we can see the resounding effects of the indigenous movement known as the EZLN. Investment markets in the US fell ten per cent from February to July 1994 (Rohatyn 1994) responding to information on political economic events transmitted instantaneously around the world (Sassen 1994). The downturn was set off by the abrupt sale of speculative holdings of investments in foreign bonds and currencies, particularly those of traders who bet against the yen when the US/Japan talks

broke down in February. But uncertainty in world markets was aggravated by events in Mexico, the latest nation to join the global financial circle. Shortly after the Zapatista uprising Mexican stocks lost over three points in the Dow Jones on January 3 (Steven D. Kaye, 'Stock shocks in Asia and Mexico', *US News and World Report*, January 24, Vol. 116, no. 3:72). Added to this was the negative reaction to the assassination of Luis Donaldo Colosio, the PRI's presidential candidate, in March 1994 which signalled to investors the political instability of Mexico. Alerted by this first reaction, the Mexican government ordered the immediate closing of Mexican security markets and accepted a six billion dollar credit from the US Treasury and international banks that prevented an even greater disruption of the markets.

The good news for investors following the August 1994 elections when political observers interpreted the reelection of PRI candidates as a vote against change soon turned to ashes by the end of the year, when citizens in the states of Chiapas and Tabasco claimed fraud in the election of PRI candidates for governor and objected to their inauguration. Protest grew as the newly elected President, Ernesto Zedillo Ponce de Leon, discovered huge deficits in the economy and instituted a new austerity programme. As the dimension of the crisis, measured in the flight of capital and the lack of reserves, came to light, the new president publicly announced the need to devalue the peso. The Dow Jones lost 6.06 points in a drop attributed to the situation in Mexico (Agencias, Washington, 29 December, in *La Jornada*, 30 December 1994, p.28). From Christmas eve to New Year's eve, ten billion dollars left the country according to German Gonzalez Quintero, president of the Confederation of National Chambers of Commerce (Concanaco), leaving national enterprises without dollars to cover their foreign obligations (Roberto Gonzalez Amador, *La Jornada*, 30 December 1994:26). Financial analysts envisioned an inflationary future in Mexico given the instability of the peso and the lack of reserves (Josephine Jimenez, analyst of Montgomery Assets Management, interviewed by Jim Cason and David Brooks,

New York 29 December published in *La Jornada*, 30 December 1994, Vol. 11, no. 3703, pp. 1-28).

Ever since the withdrawal of the EZLN into the eastern lowland tropical forest area in January 1994, the territory they control has been cordoned off by army posts that have been reinforced from the 12,000 detailed there immediately after the uprising to more than double that number after the August 21 elections, and reaching 60,000 when tensions rose in December 1994. Despite their isolation, the rebels are having a fundamental impact on the political process not only in their country, but in the global system. The doubling of national troops in Chiapas did not increase the confidence of world markets, particularly when Zapatistas made an appearance in more towns outside the zone of conflict, bringing to 38 the towns aligned with them. Zapatistas became more insistent in their demands for settlement of the conflict as the movement of the army increases tensions in the state and even the world arena.

Their high visibility is due both to the popular support for the Zapatistas within their country and the world-wide coverage of the uprising and its aftermath. The charisma of their spokesperson, Subcomandante Marcos, accounts for some of their appeal, but much of the audience they have won lies in the extraordinary force of their communiqués from the rainforest addressed to 'the People of Mexico, the Peoples and Governments of the World and the national and international press'.

The cadence of their speech and the imagery of their language reflect Mayan poetics, even in translation. Their repeated references to what the heart says reflect a belief that true language - *batzil k'op* - issues from the heart. Their diviners-curiers gain access to the language of the heart of patients by means of pulsing them. This is done by holding their thumb over the throbbing pulse in the wrist of the patient while they utter provocative questions. When the pulse leaps, the curiers who listen and feel - the verb *awayi* is the same for both actions - know where the problem lies. This dialogue resonates among the poor of Mexico and the world audience it is reaching.

The communiqué from the Indigenous Clandestine Revolutionary Committee of the Zapata National Liberation Army on February 26, 1994, expresses their purpose in words that echo ceremonial language I have often heard:

*Our path was always that the will of the many be in the hearts of the men and women who command. The will of the majority was the path on which he who commands should walk. If he separates his step from the path of the will of the people, the heart who commands should be changed for another who obeys. Thus was born our strength in the jungle, he who leads obeys if he is true, and he who follows leads through the common heart of true men and women. Another world came from afar so that this government was named and this work gave the name of 'democracy' to our way that was from before words travelled.* (Translation from *La Jornada* February 27, 1994:12 by Ronald Nigh, 1994).

This and other communiqués issuing from the jungle shortly after the uprising made me realize that this was indeed an indigenous uprising at a time when the government and some Mexican intellectuals like Octavio Paz were asserting that they were inspired by foreign revolutionaries.

The two weeks of violent confrontation, as Rudolfo Stavenhagen (*Proceso* 905, March 7, 1994), a renowned anthropologist and development critic said, was not an end in itself, but a political message coded in the only language that entrenched power understands. Once the attention of the nation and the world were turned to Chiapas, a new field of forces emerged in which the «people without faces, those without voices» in Marcos' words at the National Democratic Convention, commanded power that kept 60,000 armed troops at bay. The events unfolded as the EZLN and the Citizens Commission headed by Antonio Avendano tried to negotiate solutions to the problems they had signalled were interpreted differently by global financial markets, political analysts and the people who set the events in motion.

*Chiapas*

### What are the consequences of the uprising in 1994?

The immediate response by the Salinas government was positive. After thousands of Mexicans surged into the Zocalo in Mexico City, demanding that there be no massacre of the rebels and that the government address their demands, Salinas withdrew the troops from combat and declared a cease fire. He removed the former governor of Chiapas, Patricio Gonzalez Garrido, from office as government minister in Mexico City and appointed a new governor in Chiapas to replace the interim governor Elmar Setzer Marseille. He appointed a 'Commission of Peace and Reconciliation' to negotiate grievances, headed by the populist former mayor of Mexico City, Manuel Camacho Solis, with Bishop Samuel Ruiz as mediator.

The delegation of fifteen Zapatistas arrived in San Cristobal de Las Casas on March 8 for the meetings of the Commission for Peace and Reconciliation, much to the consternation of a group of 'autenticos coletos', the self-appointed descendants of conquerors in San Cristobal, who tried to prevent the use of the cathedral as the locale for the discussions, and who called for the exile of the Bishop for his role in presiding over the peace talks. Supporting the peace talks was a Civil Society group which maintained a twenty-four hour vigil around the cathedral in order to prevent attacks on the negotiators.

Among the demands of the Zapatistas were the following:

1) Autonomy of indigenous villages with the right to use their own language in schools, public contracts, courts, and the media. As one step in the democratization of government and the recognition of plural ethnic groups, the Zapatistas proposed a decentralization of the government at every level, overcoming 'presidentialism' as well as the control by the Federal District over the entire country with a redrawing of electoral districts conforming to the reality of the constituencies. From the very beginning of the talks, Subcomandante Marcos made it clear that the Zapatistas were not de-

manding a racially representative leadership. This in itself does not ensure responsiveness to the interest of indigenous people, as five hundred years of *caciquismo* proved. Rather, the desire was to have representatives who fulfilled the will of the people, rescuing democracy from being coopted by false leaders.

2) Redistribution of large landholdings to the smallholding villages and government support for those who work the land, including agricultural machinery, fertilizers, insecticides, credit, technical aid, improved seeds and cattle. Assurance of just prices for crops is a prerequisite for commercial production in the international market, since Mexican farmers now face competition from subsidized US products.

3) Support for housing, health, education, recreation, communication and other necessities. The Zapatistas demand services equivalent to those accorded to other communities and towns throughout the republic such as electricity, potable water, sewage, roads, telephone communication, recreational centres and sports.

The negotiations in San Cristobal in March received favourable attention from President Salinas, who agreed publicly that in the drive for modernization he had given insufficient attention to the needs of the people. The climate of conciliation was broken with the assassination of Luis Donaldo Colosio, the PRI candidate for president picked, as was customary, by the incumbent. To many it seemed clear that the ruling govern-

ment itself may have been involved in the deed, and the question of a wider conspiracy involving more than the accused, who has been jailed and indicted, has not been resolved since there has been no further investigation. Colosio had already begun to distance himself from the more extreme free market re-



Photo: Franziska K. Naffenegger

forms of Salinas just before his untimely death.

Further negotiations were on hold as civil protest took over the unsolved problems of land, social justice and welfare. Confrontations between campesinos, and cattlemen, land invasions, further expulsions from indigenous towns for political and religious motives, the takeover of town halls to censure corrupt mayors and officials, strikes, attacks on immi-

gration offices, the rape of three women by soldiers in Altamirano, and a general increase in crimes marked the tense situation in Chiapas throughout the spring of 1994.

Then in a dramatic move, the EZLN declared that they would hold a National Democratic Convention on 7 - 9 August, two weeks before the national

the return to democracy. Declaring that democracy would necessitate more than a change in leadership every six years, in which the incumbent chose his successor and the people were not part of any decisions made, the delegates called for a national referendum to draw up a new political pact, with public accountability of corrupt officials, autonomy for indig-

enous communities, and political representation for regional organizations. They invoked the social security provisions that had been denied by neoliberal reforms, and put at the centre of democratic reform the commitment to ensure food, as well as liberty, for all.

The Zapatista Convention represents the first pluralistic movement of the revolutionary left. What does pluralism mean in the New World Order? The delegates to the fifth roundtable of the Convention in San Cristobal attended by the Independent Front of Indian Peoples (Frente Independiente de Pueblos Indios (FIPI)), and the Committee of Support and Defense for the Rights of Indians (Comite de Apoyo y Defensa a los Derechos Indios (CADDAC)) were quite specific in elaborating what they considered should be a complete chapter of the new constitution. First, they would

eradicate the 'mestizocracia integracionista' vision of the 1917 constitution. This has been at the root of most 'indigenista' - pro-Indian - policies dedicated to incorporating 'Indigenes' in a mestizo-dominated culture. It is an ideology which, in the mystification of the roots of pre-conquest civilizations, co-opts the indigenous past as legitimization for the Mexican nation. Once having deprived the indigenous people of their heritage,

they proceed to justify the new forms of exploitation in which Indians are held thrall ever since the 'institutionalization' of the 1917 constitution on the basis of shared blood.

In place of a state-party alliance, in which the PRI uses the resources of the state to elect its officials, and once in office, proceeds to buy the allegiance of 'dependent' constituents with state giveaways, the delegates to the convention proposed a multicultural state incorporating a new vision of federalism. Indigenous peoples would be part of the nation and the state, with territorial autonomy, free control of funds and economic resources within their territories, and self-determination in the development programmes within their boundaries.

Clearly this new concept of federalism would not be acceptable in a country where eminent domain of the state, operating through state-owned enterprises such as PEMEX has created some of the richest men in the nation, and where the sale of other state-owned enterprises under Salinas have catapulted at least two Mexican financiers into the Forbes list of the wealthiest men in the world. Particularly vulnerable are the lands in the environs of the Zapatistas and along the Mexican-Guatemalan border where oil discoveries are multiplying each day. Should indigenous people gain control over development initiatives within their midst, neither the old co-optive politics of the PRI that were streamlined in the more efficient and less corrupt public works programme, 'Programa Nacional de Solidaridad, fostered by Salinas, nor the associations of indigenous and private enterprises proposed in the 'reform' of the Article 27 Land Reform Act could enter in and block self-determination. Their demand that indigenous languages should be officially recognized would weaken the control over cultural institutions that have promoted the domination of Indians. The insistence that a portion of the returns for the hydroelectric power generated in the state, which now produces 52 per cent of the power used in the country, and for oil that has been discovered, is the most threatening of the demands of the indigenous movement.

On the second day of the Convention, the delegates set off in a caravan of over a hundred buses, vans and improvised vehicles to a jungle area without electricity, piped water, or public meeting places. Even as the caravan began its crawl over rocky roads, some of them constructed just after the conflict began, the conventional political process seemed suspended and a new imagined community was being born. The vision of a new world order in which popular classes set their priorities was put into action in the following days. On the first evening a jungle storm with the high winds and torrential rains that result from the deforestation in the area lifted up and flattened the enormous tent that was supposed to shelter the convention. Following this dramatic event, the Zapatista leaders introduced the National Liberation Army. Men and women with uniforms and rifles of a sort, were followed by youths in motley clothing with handkerchiefs tied over their faces, some with wooden rifles. Beyond that were ranked hundreds of women, some carrying babies and wearing the flowered print dresses and aprons that are their uniform, with babies in shawls, and sometimes accompanied by their older children. Without any words the message was clear - this was not a guerrilla army, it was a people's uprising. (The paradox of revolutionaries wearing aprons was even more forcefully brought home to one of our City College students who said that she could not gain admission for herself and a photo-journalist to the Zapatista territory on Mother's Day since the women did not want to have to wear their face masks during the celebration).

Participants in the social movements that eddied around the Zapatista uprising found the elections on August 21 an anticlimax to the energy and enthusiasm generated during the convention, although they seemed to assuage anxieties in international stock markets. However, subsequent events lessened the confidence of investors. The assassination in November of Ruiz Massieu, a man known to be opposed to the drug cartel who was appointed to ensure democratic processes in government, and the forced de-

valuation of the peso which ushered in the new president Ernesto Zedillo Ponce de Leon shook up stock markets throughout the hemisphere. As the peso went from two-thirds to half its value, the new government discovered that its reserves were far less than predicted.

Growing political discontent on the southern border was echoed throughout the country as more evidence of fraud in the elections came to light. Uncounted ballots were discovered in many communities; campesinos in Chiapas were clamouring for the Procampo money promised in exchange for their vote; and Marcos refused to negotiate privately with the new President. The councillors of the National Democratic Convention and the candidate they support, Amado Avandano, along with the EZLN and the PRD rejected the election of Eduardo Robledo Rincon as governor of the state of Chiapas. When Robledo was inaugurated on December 8, 1994, in Tuxtla Gutierrez, Amado Avandano set up a parallel *Gobierno de Transición en Rebelión* (Transition Government in Rebellion) in offices borrowed from the Instituto Nacional Indigenista in San Cristóbal. There he held audience with the indigenous peoples and poor campesinos who had never had access to a governor in the past.

The Cathedral became the official site for formulating peace moves. Bishop Samuel Ruiz sat in his armchair in the Puissima Chapel on the second week of his hunger strike begun on December 20. Renamed the Cathedral of Peace, supporters joined the hunger strike, sleeping on cots at night and receiving visitors from the indigenous villages. Posters announced the support delegations of women's groups, campesino groups, student groups (Convención Nacional Estudiantil), and populist groups (Asamblea Estatal del Pueblo Chiapaneco). All of these groups added strength to the Comisión Nacional de Intermediación (Conai), and the Comisión de Diálogo y Conciliación del Congreso de la Unión, the former a citizens' group and the latter congressional representatives, building up for the national dialogue.

In the communique marking the first anniversary of the uprising, (*Expresso*,

Tuxtla Gutiérrez, 31st December 1994: 7) Subcomandante insurgente Marcos addressed the weekly news journal *Proceso*, the newspapers *El Financiero*, *La Jornada*, and the *San Cristóbal de Las Casas Tiempo* expressing surprise that the supreme government blamed the Zapatistas for the devaluation of the new peso. Granting his popularity in financial circles he promised to make a campaign to raise the emotion of risk and uncertainty and move people to buy new pesos. He complained about the constant buzzing of helicopters, planes and tanks as well as the incursion of dogs that government troops had sent in to hunt the Zapatistas. But then he added a kind of allegory quoting 'el viejo Antonio' who accompanied him in his nocturnal rounds, and it is clear that the Zapatistas draw strength from such discourse:

*The true language is born together with the first gods, those who made the world. From the first word, for the first fire, other true words were formed, and from these they were de-grained, like corn kernels in the hands of the campesino, other words. Three were the first words, three thousand times three were born another three, and from these others they filled the world with words. There was a great stone where all those who were born in the world were walking in all paths of the first gods. With all that tramping above it, the stone became very smooth, like a mirror. Against this mirror the first gods blew into the air the first three words. The mirror did not withdraw the same words that it received, but rather returned three other times three different words. The gods spent the time this way, throwing the words at the mirror in order that more come out until they were bored. Then they had a great thought in their mind, and they made a path over another great rock and another great mirror was polished and they put it in front of the first mirror and this returned three times three different words that they blew out, with all the force they had, against the second mirror, and this returned to the first mirror, three times three the number*

*of words that it received, and so they were throwing out more and more different words at the two mirrors. Thus it was that the true language was born. It was born from the mirrors.*

The old man's narration goes on to define the three first words: Justice: not to punish, but to give back to each what s/he deserves, and that is what the mirror gives back; Liberty: not that each one does what s/he wants, but to choose whatever road that the mirror wants to encounter to arrive at the true word; Democracy: not that all think the same, but that all thoughts or the majority of the thoughts seek and arrive at a good agreement.

At this moment, the Zapatistas are encircled by increased military forces, their supplies for medicines, basic necessities, and access to market for their cash goods cut off. The army incursions into the territory controlled by the insurgents during the Christmas lull were countered by the symbolic takeover of 38 towns outside of the posted area of the Zapatistas. Delegations of indigenous peoples came to visit Bishop Samuel Ruiz as he meditated and prayed for peace in the Chapel of the Virgin Purissima in the Cathedral. On December 27 musicians and dancers from Oxchuc, dressed in their striking handloomed garments, engaged him in a dance to the faint, almost insect-like buzz of homemade harp, guitar and gourd rattle. The images of the thirteen male and thirteen female dancers with the Bishop in their midst flittering in the light of thirteen candles in the cavernous recess of the seventeenth century cathedral were a vision of how one might settle discordant social relations in this postmodern world.

Criticism of the neo-liberal policies that precipitated the crisis countered government attempts to blame the crisis of a bankrupt treasury and the devaluation of the Mexican currency on the EZLN. The growing awareness that the deceptive modernization promoted by the Salinas government masked the growing impoverishment of rural cultivators and urban workers exposed the rhetoric of a free market. The minimum wage of five



Photo: Franziska K. Nyffenegger

dollars a day and the price of corn and beans sold by semi-subsistence farmers remained fixed in an inflationary economy throughout Salinas' regime. Mexico's new president, Ernesto Zedillo Ponce de León, who was Salinas' hand-picked successor to the assassinated candidate, Luis Donaldo Colosio, for the PRI in the August 1994 elections, tried to distance himself from the Salinas' presidency in his first months of office as the extent of the damage to the Mexican economy was revealed. Opposition party leaders, especially Cuauhtémoc Cárdenas of the Democratic Revolutionary Party (Partido Revolucionario Democrático (PRD)) called for a federal investigation of the financial manipulations of Pedro Aspe, Secretary of the Treasury under Salinas and his successor Jaime Serra Puche.

Zedillo's emergency plan to reduce the commercial deficit that approximated 30 thousand million dollars by the end of 1994 called for the support of the Mexican people for a new regime of austerity. The aging leader of the Confederation of Mexican Workers (Confederación de Trabajadores Mexicanos CTM), Fidel Velásquez, asked workers to give one week's wage. In the course of negotiations with the US government for a fifty billion dollar credit line to reinstate Mexico's economy in global financial structures, the US treasury department and the International Monetary Fund exacted large concessions for the repayment of the debt that have not yet been fully revealed. But it became increasingly clear that events in Chiapas in the early months of the New Year were influenced if not dictated by international financial circles.

After several abortive moves toward a peaceful negotiation of the conflict in Chiapas in the last days of 1994 and the early weeks of 1995, the government reversed its line of political negotiation with the Zapatistas, ordering the Attorney General's office to issue warrants for the arrest of five leaders of what was now called a 'terrorist' operation in the Lacandon rainforest. Among them were Jorge Santiago Santiago who has work-

ed for many years in development projects for indigenous communities and Javier Elorreaga Berdegue, both of whom denied any connection with the EZLN (*Cuarto Poder*, February 11, 1995:7). Claiming to have discovered the 'real Marcos', the Attorney General carried out a bizarre 'show and tell' operation on national television, covering a photograph of the accused, Rafael Sebastián Guillén Vicente, with a ski-mask, removing it and recovering the bearded face repeatedly. An arsenal of hand arms was opportunely discovered in Vera Cruz and Mexico City to back up the accusations of a terrorist plot.

On 10th February, 1995, the government broke the year old cease-fire agreement with the Zapatista Army of National Liberation with the order for the army to advance into the Zapatista controlled area. In a vain attempt to apprehend Marcos, helicopters descended into Guadalupe Tepeyac, the headquarters for the high command of the EZLN. The official media presented the military invasion, which mobilized thousands of soldiers and helicopters, so as to appear as the apprehension of terrorist leaders including Subcomandante Marcos and leaders in the rebel high command. Few of the international reporters were impressed with the official version as they tried unsuccessfully to approach the conflict area in Guadalupe Tepeyac; a British reporter calling from Las Margaritas short wave radio broadcast from Australia indicated his contempt for the official version of what was happening.

On the 10 and 11 February two handwritten messages were sent from the jungle and picked up by Tuxtla Gutierrez newspaper *Cuarto Poder* (February 13, p. 26-27). In language that was clearly that of indigenous peoples, the Zapatista command denounced the bombardment and machine-gunning of indigenous communities and called so as to appear as the people of Mexico to detain the genocide.

*We, the 'Zapatistas', troop soldiers and civilians, have done all that is possible to withdraw our troops but now we have no*

*other option than to defend ourselves and our peoples. Thousands of civilians have been displaced, the reporters Jorge Cárdenas, Jose Luis Ruiz and Alejandro Ruiz quoted them as having written. The report went on to state, 'Brothers and sisters, the government of Ernesto Zedillo is killing us, is killing our children and is beating and raping our women'. Criticizing Ernesto Zedillo's decision to invade their territory, they asked, 'Do you think that killing the 'Zapatistas' from Chiapas or Subcomandante 'Marcos' can end this fight? No, Señor Zedillo, the Zapatista fight is in all Mexico. Zapata has not died and will live for ever'.*

They reiterated their desire for dialogue with the government and had set clear conditions for this meeting. '*... But you responded by sending more soldiers, more planes, more helicopters, tanks and further militarizing the state of Chiapas. So, how do you want us to respond? Do you want us to turn the other cheek again? To kneel down in front of you? No, Señor Zedillo, I think you know only too well that the indigenous peoples have experienced more than 4,500 years of marginalisation and exploitation by those in power like yourself. You are not going to achieve anything with us through threats'.*

To a strong denial of the official version of the attack, the Zapatistas said that army helicopters had bombed Morelia and La Garrucha as well as machine-gunning these towns. '*You say that your troops are behaving without mistreating the population, without provoking clashes with our Zapatista troops. Lies, again Señor Zedillo. We indigenous peoples are living under the pressure of the soldiers. They are bombing and machine-gunning us. They are killing our children through starvation because we cannot return to our homes to prepare what little food we have for them.'*

In the second communique sent the following day they called upon all the peoples of the world to stop the 'genocidal war'.

Subcomandante Marcos, in perhaps his last communique from the jungle on 9 February (*Cuarto Poder*, February 13,

1995:27) demonstrated the power of the movement to shake the financial world upside down:

*The Zapatista uprising is increasing the price of Mexican indigenous blood. Yesterday it was worth less than a caged bird, today it is the condition for the most ignominious loan in the history of the world. The price of the heads of the Zapatistas is the only thing which is maintaining the focus on the rise and fall of the financial markets. Señor Zedillo began the debt payment. His message is clear: to submit and kneel before the supreme government or with the backing of my accomplices in congress, I will annihilate you.*

In a final word of praise to the Zapatistas, Marcos reveals his command over language, as he excoriates the government for their attack on '*what the governors have been taught, what they did not learn in their postgraduate studies abroad and what has not yet appeared in the textbooks of those who dis-educate the children of Mexico; that is humility, the dignity of being a human being, love for one's country and history.*

Far from showing control over an increasingly chaotic situation, the government's recourse to armed intervention revealed its precipitous loss of control in a severely weakened regime. Governor Robledo Rincón was precipitously (but according to him, voluntarily) replaced on 14 February with someone more sensitive to the needs of the emerging military financial regime. Zedillo declared that the government had returned to 'normal' conditions.

What is the significance of the uprising for the world? Don Antonio's allegory of the mirror reflects the process of the

movement for peace with justice in Chiapas. The Convention and its aftermath demonstrated the potential for multicultural democracy in the economic changes affecting the nation, releasing messages that became the rallying cry for alternative economic and political programmes. Far from posing an isolation-

re that their poverty stems from marginalization of indigenous people as a group, they seek vindication of the rights gained in the 1910 revolution from which they have been excluded. They have always lived with differences, which they tolerate and in turn expect to be able to express. They are the best prepared to live in a postmodern world where multiple modes of thought and action are the most effective defense system for survival.

The messages of the Zapatistas and those who support the democratic movement resound throughout the world. The Zapatistas are like many of the cultivators and wage workers in export processing zones throughout the world, from Guatemala to East Timor, seeking democracy as they try to balance their subsistence needs with entry into cash crops or wage work in international markets. The new trade agreement has further marginalized them as their own nations have withdrawn the supports once offered by populist governments and abandoned them to the vicissitudes of free trade. They are realists in that they know they cannot return to the isolation in which they once lived, and their demands are modest. But in taking their stand, they are projecting a new vision of what democracy might be: coexistence, with their own language and customs, functioning along with others whose differences they have always respected, and entering into decisions that

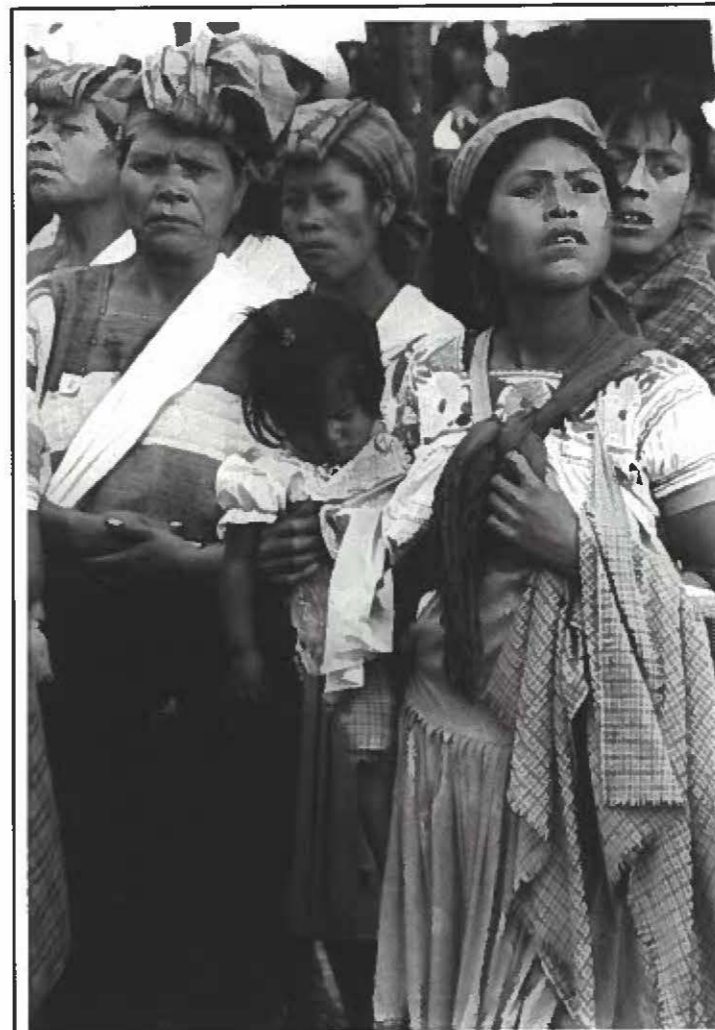


Photo: Juan Ramón Martínez León

ist, revitalization movement wherein indigenous people are enjoined to look backward for their inspiration and close the doors to international exchange, the delegates are making alliances with poor rural workers of other indigenous language groups and those who have lost distinctive cultural characteristics. Awa-

ffect their lives. They do not want to seize power for themselves, but rather to ensure democratic processes in the selection of leaders. They chose to bear arms only to draw attention to the daily violence they face in their lives, and they seek a peace that promises justice and dignity.

A hidden benefit of global integration is the opening up of local protests against growing inequalities to a global audience. This, of course, depends on a conscientious press whose reports are made available to a wide audience. It also depends upon data collection agencies inspired by human rights concerns. The conjuncture of these two conditions made the Chiapas uprising available to a wide reading public throughout the world. The press is still a more open medium than television for the dissemination of what is considered controversial news, and the world press did an extraordinary job in the early months of the uprising. So prevalent was their presence in the relatively low-paced city of San Cristobal that they were called the 'Third Army', a presence abhorred by the 'coletos auténticos' but embraced by the Zapatistas and the increasingly organized civil society which recognized that retaliation against the rebels was dependent on the world attention paid to the uprising.

If 1994 is to be assessed as the year in which free trade was embraced throughout the world, it will also be known as a time when capital markets responded negatively to those governments that allowed social discontent to reach the boiling point of uprisings. Fear of falling stock markets may yet become the most powerful force backing redistributive measures to ensure a favourable climate for investment. With Wall Street monitoring the uprising in Chiapas, the entry of EZLN forces in 38 towns on 19 December lent power to their demands for negotiating peace with the new government of Zedilla. Within 24 hours, the economic cabinet devalued the peso 15 per cent, exposing the country and the world to the weaknesses of Mexico's export oriented economy and the bankruptcy of the neo-liberal model. Without firing a shot, their mission was accomplished: as the EZLN troops withdrew like a phantasm back into the jungle they had reinforced their position as they waited for the expected resumption of negotiations. It left speculators wondering whether 'El Sub Marcos' might have had privileged information from Wall Street in order to have maximized

their position in global stock exchanges (Alfredo Jalife, 'El sub Marcos juega a la Bolsa de Valores' *La Jornada* 26 December, 1994:4).

As the depth of the economic crises was revealed, the attempt by the secretary of Hacienda, Jaime Serra Puche and others in the government to blame the EZLN for the devaluation of the peso and the collapse of the export economy was unmasked. Criticism of Salinas' neo-liberal regime increased as inside sources indicated that Zedillo urged the then President Salinas to modify the exchange rate and activate the credit lines contracted one day after the death of Luis Donaldo Colosio Murrieta (Ricardo Alemán Alemán, *La Jornada* 24 December 1994:4). The reasons Salinas failed to do so is suggested in Papantla Bishop Alamilla Arteaga's accusation that he deliberately hid the mounting crisis in order to gain entry into the World Organization of Commerce (David Aponte 'Obispo Alamilla: ficticia, la estabilidad económica del anterior sexenio', *La Jornada* 30 December 1994, p.3). As financial experts began to question the chimerical structure of Mexico's economy, the Wall Street Exchange lowered the value of the Mexican debt at a time when the prices of all the Latin American debts were being raised (James Brooke, 'La década perdida' *The New York Times* exclusive for *Cuarto Poder*, Tuxtla Gutierrez, 28 December 1994: Section C, p.24). Academic critics such as Raul Hinojosa, University of California professor of political economy and visiting scholar of the Interamerican Bank of Development, criticized the failure of NAFTA to take into account migration and the flight of capital along with commercial exchanges which were central to the agreement (*La Jornada* 30 December 1994, 1, 28). Many began to question the neo-liberal model that had led to the crisis. As a result of criticism, Salinas lost his bid to become director of the World Organization of Commerce. Yet the proposal that he become director of the Dow Jones and Co., editorial headquarters for *The Wall Street Journal*, the central organ of information for investors, suggests that his skills in simulating

a successful entry into first world status for Mexico may be marshalled to camouflage a flagging world economy at a time of increasing tension when investments might otherwise fall. After the army invasion of the territory in February, the Mexican stock market fell 38 per cent. Given the fact that the EZLN is positioned precisely where the richest oilwells are being discovered in Chiapas, Tabasco and Veracruz, their words and movements will have resounding implications for the world financial interests.

The role of the 'Fray Bartolome de Las Casas' Human Rights Commission, the citizens linked to the Convención Nacional Democrática seeking democratic paths to peace, the hunger strikers supporting Bishop Samuel Ruiz, and the international press that has brought their message to a world audience - all these fountains of hope have allowed us to imagine a New World Order with Social Justice at its core.

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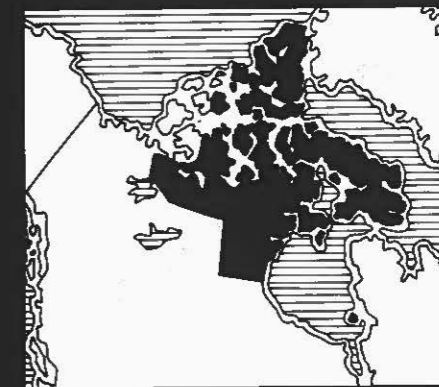
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## THIS IS OUR LAND: NUNAVUT

by Jens Dahl



Coppermine, July 9, 1993. On this day the Inuit of the Canadian Northwest Territories were able to celebrate the fulfilment of a long-awaited dream. After negotiating for 20 years they entered into a historical agreement with the federal government, which will set up a new territorial government before the turn of the century. The new self-governing territory, *Nunavut*, meaning 'our land' will be dominated by the Inuit who make up the majority of the population.

The agreement with the government also includes a land claims settlement. This settlement implies that the 18,000 Inuit will have ownership rights to 353,610 square kilometres of surface land within the Nunavut settlement area. This is equal to about 18 per cent of the entire Nunavut settlement area. Of this region, the Inuit will have subsurface rights (ownership of gas, oil and minerals) to 36,257 square kilometres. Finally, the Inuit will get royalties from oil and mineral development on all land within the settlement region.

Since time immemorial the Inuit have lived off the land. In the summer they hunt caribou throughout the vast Arctic tundra, they fish for Arctic char in the rivers and in the open sea they catch whales for their tasty meat and skin, *mattak*. In winter seals are caught from under the ice - the meat is eaten and the skins marketed or used for their own clothing.

The significance of the land to the Inuit economy and way of life is obvious to anyone who has visited their homelands in the Arctic.

The expansion of oil, gas and mineral activities had made it clear that the Inuit were in danger of completely losing control of their land, culture and destiny. Although the Inuit have never entered any agreement or surrendered any land to outsiders, they felt that to protect their land and culture they had to enter into negotiations with those who held the power. This explains why the Inuit have always opposed any land claims agreement without political guarantees.

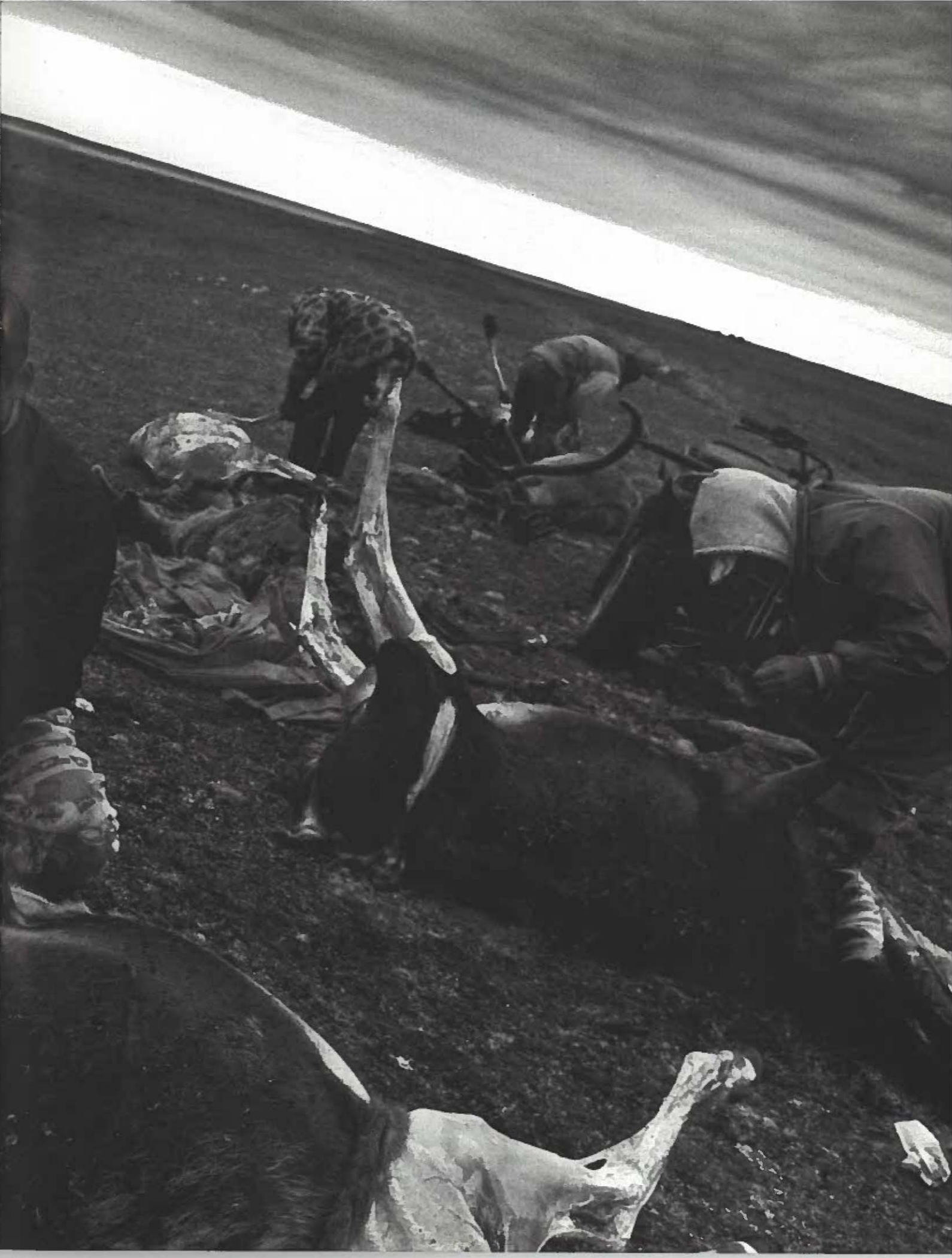
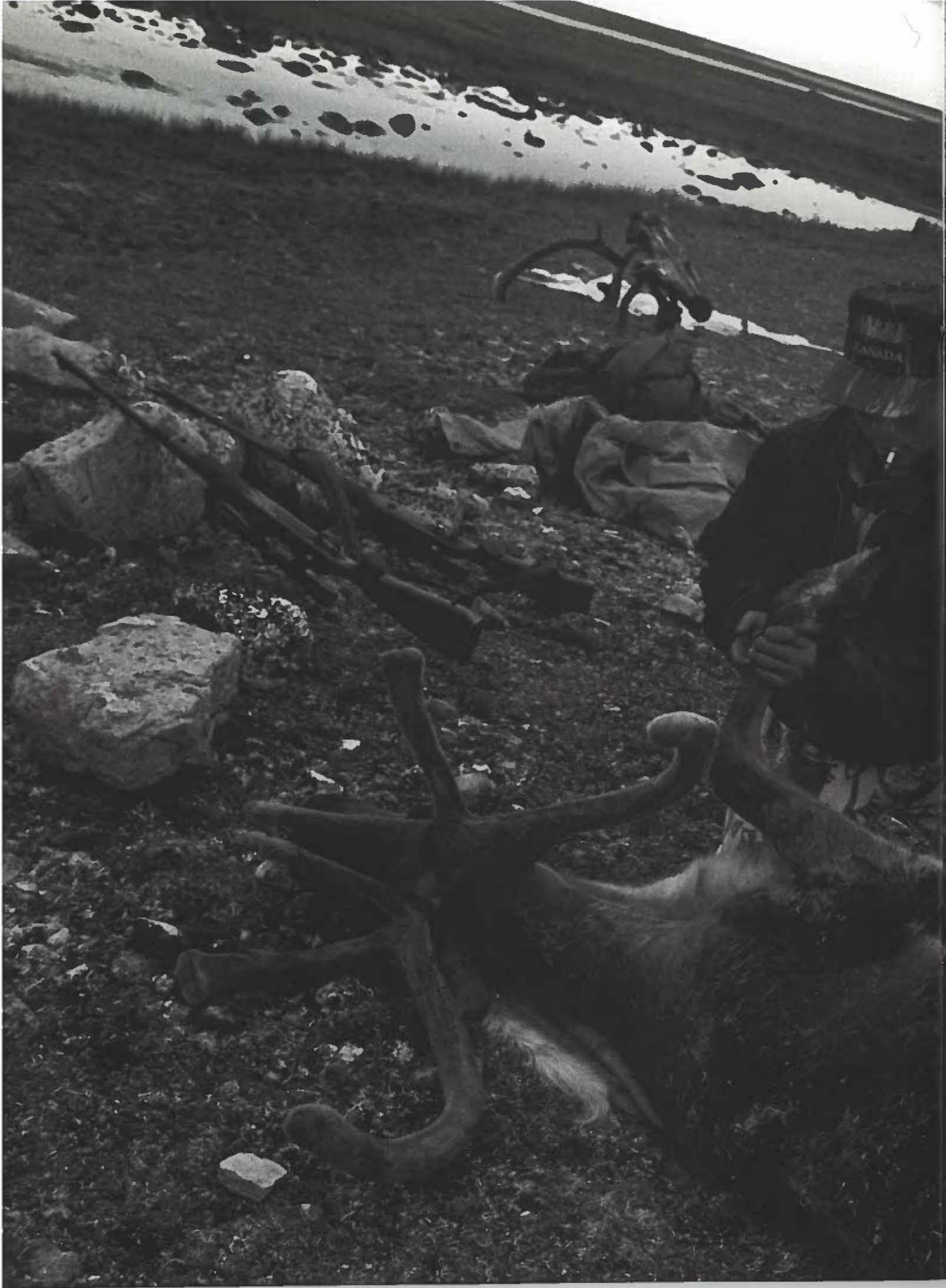
In the land claims agreement the Inuit have retained a priority right to hunt and fish within the entire Nunavut territory including offshore areas, and the Inuit will take part in the management of wildlife.

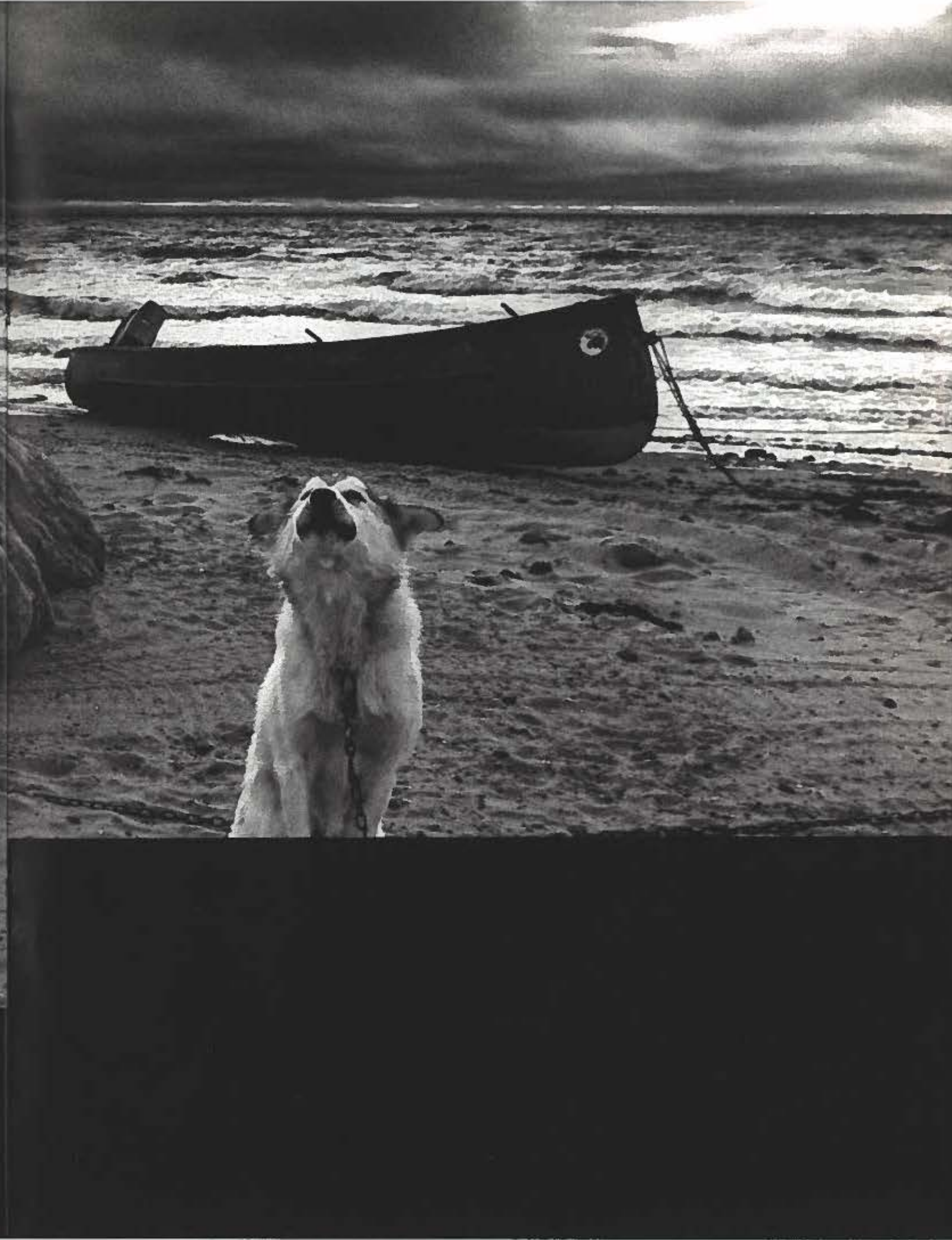
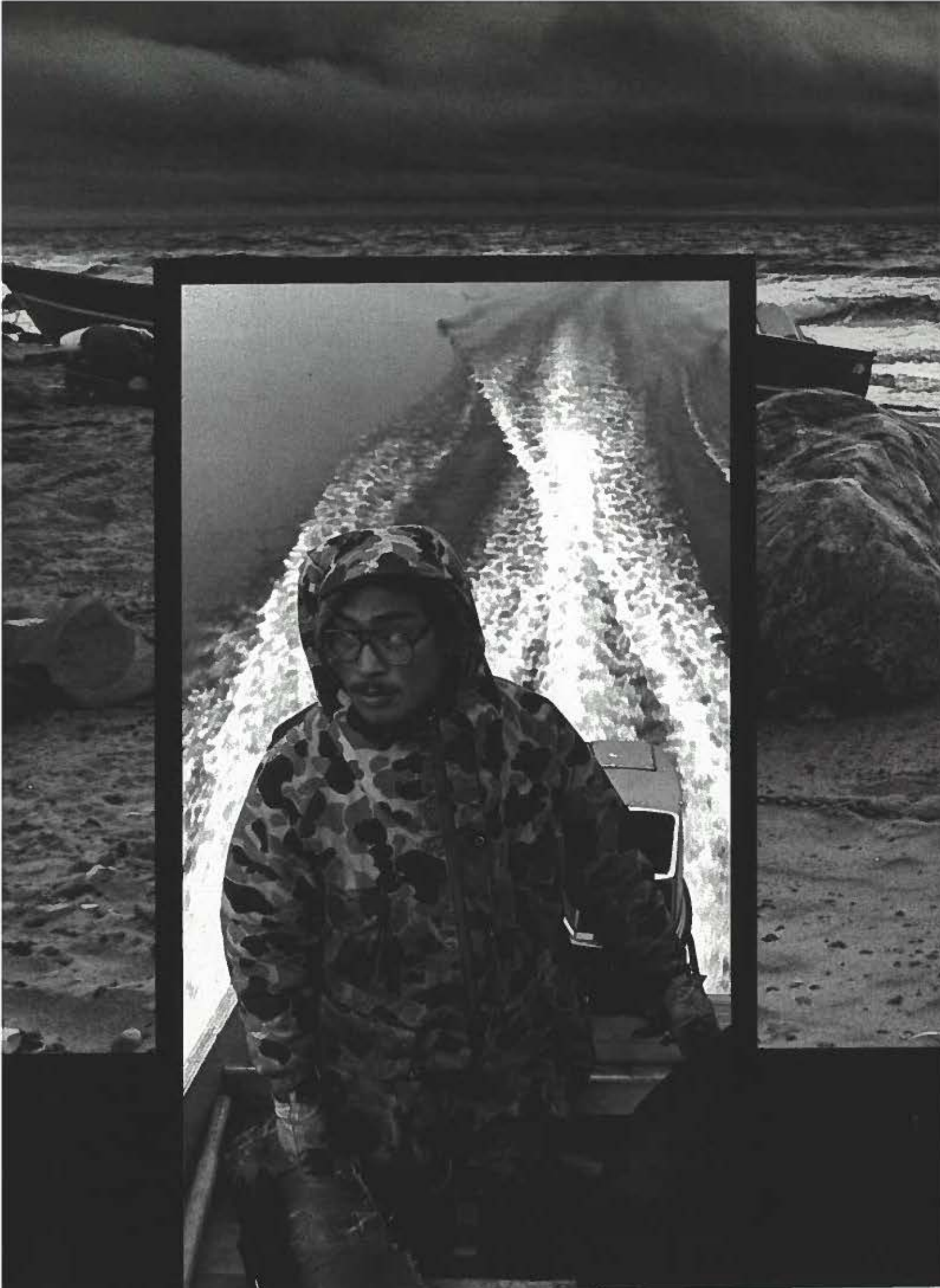
The kayak of the old days has disappeared and given way to small boats with outboard engines. In some places dog sledges are still being used for transportation during winter, but the Inuit usually travel by means of skidoos or airplanes. However, the significance of land has never changed and without the land, the whales, the seals and the caribous the Inuit culture will be in danger. □



# NUNAVUT

*photos: RUNE ERAKER*







who were directly employed by the Cooperative benefitted from the arrangement. This led to a situation of growing pressure from those who did not profit from the forestry to convert the forest for other purposes, such as cattle raising. This gave rise to conflicts and struggles for land-use within the communities and between them.

### What can be learned?

The organizational aspects distinguish forestry from the management of other natural resources in the Amazon Basin because of the large areas required. This means that it cannot be built directly on the structure of traditional farming among individual families. The long-term security of property rights, which is a condition for proper management, is practised among indigenous peoples through community land titling. This means that some kind of communal arrangements have to be set up in forestry projects, which are not part of the traditional utilization of natural resources. Therefore:

1. As the case of the Yanasha Forestry Cooperative shows, forestry projects have to start out on a small scale. Huge vertically integrated enterprises are not feasible in indigenous societies, which are not familiar with the exterior market or the administration of large projects.

2. To compete with cheap timber from non-sustainable logging practises some kind of donor support will be necessary. The support must be part of a long-term agreement and has to be carefully adjusted to needs. Too much funding will hinder the adaptation of the project to normal market conditions.

3. Indigenous peoples are capable of carrying out natural forest management and very rapidly understand the technical issues of forestry, but thorough input is needed in administration and marketing training.

4. The participatory process is fundamental to ensure that neither land-use nor time consumption in forestry activities will conflict with slash-and-burn agriculture or other subsistence activities. This implies that communities must have sufficient farming land at their disposal.



Photo: Soren Gram - Jakob Klint

Forestry has the potential not to be in conflict with traditional gathering activities and can be practised in areas that are not suitable for slash-and-burn farming.

5. The profit from forestry on communal land must benefit the whole community and must be distributed in a way that will neither start a process of economic and social differentiation nor be in conflict with traditional redistribution in the indigenous communities. If some people do not benefit, conflicts will arise.

6. Autonomy is a key factor for the survival of indigenous societies, and participants in forestry must not become

economically dependent on the project. If they do and the project fails, they will be forced into a more intensive and accelerated rate of harvesting that will ruin the ecological sustainability of the forestry.

7. Proximity to the market and a well developed infrastructure are crucial for commercial forestry projects. Investments in infrastructure in remote indigenous communities should only be made as part of natural resource management plans, otherwise it could lead to uncontrolled and illegal timber cutting.

Forestry among indigenous peoples can make them independent of patrons (big



landowners) and illegal coca production. But one has to keep in mind that, up to now, nearly all attempts to manage tropical rainforests for timber production have failed. However, with thorough planning and long-term efforts it could be a viable strategy for an autonomous development among indigenous peoples and for the protection of the natural tropical rainforest.

### Epilogue

Today the Yanasha Forestry Cooperative is in a process of falling apart. Future action and support in the upper Palcazu Valley is necessary to prevent social and ecological collapse. The Yanasha have

shown a strong will to protect their forest and wish to continue forestry activities. The Valley is relatively free of terrorist activity and has the best conditions for a development effort. Due to the poor soil fertility, forestry is the most ecologically sound development activity in the Valley.

The Palcazu Valley represents an area of extreme biological diversity situated at the junction of the Amazon Basin and the Andes Range and, unique in this case, 75 per cent of the lower valley still retains its primary forest cover.

But until now all the aid agencies and development workers involved in the Yanasha Forestry Cooperative have bur-

ied their heads in the sand. What we see are only project proposals concerning forest technical research in the Valley. What is needed is not more foresters and biologists counting trees in the Yanasha communities. Support to and cooperation with the Yanasha to adjust the forestry project in relation to the sociocultural realities in the Valley is much more urgent.

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*This article is based upon: 'Forestry among indigenous people in natural rain forests - a case study from Peru' by Soren Gram and Jakob Klint. CASA, Copenhagen 1994. The report is available from Centre for Alternative Social Analysis, Linnesgade 25, DK 1361 Copenhagen K. Denmark. Fax: +45 3333 0554.*

*Soren Gram is a sociologist and researcher at the Unit of Forestry, The Royal Veterinary and Agricultural University, Copenhagen.*

*Jakob Klint is a geographer and consultant at the Centre for Alternative Social Analysis, Copenhagen.* □

The Peruvian Constitution recognises the pluricultural and multi-lingual nature of the country. However, in practice, we indigenous peoples have found that the state is racist and discriminatory towards the indigenous Amazon peoples. For example, we have experienced the way in which the state neither guarantees nor helps to save the cultures and ancestral territories of the more than 63 indigenous peoples living in the Peruvian Amazon. The state defends certain interests but not those of the indigenous peoples although we are also Peruvian, and it ought to recognise our ethnic identities, value our cultures and recognise our ancestral territories as protected areas. Then we could pass on our ancestral knowledge to our children and contribute

Faced with the immediate threat of the disappearance of indigenous cultures, we Harakmbut have made a start towards the recovery of our ancestral knowledge so that it can then be passed on to future generations. Not all is lost. Because of external pressure, our knowledge has remained hidden and protected for many years by our elders. When the elders die it will be very difficult to recuperate the culture but we still have elders who are teaching their knowledge to the children. Now is the time to safeguard this knowledge.

The Harakmbut people are made up of subgroups: Arakmbut (or Amarakari), Arasaeri, Wachipaeri, Sapiteri, Pukirieri, Kisambaeri and Toyeri. We comprise nine communities situated near the

the western world, we had a population of approximately 30,000 persons who lived without endangering the environment. Today we are only 1,500. When we were contacted in 1940, a huge assault was made against our lives and our culture at a time when we were defenceless against contagious diseases from the western world. Then the evils of western society began to penetrate, breaking down our authentic Harakmbut culture and bringing about a process of change which has condemned it to the uncertain road of disappearance.

The Arakmbut are the most recently contacted of the Harakmbut through the work of a group of Catholic Dominican missionaries in the 1950s. This was the beginning of the pressures from western

nae, a fact which has accelerated the loss of culture and indigenous identity.

#### Recovering Harakmbut culture

In the course of no more than twenty years our culture and ancestral territory could disappear, and that is a real threat to our survival. Therefore we are proposing an alternative solution to the problems which are having such a negative impact on our culture. First of all, the Arakmbut are working to stop the disappearance of our culture by revaluing and also using our language and ancestral customs. Later, other Harakmbut subgroups will do the same.

The leaders, curers and the young Arakmbut have decided to defend our culture because we know it is being threatened by

pleted our studies we will return to our communities. Then we will hold a meeting in order to explain the social, cultural, political and economic problems which exist in the cities so that our young people will not believe that living in a city is better than living in an ancestral community. We are aware of some of the problems which indigenous youth experience with the introduction of western vices such as smoking, alcohol abuse, drug abuse and prostitution.

Nevertheless, we do not want to force any young people who do not support our initiative. On the contrary, what we want is that they themselves realise the importance of their own distinctive culture. For us, there are no 'civilised' cultures and no 'backward' cultures, but

ADEIMAD, which brings together students in higher education in Lima, secondary school students and our communities. We are not cut off from our communities. We belong to and have support from our indigenous regional federation, FENAMAD (Federation of Natives of the Madre de Dios), and are affiliated to our national organisation, the Inter-ethnic Association for the Defence of the Peruvian Rainforest, AIDSESP. We also have the support of the international agencies such as IWGIA. With this support and the alliance between Harakmbut youths and elders we will strengthen our ancestral culture.

The Harakmbut indigenous university students are taking part in a Harakmbut Cultural Revitalisation project which is using videos, cameras and tape recorders to gather information about our oral tradition. We have now accumulated a large number of recordings of oral traditions, some of which we have begun to transcribe. Our culture does not have a writing system but with the help of the elders and linguists we are working out orthographic rules so that we can then decide upon an alphabet with young and old Harakmbut together. Generally, in each Harakmbut community young people participate together with the elders who are the source of knowledge. For this reason it is essential that we work with the elders on the ceremonies, rites, myths, legends, history, etc. The Harakmbut elders pass on their knowledge and give theoretical and practical instruction in the Harakmbut culture but this takes place not in the house but in the gardens, in the forest and by the river.

We are working together to produce educational bilingual booklets in Harakmbut-Spanish which will serve as primers for school children. We students studying in Lima know that the different private and public universities carry out almost no research into indigenous Amazon peoples. Therefore, we have decided to carry out research in our vacation periods. At different times we travel to our communities with research equipment. There we explain in great detail to those at school, as well as those who have completed neither primary nor secondary schooling, about the importance of recovering our culture, and we also

# PERU

## The Harakmbut People Reclaim their Traditional Culture

by Héctor Sueyo

to modern medicine with our understanding of medicinal plants and our management of the flora and fauna. In spite of the politicians' apparent goodwill, in practice their actions towards us are destructive and domineering and there can never be 'development' among peoples who have lost their culture.

ivers Madre de Dios, Inambari and Colorado in the southeastern Peruvian Amazon. Our territory lies in this region of rainforest which today corresponds to the Department of Madre de Dios. Our language is Harakmbut'Ate with various dialects which correspond to the different subgroups. Before contact with

society: rubber tappers, the Summer Institute of Linguistics and the Swiss Evangelical Mission, traders in pelts, timber extractors, oil companies with their seismic explorations, mining companies and traders. In some Arakmbut communities television has recently appeared facilitated by parabolic anten-

western culture and we want to revalue it as fast as possible. We know that if our youth are not educated in the Arakmbut language they will forget not only their language but some of their customs. We young people agree that we must fight to save our culture and that is the first step. Once we students have successfully com-

simply all cultures are different and the members of each have their own way of life. Consequently, we Harakmbut know that there is nothing more important for us than our rivers, our ancestral territory, our culture and our way of being.

We indigenous Harakmbut university students are members of an association,





Boca Inambari, 1994.  
Photo: Pablo Lasansky

inform them and the elders about the progress we are making in our university studies:

*While our Harakmbut culture continues to exist, we will continue to exist without endangering the ecology. In this way the Harakmbut will be able to breathe the air which is sweet with the fragrance of forest flowers because this air gave our great grandfathers their first breath of life and their last sigh.*

We indigenous Amazon peoples are experiencing rapid change in the context of a long history of economic exploitation and cultural domination. It is quite wrong for non-indigenous peoples to think that we indigenous peoples are 'poor things', 'ignorant' or 'lazy' - concepts, terms and attitudes which we believe are false. Scientists see us as objects of study from which they can later acquire prestige and, in some cases, for-

tunes. Western religious missionaries see us as 'poor pagans' who should be converted or 'civilised'. Governments, which have always represented imperialist interests, and transnationals see us as indicators of 'backwardness' and under-development. In practice, western society wants to assimilate the indigenous peoples into the market economy as a source of cheap labour. They do not understand that we have our own ways of life, politics, religion, education, health, etc. and moreover, we have our own ways of using the floral and faunal resources which have endured for many years and through which we have conserved the ecosystem of the Peruvian Amazon. Today in areas where there is massive colonization, that ecosystem is uncontrollably deforested which is destroying our entire cultures.

What we are doing is just a beginning and we would like to have contact with

other indigenous youth who are working with their people to save their culture. We want to share our experiences and collaborate with other indigenous peoples.

Please write to us at the following address:  
Association of Indigenous Students of Madre de Dios (ADEIMAD)  
Jr. Carlos Arrieta #844  
Urbana Santa Beatriz  
Lima 1, PERU.

*Hector Sueyo belongs to the Arakmbut (or Amarakaeri) subgroup of the Harakmbut peoples. He is nearing the end of a degree in Sociology at the Inca Garcilaso de la Vega University in Lima.* □

## "...NEVER DRINK FROM THE SAME CUP"

### Proceedings of the Conference on Indigenous Peoples in Africa.

Tune, Denmark - June 1-3, 1993

editors:

Hanne Veber - Jens Dahl - Fiona Wilson - Espen Wæhle

### Book Review

***The Last Stronghold*** by Bob Yetter, Badger-Two Medicine.

This booklet about the sacred land of the grizzly, the wolf and the Blackfeet Indians (Picuni) gives a short but informative review of the history of the Glacier National Park Ecosystem in Montana, USA. This is one of the last wildernesses in Northern America. It has not only importance for the survival of many rare plants and animals, but also for the cultural and religious lives of the Blackfeet-speaking community. The Badger-Two Medicine area has for them the same importance as Mount Sinai for the Christian world. But now, Badger-Two Medicine is threatened with plans for oil drilling by the Belgian firm, Petrofina, although the chance of a significant discovery in this area is estimated to be about 0.42 per cent. The Blackfeet Brave Dog Society is led by Chief Floyd Heavy Runner, whose great-grandfather was murdered together with another 170 Blackfeet in 1870 by the US cavalry. The Society is fighting together with environmental organisations against the plans by the US government and Petrofina which want to set a precedent in order to exploit Alaska's oil and gas resources in the future.

The booklet also provides a short review of the history of the Picuni, significant treaties and agreements between them and the US government and contact addresses.

***The Last Stronghold*** can be ordered from: Martin Briese, Elsgrabenweg 12, D-13597 Berlin, Germany and costs US\$ 5.

# PARAGUAY

## The Indigenous Peoples Denial of their Land Rights

Over the last hundred year there has been what amounts to ethnocide taking place in the Paraguayan Chaco which has gone almost unnoticed by the rest of the world. The indigenous peoples of the area have been completely stripped of their land, thousands have died as a result of contact with diseases previously unknown and they have been transformed into a source of cheap labour in conditions of semi-slavery.

In 1967, Paraguay ratified ILO Convention 107 which recognises the right of indigenous peoples to the lands which they traditionally occupied. In 1981, the state passed the Indigenous Communities Statute which established a channel through which indigenous peoples could claim their lands. The 1992 Constitution formally recognised: *the right of indigenous peoples to preserve and develop their ethnic identity in respect of their habitat and that they have the right to communal ownership of land, in sufficient quantity and quality for the conservation and development of their particular forms of life.* The Paraguayan state is committed to providing these lands. In 1993, Paraguay also ratified ILO Convention 169 which reinforced those rights already established.

This is an impressive but essentially empty legislative array because the ethnocide of the indigenous peoples of the Chaco continues its relentless course. The Paraguayan state has done almost nothing to help the indigenous peoples claim their rights. In fact, in the last few years, its only policy in support of the indigenous Chaco peoples has been the distribution of some provisions to the most accessible communities.

However, this food did not even come from the state's own resources but was donated by the United Nations.

Although the Paraguayan state recognises in its legislation that the fundamental problem facing indigenous peoples is lack of access to their traditional lands, in practice it has done nothing to remedy this situation. Almost all the lands secured by the indigenous peoples have been through private funds, mostly from European agencies, but this increase in indigenous held lands is extremely small when compared with their real needs. Almost all the indigenous settlements (known as colonies) in the Chaco are overpopulated. It is estimated that the land areas for indigenous peoples should be calculated on the basis of 200 hectares per family<sup>1</sup>. However, it is common to find colonies with only 15 to 20 hectares per family. The result is that the majority of those indigenous peoples who live in the colonies have to spend much of the year looking for work on farms and cattle ranches in the area. They are the most exploited sector of the population in terms of their labour and their very low wages are reflected in their poor levels of nutrition. Diseases associated with malnutrition, such as tuberculosis, continue to affect indigenous communities to a much greater degree than other sectors of the population. In fact, it would be more accurate to consider the colonies as 'work camps' to which the indigenous peoples return when they are unemployed.

Some of the indigenous peoples are reacting against this ethnocide and demanding their rights. The most prominent group are the Enxet, who are the most numerous indigenous people in the Chaco. They comprise more than 16,000 persons<sup>2</sup> and they are divided into five groups: Lengua, Sanapaná, Angaité, Toba-Maskoy and Guaná who live in the

## of the Paraguayan Chaco and the

by Stephen W. Kidd

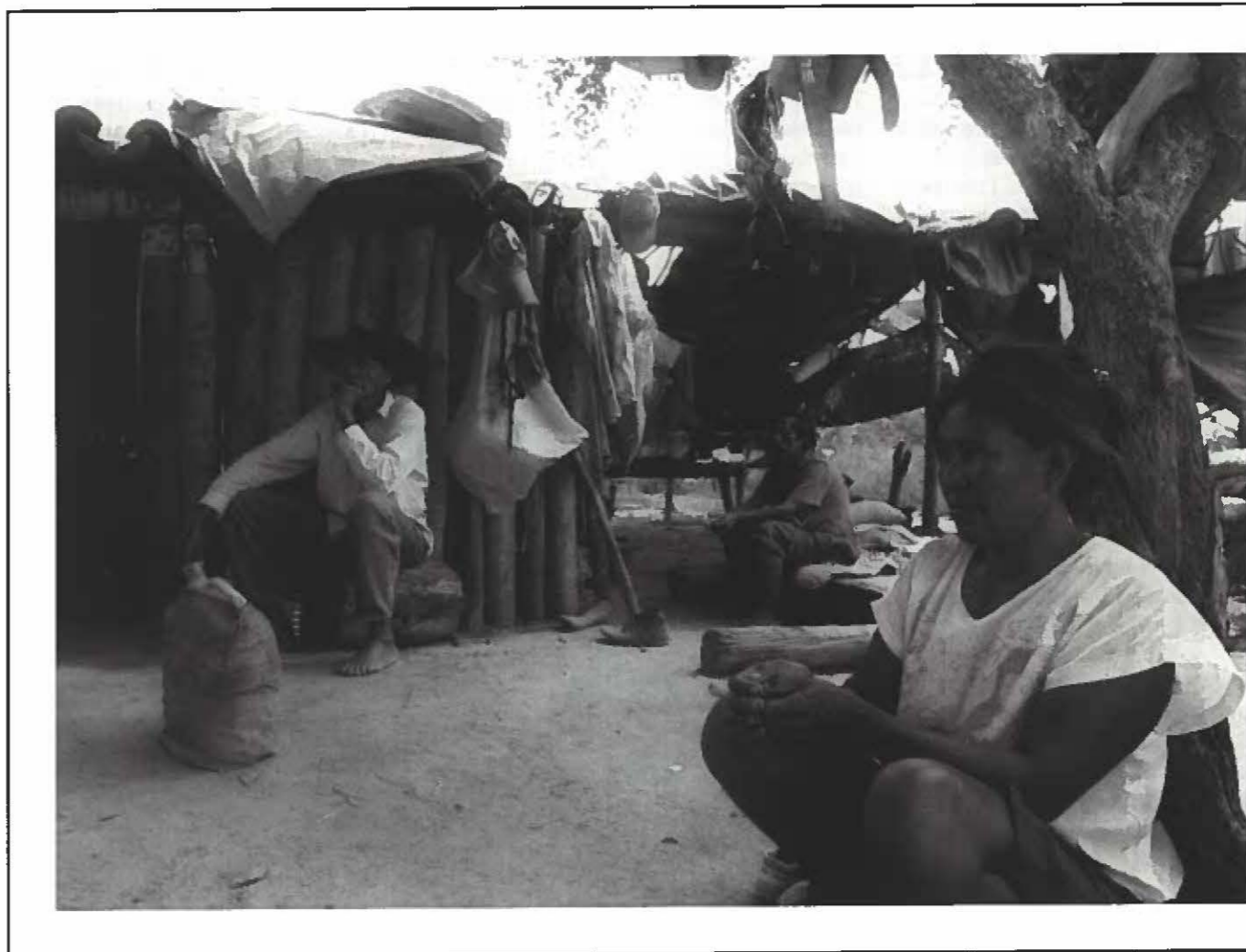


Photo: Alejandro Parellada

Lower and Central Chaco. Since 1990, some 4,000 people from 14 communities have been demanding the legal recognition of 163,000 hectares of their traditional territory<sup>3</sup>, but the national government has not legalised one square metre of it. Worse still, the landlords whose lands are being claimed are making a strong defence of their property and the government is not providing the communities with the support they need against them. Faced with the inaction of the Executive Power, the indigenous

peoples have turned to tribunals to find effective protection. However, in spite of strong support in the national legislation, their claims have been rebuffed and the communities left unprotected, which is not only difficult to understand but questions the competency of some of the judgements. The following examples, Quebrachales Puerto Colón and Sawhoyamaxa, illustrate the difficulties which face the indigenous peoples of the Chaco.

### Quebrachales Puerto Colón

It is doubtful that there can be another landlord in the Chaco who has had more spectacular success in defending itself than Quebrachales Puerto Colón S.A. This company owned a typical estate which comprised more than 300,000 hectares in 1991. For several years, the Enxet indigenous to the area, some 450 families, had been claiming 60,000 hectares and it seemed that Quebrachales Puerto Colón S.A. would lose the case. How could they retain such an immense



area, moreover, when the indigenous peoples were demanding only 20 per cent of its unused land? But no one had expected the fraudulent manipulation, lies and utter bad faith of the Spanish owner, Javier Solé and his lawyers Hermes Rafael Saguier<sup>4</sup> and Felino Amarilla. What happened is as follows:

Quebrachales Puerto Colón S.A. began the defense of its land feigning openness and a good disposition. In November 1992, in a letter to the Institute for Rural Welfare<sup>5</sup> (IBR), the lawyers Saguier and Amarilla declared that: *the company desired to find a solution to the claim which satisfies both parties without prejudice to either of them...* This statement was blatantly untrue because the company had already begun a massive sale of its land. Between September 1991 and December 1994 it sold 265,000 hectares, including all the lands claimed by the indigenous peoples. The little land that remained, some 40,000 hectares, was of no interest to the indigenous peoples but, for Solé, this cunning piece of business was financially very profitable. It meant he could extract himself from a disagreeable problem and shift the responsibility to the buyers, many of whom did not even suspect that they were buying lands in conflict with an indigenous people.

The only defense which the indigenous peoples have against such sales is Law 43/89 which allows them to ask for legal measures to be taken to prohibit any new land sales and the inscription of titles in the General Directorate for Public Records. Moreover, it protects potential buyers in that it advises them that they are buying disputed land and that, furthermore, they cannot be cheated so easily. Unfortunately, even though this indigenous land claim was totally justified and they had a court order in their favour, the Quebrachales Puerto Colón lawyer used unethical means to hoodwink the buyers.

On two occasions, the lawyer, Amarillo, lied to the judge. When several communities obtained a court order to block any new land sales by Quebrachales Puerto Colón in March 1993, Amarilla declared to the judge that the company only owned some 27,468 hectares and that there was no indigenous com-

munity on that property. In fact, the company still owned more than 140,000 hectares on which there were four indigenous communities. Surprisingly, the judge accepted Amarilla's argument and annulled the court order.

In February 1994, another court order was placed on one of Quebrachales Puerto Colón's subsidiaries, Victor Brusquetti's Laguna Misión S.R.. Amarilla asked for the removal of the order, arguing that it had been requested for too large an area. He cited Article 3 of the 43/89 Law, supposedly to demonstrate that the court order be restricted to only 100 hectares per family for nine families. Consequently, Judge Oscar Rodriguez

Kennedy reduced the court order to only 900 hectares. This was a serious mistake on the part of the judge because the Article cited by Amarilla referred to a *minimum* of 100 hectares per family, a point which the lawyer had intentionally omitted. Moreover, the President of INDI, Valentín Gamarra, had already informed the judge that there were 40 families on this area.

In another case, during February 1994, another court order was granted against Quebrachales Puerto Colón. Although Amarillo said that the company still owned 135,921 hectares - a substantial increase on their previous claim - he managed to persuade Judge Juan Ramon

Bueno Jara to remove the court order on most of the estate, and leave it in place for only 14,000 hectares which the indigenous peoples were not claiming. Amarillo's action had the effect of totally undermining the court order.

This demonstrates the difficulties an indigenous community has in securing a court order against land sales. And, even when granted, it is very difficult to implement. The case of Pelayo and Jorge Abente is very illustrative. After an indigenous application, they bought a piece of land around Laguna Pato in 1992 from Quebrachales Puerto Colón which has been totally abandoned and was perfect for an indigenous settlement. Al-

though the indigenous peoples had put in a claim, the Abentes began to build an estate in the area, to deforest it and construct fencing and roads. They were trying to demonstrate the land's supposed 'rational' exploitation potential so that it could not be expropriated. In February 1994, an expert from the General Fiscal Office went to look and attested that the Abentes were in contempt of the court order. However, the Abentes continued their work, the judiciary took no action, and the indigenous communities were left totally defenceless.

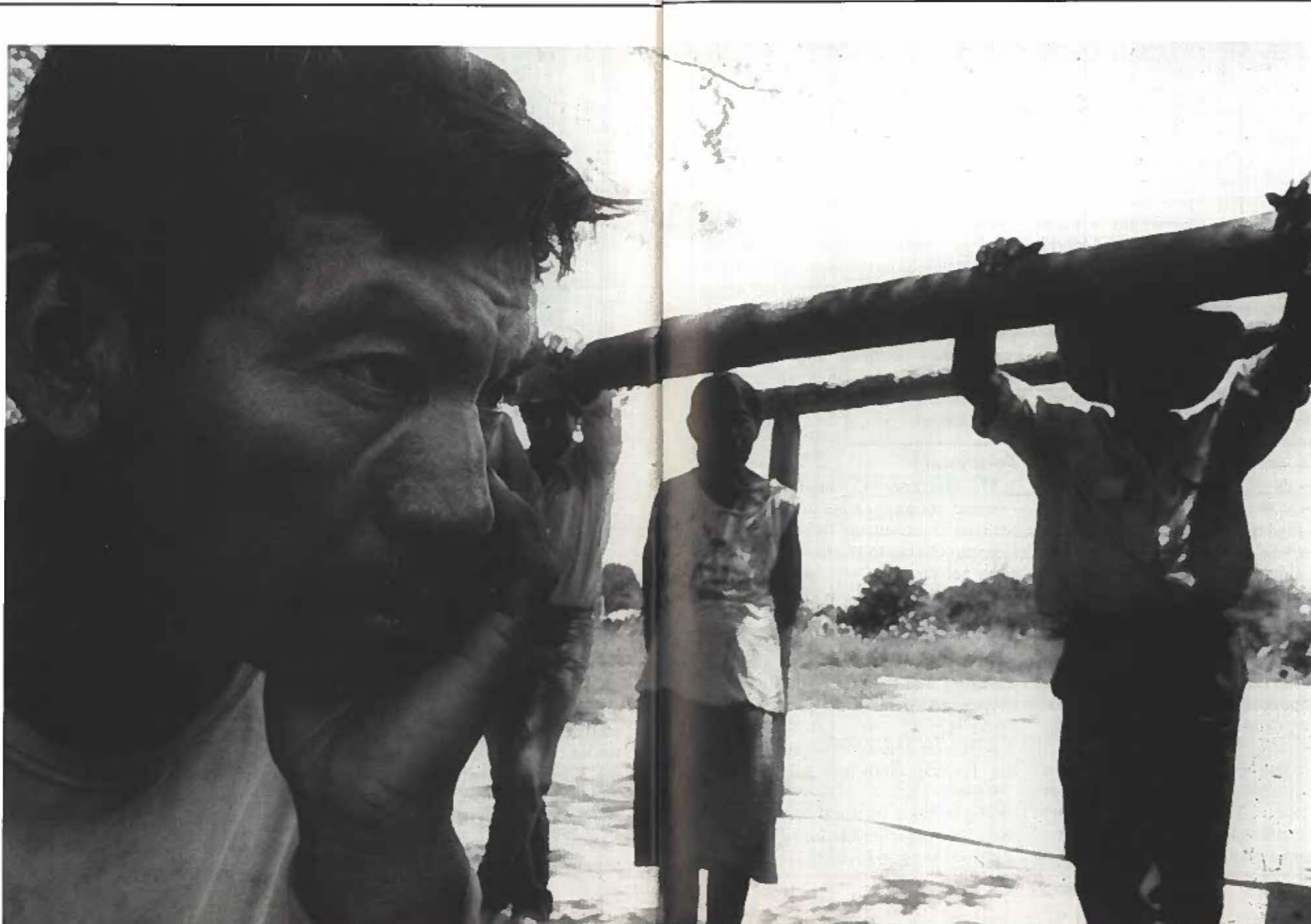
The argument for 'rational exploitation' is not valid with respect to indigenous lands. Their rights are prior to the

formation of the state and rationally exploited land should also be expropriated in favour of an indigenous community. Nevertheless, many people in government continue to show little willingness to expropriate these supposedly productive lands. Their attitude encourages the landowners to deforest and pillage the indigenous habitat and aggravate an already complicated conflict.

The attitude and action taken by Quebrachales Puerto Colón also sowed the seeds of conflict between the indigenous peoples and local farmers. The company managed to convince the government to exchange a cold-storage plant in Asuncion for 20,000 hectares of their land whose real value was less than the refrigeration plant. It is difficult to understand why the government did not use this opportunity to resolve partially the indigenous land claim. In fact, it handed the land over to peasants who were living along the Trans-Chaco road and whose nearest settlement was some 70 km away. The indigenous peoples protested and managed to suspend a donation of US\$ 2 million from the Italian government which was to be used for settling the peasants. For a while this took attention away from the real conflict and moreover, it overlooked the fact that many of these peasants were opposed to being relocated to Quebrachales Puerto Colón.

The other tactic used by Quebrachales Puerto Colón S.A. and some of the new landlords is well known in the Chaco: pressuring indigenous peoples into leaving their property. According to the indigenous peoples they have suffered from the following violations of human rights: houses burned on the land of Victor Brusquetti; a leader violently attacked; others threatened with death; a tractor ploughed the land to within a metre around their houses as if they were living in a corral; hunting permission refused; the destruction of the only garden in the community of Los Lapachos by the administrator who pulled down the fencing and let his cattle in; refusal to have their domestic animals near their houses with the resulting danger of losing them; and *macateros* refused entry to the communities making it difficult to sell their products and buy provisions. Some indig-

Photo: Alejandro Parellada



enous people have succumbed to these pressures and have escaped to other communities. Nevertheless, it is impressive how many have remained and denounced these violations while state protection has been minimal.

Continuing their underhand tactics, Quebrachales Puerto Colón has managed to disentangle itself completely from the land issue. On the small area of land which they still own there is not one single territorial claim by the Enxet, instead their claims are for land held by others in small properties. The Enxet have not withdrawn their claims but it will now be much more difficult for them to succeed.

### Sawhoyamaxa

Sawhoyamaxa is a community of 86 families who live spread over estates near the River Paraguay. They are claiming 15,000 hectares of the Loma Pora estate which belongs to a German, Heribert Rodel, an ex-swindler who has spent three years in prison in his homeland. Loma Pora is an huge estate covering some 61,000 hectares and is only one of several estates which Rodel owns in Paraguay. When the indigenous peoples first made a claim for this area, Rodel defended it by saying that he intended to preserve it as an ecological reserve. When he realised that this argument would not help him, he decided to deforest the claimed area to make it useless for the indigenous peoples. In December 1993, the indigenous peoples responded by invoking Law 43/89 and taking out a court order to prohibit the sale of the land. Nevertheless, the judge delayed authorising the court order and Rodel sold most of the estate land to his mother who, in turn, transferred it to various recently created companies in Uruguay in which Rodel had stakes. When the judge finally approved the court order it did not cover the new properties but only part of the original property which had not been 'sold' and for which the indigenous peoples did not have a claim.

Consequently, the Sawhoyamaxa community had to ask for another court order which they only acquired after six months, by which time intensive deforestation had totally destroyed a total of 1,250 hectares. The implementation of the court order also turned out to be

very problematic. Rodel did not want to respect it and only when the case attracted television and press coverage was he forced to stop the destruction. However, he continued with other changes in the area - such as the construction of fences and roads - and in spite of being clearly in breach of the law, the Paraguayan judiciary took no action against him.

Rodel also decided to take various measures to frighten the indigenous people who were claiming their lands. He contracted a French mercenary and put him in charge of the estate. Several non-indigenous employees at Loma Pora were frightened and told the national press that Rodel was threatening to kill the journalist who had published the news of the deforestation and that they had been offered US\$ 2,000 each if they also would kill him. The indigenous community heard that they would be attacked if they entered the land they were claiming and in October 1994 one indigenous person received a death threat from one of Rodel's employees. They were also told that if indigenous representatives tried to enter the estate they would be fired upon. All this was denounced in the courts yet no action was taken against Rodel.

### A blind government

Quebrachales Puerto Colón and Sawhoyamaxa are only two examples of what is happening with the Enxet territorial claims. The landlords are successfully defending their lands because of their almost total support from a government which is completely blind to the rights and needs of the indigenous peoples. Moreover, the action taken by some sectors of the legal justice system has been lamentable. What possibilities are there for the indigenous peoples when the judges do not know the laws or do not read the legal papers, and moreover, let themselves be manipulated by lawyers of the rich and powerful while they neglect the interests of the most marginalised sector of the population, a sector which the National Constitution particularly protects?

The government continues to allow the indigenous peoples to be a source of cheap labour. The 1995 national budget barely contemplated funding for resolving indigenous territorial claims, although

the budget for buying lands increased compared with previous years, almost all of the money is destined to pay debts contracted in previous years. This will leave only enough money to acquire some 10,000 hectares which has to be shared among all the indigenous peoples of Paraguay.

Nevertheless, the indigenous peoples continue their struggle and are seeking international support in order to put pressure on the Paraguayan government. In 1994, they persuaded the European Union, which was planning to fund a project for the 'Sustainable Development of the Paraguay Chaco', to earmark some US\$ 17 million for legal settlements in favour of the Enxet people. Paraguay has one year in which to find a solution or it loses the money. This is the second project which the Enxet have managed to have suspended; in 1992 the Italian government decided not to offer US\$ 2 million.

The Enxet want the Paraguayan government to realise that it is in its own interest to resolve the Enxet land claims. The compensation which it will have to pay the landowners is small in comparison with the international funding which Paraguay could lose if it does not take the indigenous problem seriously. Paraguay ratified ILO Convention 169 and is committed to recognising indigenous property rights to the lands which they have traditionally occupied; and it certainly ought not to complain if the international community asks it to honour this commitment.

### Footnotes:

1. The Indigenous Communities Statute - passed during the time of the dictator, Stroessner - stipulated that land calculations should be on the basis of 100 hectares per family.

2. The 1981 indigenous census gives a population of 13,638.

3. For more information on Enxet land claims see S. Kidd (1994 'The Enxet of Paraguay and their Struggle to Regain their Land' in *Indigenous Affairs* No.1 pp.36-44.

4. Saguier is a member of parliament of the Radical Authentic Liberal Party (PLRA).

5. The Institute of Rural Welfare is the state organ responsible for resolving indigenous territorial claims. □

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# Conference on EAST TIMOR

## in Iserlohn

More than 100 persons gathered in the German town of Iserlohn, near Dortmund, during the weekend of 30 September - 2 October, 1994, for an international conference on East Timor, the former Portuguese colony that was invaded by Indonesia in December 1975.

The conference was organized by the Evangelical Academy of Iserlohn, the Protestant (Lutheran) Church in Germany. The title was «The European Responsibility for East Timor: An Example of the Colonial Past». The delegates came from all over the world: The United States, Australia, Europe and Asia, including East Timor and Indonesia.

The response was overwhelming. The organisers had expected some 50 persons, but twice as many wanted to attend. Fifteen persons had to be housed in a nearby village, and the last applications had to be rejected.

Antonio Barbedo de Magalhaes, professor at Porto University (Portugal), opened the conference Friday evening. He gave a special welcome to the delegates who had come from Indonesia. Their support was crucial, he said, because there will be no change in East Timor, until there is a change in Jakarta.

Klemens Ludwig, of the German-based Society for Endangered Peoples, presented four parallel cases to East Timor: (1) China's invasion of Tibet, (2) Turkey's invasion of Cyprus, (3) Morocco's invasion of the Western Sahara, and (4) Ethiopia's invasion of Eritrea. The last case gives some ground for optimism, because recently Ethiopia recognized Eritrea's right to independence. But Ethiopia did not stop its illegal war, until there was a new government in Addis Ababa.

Roger S. Clark, professor at Rutgers University (USA), was Saturday's first speaker. He said the right to self-determination does not expire even though it is violated for many years. As examples, he mentioned Namibia, for many years occupied by South Africa, and the Baltic states, (Estonia, Latvia, and Lithuania), for many years occupied by the Soviet Union. José Amorim Dias, a member of East Timor's resistance movement (CNRM), said that Indonesian soldiers still imprison East Timorese and expose them to torture. Amorim has been living in exile since 1992.

### Ecological destruction

George Aditjondro, a former journalist at the weekly *Tempo* and now a scholar at the Saya Wacana University (Indonesia), talked about the ecological destruction of East Timor as a result of a massive logging of sandal trees.

He also talked about the economic exploitation of the country. Indonesian military officers establish companies which invest in East Timor from where they expand back into Indonesia and further to Christmas Island (ruled by Australia).

Aditjondro's statement is significant because it comes from a Indonesian. Few Indonesians dare criticize Jakarta: it can be hazardous to your health.

Renato Constantino, of the Philippines, talked about APCET, the Asia Pacific Conference on East Timor, held in Manila, 30 May - 4 June 4, 1994. Constantino was chairman of this conference which the Indonesian president Suharto tried to have cancelled. He did not succeed. On the contrary. East Timor was more discussed than ever and the Philip-

pinas was described as Indonesia's 28th province. Constantino thanked president Suharto and his 'governor' in the Philippines for putting East Timor on the international agenda!

Ariffin Omar, of Malaysia, explained how the Malaysian authorities follow the Indonesian line: just before his departure for Germany, he was summoned to 'an interview' in the ministry for foreign affairs and told not to talk about East Timor. Malaysia's foreign minister declared officially that any open support for East Timor is illegal in Malaysia.

These events demonstrate how Indonesia is pressuring the other members of ASEAN to follow its own line.

### Five films

Saturday's program ended with a presentation of five different video films:

\* *Cold Blood: The Massacre of East Timor*, 1992, 50 minutes. This film is made by the British reporter Max Stahl who was present at the conference to explain how the film was made.

\* An interview with the new leader of the armed resistance, Koni Santana, from Australian television, 1994, 15 minutes. This interview is also made by Max Stahl. Although Koni Santana is a pseudonym, having appeared on Australian television it is difficult to conceal his identity to the Indonesians any longer.

\* APCET, the Manila conference, 1994, 15 minutes. This film is made by Philippine activists.

\* *Indonesia: The Export of Death*, 1993, 15 minutes. This film is about the East

by Torben Retbøll

German warships sold to Indonesia and a German protest against the sale.

\* An excerpt from Germany's second television channel (ZDF), 1994, 8 minutes. This excerpt covers Indonesia's shutting down of three weekly magazines, including *Tempo*, which had criticized the buying of the East German warships.

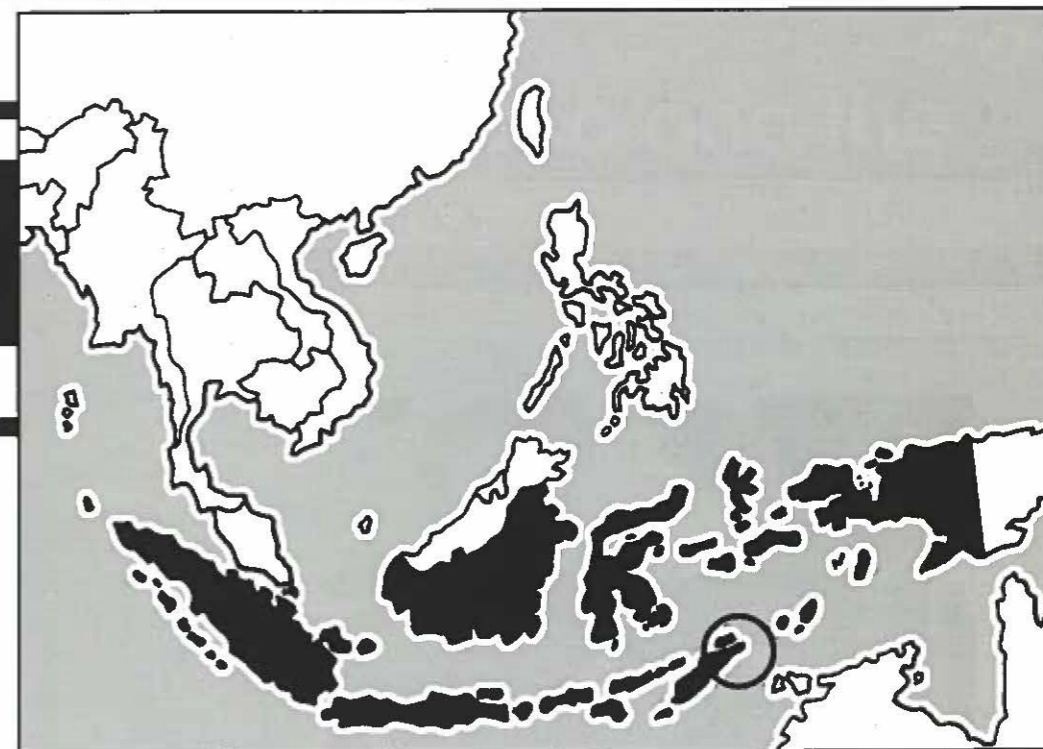
José Ramos-Horta, leader of East Timor's resistance movement (CNRM), opened Sunday's program. He explained that in a few days he was going to meet with Indonesia's foreign minister, Ali Atalas, in New York. Previously, Indonesia would only talk to Portugal, the former colonial power. Indonesia refused to talk to East Timor's resistance movement because it does not officially recognise that it exists.

Horta said he was only waiting for the green light from Xanana Gusmao who is currently serving a twenty year sentence in an Indonesian prison in Jakarta. Xanana has been convicted for fighting for freedom and independence in the same way as the Dutch colonial power convicted Sukarno back in the 1940s.

### Three phases

Horta's peace plan contains three phases: (1) Demilitarization of the area under supervision of the United Nations; (2) autonomy with more access for the UN, the media and NGOs; and (3) a referendum within five or ten years.

«Twenty years ago,» Horta said, «I travelled to Indonesia to meet with Adam Malik, then foreign minister and later president, who is now dead. Malik gave



me a letter in which he promised that Indonesia would not interfere in the internal affairs of East Timor. This promise was broken.»

«Twenty years ago,» Horta continued, «I was on the front page of the Indonesian weekly *Tempo*. The man who put me there was George Aditjondro who was working at the paper then. Now, *Tempo* has been closed down because of its critical coverage of Indonesian society. We have been waiting for our freedom for twenty years. Twenty years is enough!»

Zacarias Costa, UDT, spoke about the new world order. «What about East Timor?» he asked. «When many other conflicts can be solved, why not East Timor?»

Mari Alkatiri, Fretilin, talked about the role of religion: «Indonesia creates religious confrontations in East Timor.» He added that the first condition for progress in the peace process is the release of Xanana Gusmao, who is currently serving time in an Indonesian jail.

### Portugal's role

Oliveira Pinto de Franca, Portugal's ambassador in Germany, was the last speaker: «We have not abandoned East Timor,» he said. «We are still working for a peaceful decolonization of the area. We want to negotiate, but Indonesia does not want a real dialogue with us.»

«In 1991, we raised the case in the world court, the International Court of Justice at the Hague (Holland). The case is still pending. Also in 1991, Indonesia invited a parliamentary delegation to visit East Timor. Unfortunately, the visit was cancelled at the last moment.»

By noon on Sunday the conference was over and the delegates were packing their bags. Some were going home, while others were going to attend a conference in Porto (Portugal) the following week.

For delegates from Indonesia it may be dangerous to attend conferences such as this one. They risk running into trouble when they return to their homes.

George Aditjondro is known abroad because he has visited the US on several occasions. He is safe. Probably. Others, who are less well known, risk being summoned to an 'interview' or something worse. Their presence at the conference in Iserlohn was a sign of great personal courage and high moral integrity.

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## International Solidarity

Since Indonesia's invasion of the former Portuguese colony of East Timor in 1975, a number of international conferences have been held about this conflict, such as those in Lisbon (Portugal) in 1979 and 1981, and in Amsterdam (Holland) in 1980.

The purpose of these conferences is to show solidarity with East Timor. At the same time, they give activists from all over the world an opportunity to meet and exchange information. International experts, activists and East Timorese in exile are invited as speakers.

In recent years Portugal's biggest university in Porto has hosted an annual conference on East Timor. The sixth conference in this series was held in October 1994. The Porto conferences are organized by Professor Antonio Barbedo de Magalhaes, who did his military service in East Timor while the area was still a Portuguese colony.

One conference received more international attention than all others: APCET, the Asia Pacific Conference on East Timor, held in Manila, the Philippines, 30 May - 4 June, 1994.

The government in Jakarta tried to have the Philippines ban the conference and threatened to take political as well as economic action if this did not happen. President Ramos wanted to comply, but was unable, since a ban would be in violation of the country's constitution.

In the end, a middle of the road solution was chosen: the conference was allowed to go ahead, but foreign delegates were excluded. Indonesia's demands and threats attracted much attention, not only in the Philippines, but also in the rest of the world. Indonesia had annexed East Timor as its 27th province in 1976. Now the Philippines was described as Indonesia's 28th province and Ramos as its governor. It was most embarrassing for Indonesia.

Some foreign delegates arrived at the airport in Manila, only to be deported, but others made it, in spite of much government control and checking. Indonesia's brutal occupation of East Timor became more known than ever, and Suharto only had himself to blame. He wanted silence about his aggression, but achieved quite the opposite:

East Timor was placed on the media agenda: many people who had never heard about the former Portuguese colony saw a clear example of Indonesia's dictatorial methods.

APCET became a lesson in international politics and for once international solidarity defeated the powerful generals in Jakarta.

**Source:** Charles Scheiner, «APCET Upsets Jakarta: Eyewitness Report from Manila Conference on East Timor», *Network News*, no. 10, July 1994, pp. 4-6; published by the East Timor Action Network, USA. □

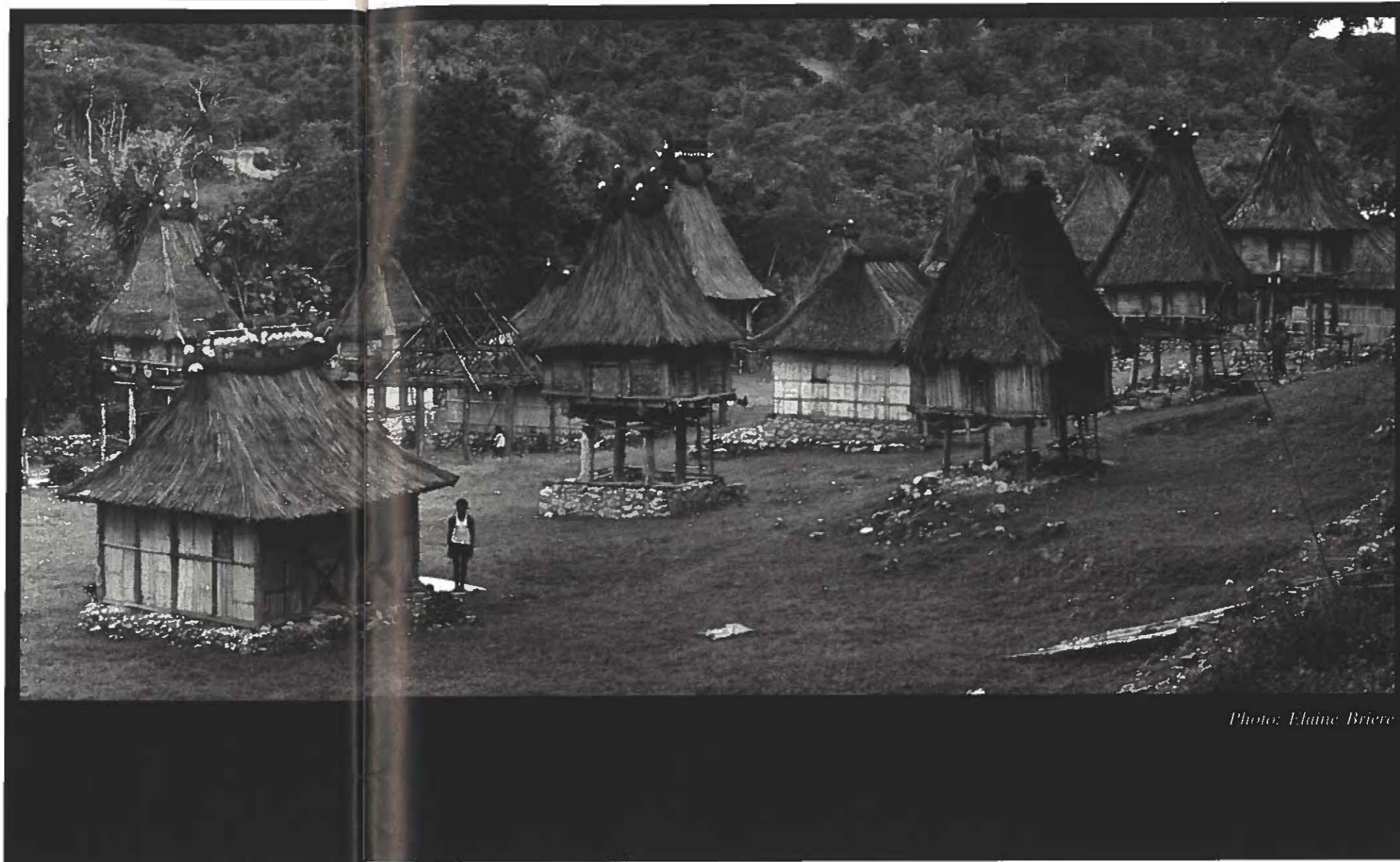


Photo: Elaine Briere

## Kinkel bans demonstration

In September 1994, the German foreign minister Klaus Kinkel banned a demonstration demanding freedom, democracy and human rights in Indonesia. This happened as he was hosting an economic summit meeting for ministers of the European Union and the ASEAN countries of Southeast Asia, held in Karlsruhe, where Kinkel himself is elected for the Liberal Party (FDP).

The demonstration was supposed to take place in front of a

church opposite the town hall where foreign guests were going to enter their names in the town's 'golden book'. Activists from the German-based Society for Endangered Peoples had made three banners with these words:

\* 'Indonesia: 19 years of genocide!'

\* 'Ministers of Europe: Stop the occupation of East Timor!'

\* '200,000 dead: Why is Germany exporting warships to Indonesia?'

The police had been notified and the demonstration was approved by the lo-

cal priest. But when Kinkel heard about it, he was furious. An eyewitness said he 'freaked out'.

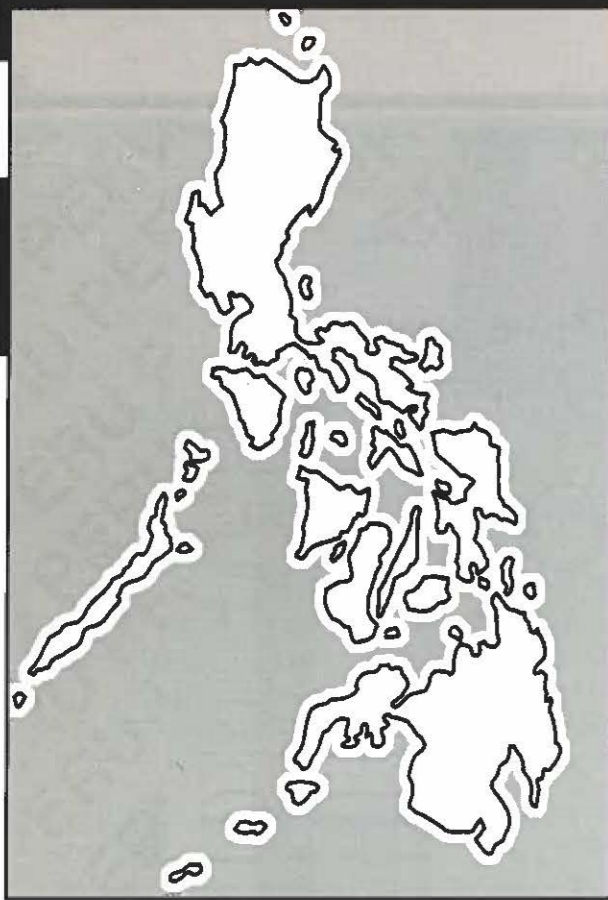
He demanded an immediate ban against the demonstration. If this was not done, he would 'never again' hold such a meeting in Karlsruhe.

Kinkel had his way. The police prevented the demonstrators from unfolding their banners. One of the demonstrators, who had photographed the police in action, had her film ripped out of her camera.

Afterwards, the Society for Endangered Peoples issued a press release stating that they were saddened by Kinkel's ac-

tion. Among the demonstrators was an East Timorese living in exile, José Amorim Dias. He was also saddened by the undemocratic actions of the German authorities. But, he added, in his own country it was always like this.

**Sources:** AFP -telegram in *Die Tageszeitung, Süddeutsche Zeitung and Frankfurter Rundschau*, September 29, 1994. Society for Endangered Peoples, press release, Göttingen, September 23, 1994. □



# INDIGENOUS PEOPLES AND THE LAND QUESTION

When the Americans came, they did not make amends for this injustice committed against the indigenous peoples. Instead, they reinforced the unjust law by enacting public land laws to secure their interests and those of the elites.

Today, under the ruling elites who benefitted from the colonial system of the western imperialist states, the Filipino masses have to struggle to break the semi-feudal relations of the land. The indigenous peoples, whose

lands are the base of their economic, social, political and cultural life, have to struggle for the recognition of their rights to ancestral lands and self-determination to correct the history of displacement and injustice.

## Tenurial Options In Lieu of Ancestral Land Rights Recognition.

The Regalian Doctrine, according to the official view, states that all lands not covered by official documentary certificates of title are presumed to be owned by the colonial regimes' sovereign successor, the Republic of the Philippines.

This view has found expression in Article XII, Section 22 of the 1987 Constitution, which provides that:

*All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy,*

*fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.*

With this legal concept, the government exercises an almost unrestrained control over land tenure decisions affecting millions of Filipinos today, living within the so-called public domain.

At the onset of 'development projects' in the ancestral lands of the indigenous peoples, the US-Ramos Regime offers tenurial options in lieu of the centuries-old quest of the indigenous peoples for the recognition of their right to own, control, manage and develop their ancestral lands and reap the fruits of their labour and of the resources therein.

But do these tenurial options answer the long over-due quest for justice—justice for the continued displacement and economic dislocation from their ancestral lands? A quest for justice for their leaders and people who were murdered by the armies of aggressors to force 'development projects' in their ancestral lands. A quest for justice for the injustices and inequality suffered by their ancestors and the present generation under the rule of colonial and neo-colonial regimes in the country.

Looking at the past and present policies and programs of the Philippine governments on the indigenous peoples, it manifested the extension of colonial and imperialist countries' hegemonic relationship with our country. A relationship ensuring the former's continued plunder and exploitation of our resources. Indeed, a mad rush to gobble up the rich resources in the ancestral

lands of the indigenous peoples. Also, a mad rush for the extinction of the indigenous peoples by way of development aggression and militarization.

Let us, however, spare for separate discussion the recent versions of development aggression and militarization. Allow us to get back to the point that these ancestral lands tenurial options offered by the government are nothing but a wanton perpetuation of the ruling elites and transnational corporations control of the lands and resources and to make it impossible for indigenous peoples to regain control and access over the same.

Consider also that the government has now entered an agreement with the World Bank for a US\$ 20 million financial grant for the mapping and listing of biodiversity species under the National Integrated Protected Areas System (NIPAS). This financial grant shall be used for the 10 Priority Sites. The government is also negotiating for the funding of additional sites that the Department of Environmental and Natural Resources (DENR) may recommend. Under the Agri-Industrial Development Strategy of the Medium Term Philippine Development Program (MTPDP), the government hopes to establish 70 NIPAS sites.

Consider also that the government peddles tenurial options to indigenous peoples, like the DENR Department Administrative Order No.25 under the NIPAS Law, Stewardship Contract under the Integrated Social Forestry Program (ISFP) and the Industrial Forest Management Agreement (IFMA). Consider the government's pursuance of the MTPDP by encouraging Foreign Investors through lifting of trade barriers including an increased land rent period of 75 years un-

der the Investors Lease Act.

With these, the tenurial options offered by the government seem to be just a window dressing for a shopping list of the ruling elites and transnational corporations for choice projects. Of course, in favour of their interests and not the people and the environment.

Let us try to examine briefly these tenurial options and some other programs and land laws of the government.

## The National Integrated Protected Areas System (NIPAS)

NIPAS, otherwise known as R.A. 7586, is the government's legal framework for its so-called biodiversity conservation. With a World Bank funding of US\$ 20 million for 10 priority sites, it shall be implemented by the DENR with the collaboration of a consortium of Philippine NGOs called NGOs for Integrated Protected Areas or NIPA. At least, four of these 10 sites are homes of the indigenous peoples.

NIPAS' concept and importance came into play after a World Bank study of the Philippine environment in late 1980s identified it as one of a 'rich assemblage' of biodiversity. With the World Bank's newfound interest in biodiversity conservation programs, it starts to put big investments which are really dubious given the role of the Bank in plundering the resources of Third World Countries for the affluence of First World Countries, like the United States.

The NIPAS implementation is yet to get off the ground. Already, several indigenous peoples' communities to be affected by the project are opposing the project for the following reasons:

1. NIPAS does not at all recognize ancestral land rights despite some inserted provisions on the recognition of ancestral domain. «Ancestral Domain and other customary rights and interests of indigenous communities shall be accorded due recognition... Moreover, the preservation of ancestral domain and customary rights within protected areas shall be a management objective».

Yet, the same law prohibits the habitation and livelihood activities in strictly protected zones. Also, «no clearing, farming, settlement, ... or other activities detrimental to biodiversity conservation shall be allowed» in Sustainable Use Zones. The Mangyans to be affected by the Mangyan Heritage Nature Park, one of the 10 sites identified earlier, overwhelmingly rejected the project because 90 per cent of their population live in the strictly protected zone.

2. The indigenous peoples' participation is only regarded as vital for the protected areas management because of their knowledge of nurturing the environment, yet, their basic right to land continues to be undermined.

3. The project, being funded by the World Bank, is dubious. The World Bank is the bank of the rich capitalist countries and transnational corporations. Transnational Corporations are now engaged in the patenting of cultural artifacts and life forms, namely, plant and animal genes and other life forms, including human being organs under the Intellectual Property Rights. The Intellectual Property Rights is also a component of the General Agreement on Tariffs and Trade (GATT) persistently pushed by the US-Ramos Regime for Senate ratification.

## Introduction:

Today, the indigenous peoples of the Philippines are trapped by the government's land laws which undermine their prior rights to ancestral lands. The government has wantonly continued these land laws since they were forced on the native population by the Spanish Conquistadors and continued and firmed up by the Imperial United States and the succeeding Philippine governments until the present.

Today's land laws stem from the Regalian Doctrine. A doctrine which declared the entire Philippine archipelago to belong to the Imperial Crown of Spain even though some parts of the country, particularly the territories of the indigenous peoples, were never colonized.

# PHILIPPINES

Presented by Yul Caringas

KAMP (National Federation of Indigenous Peoples of the Philippines)

4. The collaboration of NIPAS with the government and World Bank has caused divisions among the communities between those who were lulled into the project because of livelihood offers and ancestral land rights promises, and those who refuse to be deceived by the project. The NIPAS collaboration has, somehow, given legitimacy to the project.

#### The DENR Department Administrative Order No.2

DENR DAO #2 is known as the Identification, Delineation and Recognition of the Ancestral Domain and Ancestral Land Claims of the Indigenous Cultural Communities. As such, it can only go as far as identifying the ancestral domain or ancestral land claims of the indigenous peoples based on the requirements for applications provided by DAO #2; and the issuance of Certificates of Ancestral Domain or Ancestral Land Claims (CADC/CALC). DAO #2 does not guarantee ownership and title to ancestral lands.

#### The DENR Department Administrative Order #25.

DAO #25 is the Implementing Rules and Regulations of NIPAS. Concerning the Ancestral Domain or Ancestral Land issue, it follows the same concept as DAO #2. As such, DAO #2 shall be implemented outside the NIPAS areas while DAO #25 will be implemented inside NIPAS sites.

#### The Integrated Social Forestry Program

The Integrated Social Forestry Program (ISFP) is based on the declared government policy «to democratize the use of public forests and to promote more equitable distribution of the forest bounty».

Under the ISFP, qualified individuals or communities are allowed by the government to continue occupying and cultivating the uplands. ISFP participants, through Individual or Community Stewardship Agreements, are given a tenure over the land for a period of 25 years, renewable for an additional 25 years. In exchange, the program participants are required to undertake forest-guard duties and reforestation activities. They are also prohibited from committing certain acts, such as cutting or harvesting timber crops when notified by the DENR that

to do so would adversely affect the forest ecosystem.

At its core, the ISFP is «nothing more than a glorified lease contract». As such it does not offer any real security of tenure over the land. For communities who have been in the land for centuries, the 50 year limit is patently unfair. There is no assurance on what will happen after 50 years. Moreover, the agreement may be cancelled for such causes as non-compliance with its terms and conditions, violation of forestry laws, and «when public interest so demands». Too many injustices against indigenous peoples have been committed in the name of public interest and national development.

#### The Industrial Forest Management Agreement

It is said in the Revised Regulations and Guidelines Governing the Establishment and Development of Industrial Forest Plantations (IFP) (DENR Administrative Order No.42, Series of 1991) that such are tools to economic recovery. The objectives of the program are as follows:

- to convert the country's open, denuded, brushland and inadequately stocked residual forests into productive areas to supply the raw material requirements of forest-based and related industries, energy-generating facilities and for export;
- to promote more effective protection of the remaining natural forests;
- to improve and maintain a desirable forest ecosystem;
- to generate employment opportunities in rural areas; and
- to generate additional sources of foreign exchange.

The program encourages the establishment of corporate tree plantations, generally of fast-growing, commercially-valued, exotic soft-wood species of trees like falcatta and g'melina, over large tracts of classified public forest lands. This is supposed to ensure that future domestic demand for wood can be met by the plantations established under the program. The IFMA has a term of affectivity running a total of 50 years. It gives the corporation control of the area for plantation purposes, irrespective of the actual occupants of the areas covered and their rights and needs.

The Industrial Forestry Program is supported by the Asian Development Bank (ADB) through special loans awarded to IFMA holders. To note, most IFMA holders and applicants are logging firms which are trying to retain or even expand their areas of operation in the face of a perceived decrease in harvestable forest stands within the next decade.

IFMA operations have already taken their toll on indigenous peoples, specifically the Banwaons of Agusan del Sur and the Ata-Manobos of Talaingod, Davao del Norte. IFMA, like any other forestry programs of the DENR, is biased against the indigenous peoples who have been in their ancestral lands for centuries, in awarding licenses, permits to logging firms. With the aid of the Armed Forces of the Philippines, who conducted military operations in the Banwaon and Ata-Manobo communities, they were forced to leave their ancestral lands.

#### Conclusion:

As shown by the above legal concept, policies and programs of the government concerning the indigenous peoples and the land question, nothing has changed in its view of the land. It still adheres to the Regalian Doctrine as expressed in the Philippine Constitution which continues to bring affluence to the ruling elites at the expense of the impoverished masses. Land and resources are meant to be exploited even if it costs the destruction of the environment and the hunger and death of the suffering masses.

The definition by the DENR of ancestral domain/land «as lands and resources occupied and possessed by indigenous cultural communities 'since time-immemorial'» is already problematic to indigenous peoples who were displaced at the time the Spanish and succeeding American colonizers dispossessed them of their ancestral lands. The present government ruled by the elites does not and will never forego the benefits it gets from the present system.

Neither can we expect the present government to see the viability of the indigenous socio-political system in the management and development of land and resources. An indigenous world view is one that sees the inter-relatedness of

land, resources and people and therefore all are parts of the integral whole that shall be nurtured.

Only through the genuine recognition of ancestral land rights can the indigenous peoples develop their social, economic, political and cultural life. Only by granting the indigenous peoples the right to control, manage and develop their ancestral lands can they contribute to national development.

The current legal instruments fall short of the meaningful recognition of ancestral land rights. They have gone only to the extent of hiring the indigenous peoples as forest guards, jungle survival train-

ingly the NIPA in government and World Bank Projects, will further intensify the division of the already divided indigenous communities. This divide-and-rule tactic has been a very effective tool of the colonial states to control the lands and resources of the people.

Therefore, it is urgent to unmask this unholy alliance and put a stop to its deception of indigenous peoples' communities.

Meanwhile, a continuing dialogue between the indigenous peoples and the non-indigenous peasants will enhance an understanding of each others aspirations, demands and agenda for a meaningful



Photo:  
IWGIA's archives

ners, ecotourism guides and human fences for the protected areas.

For the state to seriously address the conflict of land use and ownership, it should address the issue of the historical and continued displacement and dislocation of the indigenous peoples from their ancestral lands. This is the basic and first step for the genuine recognition of ancestral land rights.

On the other hand, the collaboration and cooptation of some NGOs, particu-

reform of the Philippine society. Only the solidarity of the struggling masses will break the present feudal and colonial system wantonly perpetuated by the ruling elites to preserve their interests.

(Paper presented at the Land Use Conversion and Agrarian Reform Conference held October 25-28, 1994 in Quezon City, the Philippines.) □

## SHORT NEWS

## SHORT NEWS

## FINAL DECLARATION

Second Assembly  
of the Indigenous  
Peace Initiative

Members and delegates of indigenous organisations, invited guests and observers to the Second Assembly of the INDIGENOUS PEACE INITIATIVE, 13th to the 17th February in the Headquarters of UNESCO, Paris, France.

Consider:

1. The proclamation of the International Decade of the World's Indigenous Peoples 1995-2004 by the United Nations Organisation in December 1994;
2. Advances in the drafting of the Universal Declaration of the Rights of Indigenous Peoples by the UN Working Group on Indigenous Populations;
3. The agreements and resolutions of the First Assembly of the Indigenous Peace Initiative;
4. The continuation and increase in conflicts in indigenous territories; and
5. The increase in the level of respect for the world's different cultures and the coordination between governments and indigenous peoples.

We Declare:

That, in spite of the progress made in the recognition of the rights of indigenous peoples at the national and international

levels, serious violations of indigenous rights still persist and are worsening, which is also leading to a deterioration in living conditions. Throughout the Assembly we have noted cases such as the distressful situation in Chiapas as well as the border conflict between Peru and Ecuador.

The effects of globalisation and the imposition of economic measures were indicated as serious causes of the deterioration in the standards of living of indigenous peoples. They are elements in a model of development which increases rates of suicide, negation of identity, cultural alienation, indigenous peoples' loss of territories, deterioration in health and lack of access to education.

Reclaiming indigenous peoples' traditional forms of discussion, respect, fraternity, solidarity and the search for consensus and unity, we address issues related to:

1. The most urgent conflicts such as: Perú-Ecuador, Chiapas and the identification of serious violations in Burma, India, Nicaragua, Colombia; such as the specific situations of the Karens and the Mangyans; and the process of negotiation in Guatemala.

2. Goals and tasks which are priorities for the Indigenous Peace Initiative.

3. Recommendations for the Plan of Action for the International Decade of the World's Indigenous Peoples and mechanisms for implementation at the national, regional and international levels.

4. The position on the Universal Declaration of the Rights of Indigenous Peoples as well as the resolutions on this Draft Declaration which are under discussion at the UN.

The recommendations arising from the Assembly prioritise the following points:

1. The establishment and strengthening of an efficient and appropriate communication network between persons, organisations, communities, institutions and indigenous peoples.

2. To support indigenous peoples' achievements and foster their dignity and identity; to honour their cultures and value and reinforce the consensus between them.

3. To work at distinct levels for the recognition, protection and monitoring of the rights of indigenous peoples, such as the denunciation of violations of their rights on the national and international levels.

4. To promote peaceful solutions to the conflicts which are affecting indigenous peoples, influencing in an efficient and appropriate manner principally in the areas of violent conflict, such as where peoples are in danger of extinction.

5. To promote the effective participation of indigenous peoples in all decision making opportunities which concern them at the national and international levels.

The Assembly declared its support for the Social Summit, establishing that the

## SHORT NEWS

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WORLD SUMMIT  
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struggle for peace requires the implementation of models of integrated development which consider the demands of pluralism and indigenous self-management; understanding that the achievement of peace needs economic development but that this alone is not sufficient because peace requires an integral development with justice and liberty. Well-being depends on the right to be different within a peaceful understanding, which is a fundamental consideration for the effective development of humanity.

The Assembly ratified the resolutions of the First Assembly of the Indigenous Peace Initiative as well as the designation of Rigoberta Menchú Tum as Goodwill Ambassador of the International Decade of the World's Indigenous Peoples.

Finally, we make a call to the international community, to governments and to indigenous peoples in particular, so that we can continue working together for the strengthening of unity and practice towards an effective evaluation of the actions which are developed in favour of the indigenous peoples during the International Decade.

We take as our motto the phrase of the Director General of UNESCO, Federico Mayor, that «the indigenous peoples' cause needs to be experienced not only by them but by all those who want peace, justice and liberty». We express our profound thanks to all those present for their cooperation and solidarity with the Indigenous Peace Initiative and the indigenous peoples.

Paris, France, February 17, 1995.

*This is a translation from the Spanish by IWGIA.* □

Copenhagen. March, 1995.

1. The use of the term «indigenous people» rather than «indigenous peoples» in the Declaration and the Programme of Action is a denial of our identity and a negation of the principle of the equality of peoples which is fundamental to social justice. Indigenous peoples are peoples within the meaning of Article 1 of the International Human Rights Covenant.

2. We reject the assumption of the World Summit for Social Development that indigenous peoples can achieve social justice through a process of social integration. Integration has always been a destructive process for indigenous peoples. Without effective recognition of our right to self-determination in its political, economic, social, and cultural dimensions, expressions of respect for justice and cultural diversity are without substance.

3. The Declaration and Programme of Action fails to recognize the inherent rights of indigenous peoples to own and control our territories and natural resources, including marine and energy resources, and to determine for ourselves

whether and how these resources should be developed.

4. The documents also fail to recognize that marginalization of indigenous peoples results from the dispossession of our territories. Dispossession in turn is caused by resource extraction, deforestation, hydroelectric development, and colonization – threats that are increasing under pressure from structural adjustment programs.

5. We have grave concern over the recent decision of the Commission on Human Rights to restrict participation in the future work on the Draft Declaration on the Rights of Indigenous Peoples adopted by the Subcommittee on the Prevention of Discrimination and Protection of Minorities. We affirm that all consideration of the rights of indigenous peoples within the United Nations system must take place with the full participation of indigenous peoples without restriction.

*The indigenous representatives present at the NGO Forum of the World Summit for Social Development - Copenhagen.* □

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