

THE INDIGENOUS WORLD

With contributions from indigenous and non-indigenous scholars and activists the new edition of IWGIA's yearbook

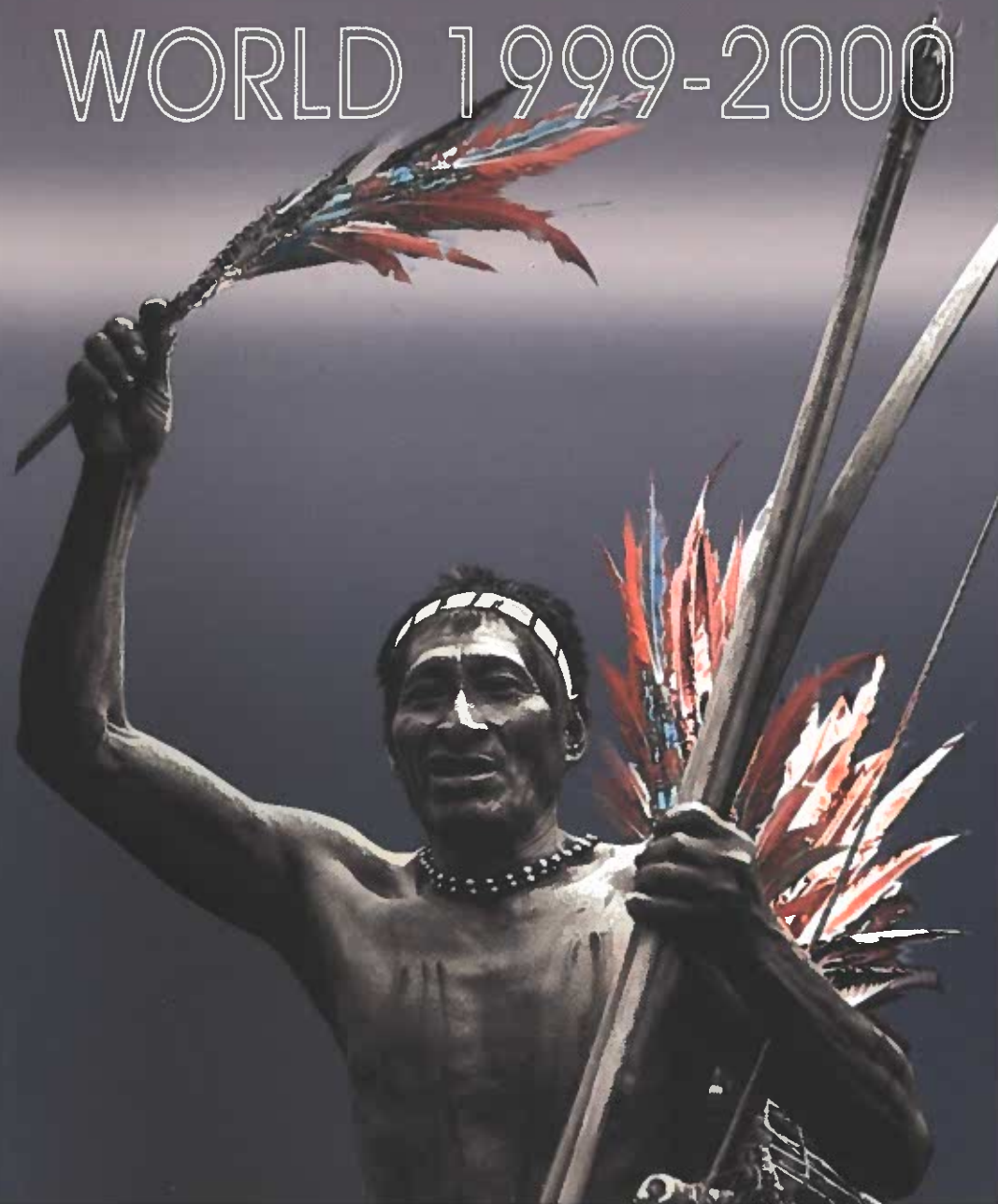
- provides an overview of the present situation and crucial developments in 1999 and early 2000 among indigenous peoples in Asia, Africa, the Arctic, the Pacific and the Americas, with a special focus on indigenous women;
- presents reports on the work of the Open-ended Working Group on the UN draft Declaration on the Rights of Indigenous Peoples and on the process of establishment of a Permanent Forum for indigenous peoples in the UN system.



INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

THE INDIGENOUS WORLD 1999-2000

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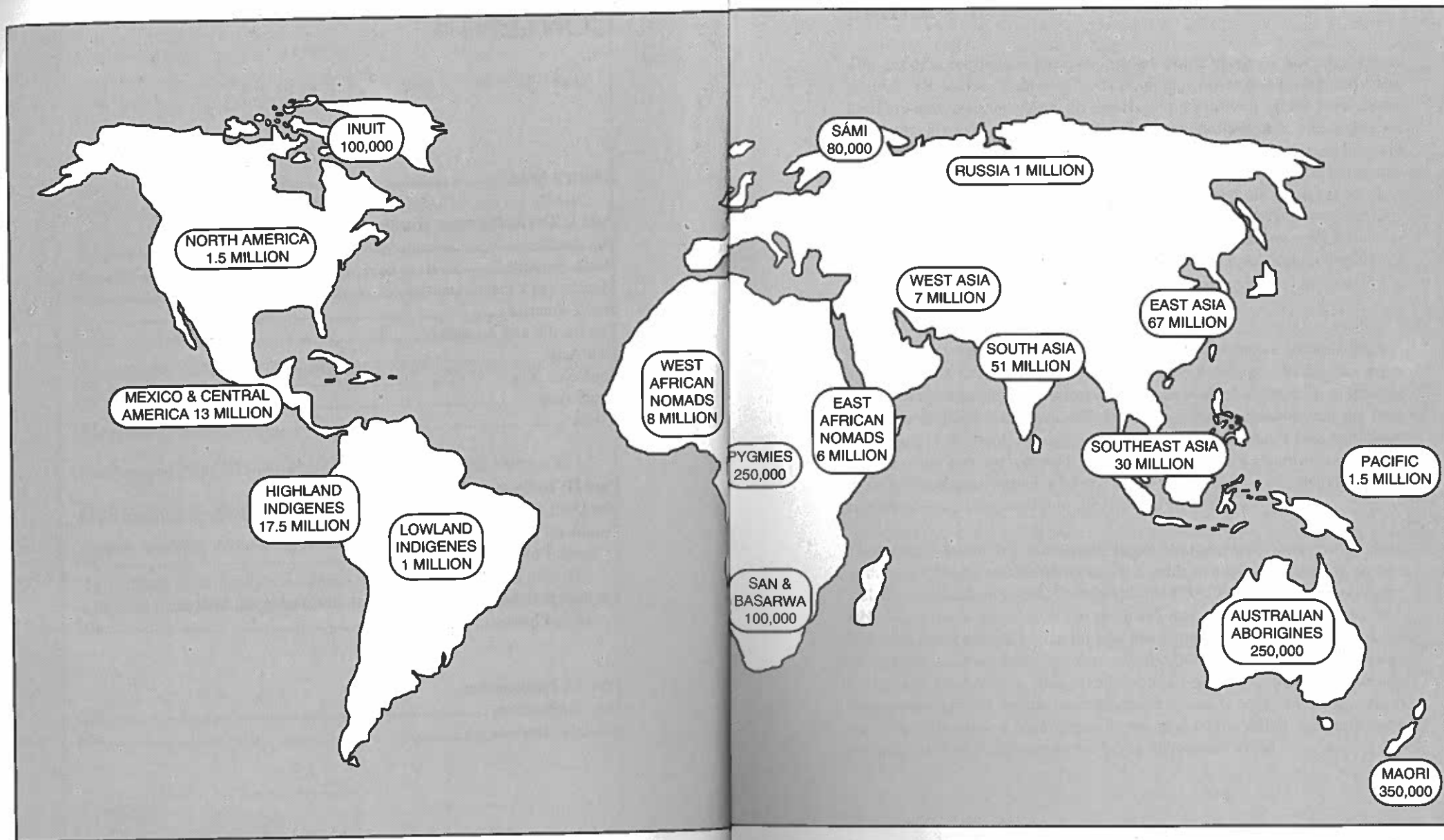
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EDITOR'S NOTE

The response received so far from readers of the yearbook has largely been positive. Of course, a number of shortcomings in the publication have also been brought to our attention. To report comprehensively on the most crucial developments in the indigenous world is an enormous task, and a goal we will always strive to achieve but perhaps not quite attain. The indigenous world is too varied and complex, and our limited capacity does not currently allow for more extensive research in order to extend our coverage to more regions and peoples. The writing has thus far been undertaken on an entirely voluntary basis, by a large number of indigenous and non-indigenous authors. If you feel there is a crucial area lacking in our publication that should be covered in future issues, please do contact us and provide us with the information.

In response to one criticism, we have abolished the separate section on indigenous women, which was introduced only two years ago. We find the argument convincing that by treating indigenous women's issues in a separate section a division is created, which may give the impression that the first, larger part of the book is solely devoted to indigenous men's issues. Following the comments we received, the contributing authors were encouraged to include indigenous women's issues within their articles, and separate articles submitted were integrated into the regional chapters.

The editor is aware that, once again, important regions or issues are not dealt with in this year's edition. Particularly notable is a lack of reporting on crucial developments in China, Canada and the USA. The reason for this regrettable omission is simply that the promised manuscripts were not delivered. We were thus extremely grateful that one author was willing to provide us with last minute summary articles on some of the most important developments in North America, such as in Nunavut. And we would appreciate any suggestions, and particularly concrete contributions, to next year's issue, which we hope will come a little closer to our goal of providing comprehensive coverage of current developments in the indigenous world.

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IWGIA would like to extend warm thanks to the following people and organisations for having contributed to *The Indigenous World*:

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East Asia

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Part III: Indigenous Rights

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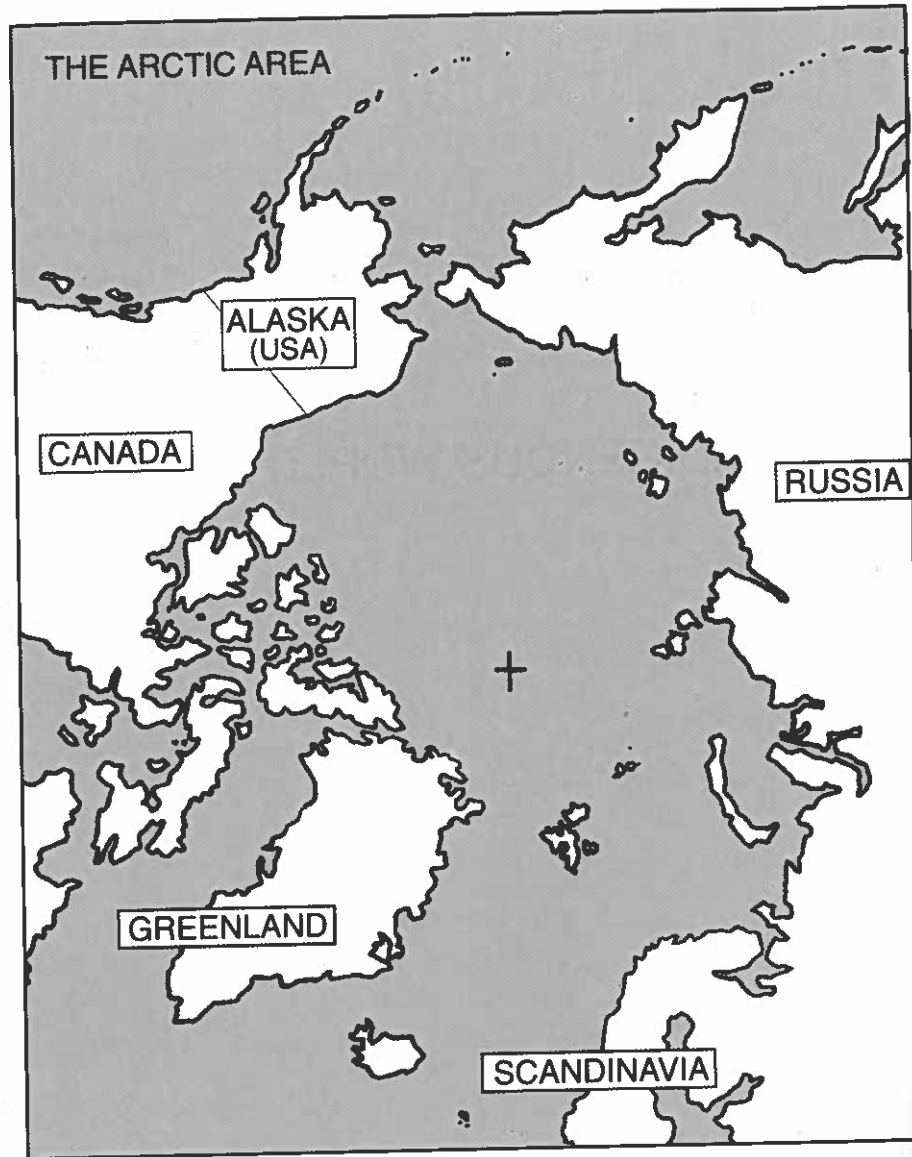
PART I

THE INDIGENOUS WORLD

AIWA



AIWA
AIWA
AIWA



Countries/regions covered in this issue: Alaska, Canada, Greenland, Russia, Sápmi

ARCTIC

ALASKA

The Subsistence Debate

The subsistence debate continued to rage in Alaska throughout 1999 and into the new millennium. At issue is whether or not the residents of rural Alaska (mostly indigenous peoples) should be guaranteed a preference in the taking of fish and game in times of shortages. A 1980 federal law, the Alaska National Interest Lands Conservation Act (ANILCA), allowed for such a provision partially restoring the aboriginal hunting and fishing rights that were abolished by the 1971 Alaska Native Claims Settlement Act.

An Alaska state law was passed that implemented the federal requirement throughout Alaska, but a lawsuit filed in the Alaska state court by sports hunting and fishing groups challenged this state law and, in 1990, the Alaska Supreme Court ruled that the law was unconstitutional. This put the State of Alaska law in opposition to U.S. federal law. The result was that the U.S. federal government took over management of game animals on federal lands in Alaska in 1991.

The process of taking over the management of fish in federally controlled waters in Alaska took much longer than that of taking over game management on federal lands. Fish are a crucial component of the lives of Alaska Natives and make up 59% of their subsistence diet. After numerous moratoriums, extensions and delays, designed to give the State of Alaska the opportunity to comply with federal law, the federal government took over the management of fish in federally controlled waters in Alaska on October the 1st 1999.

Prior to the takeover of fish management in federally controlled waters a key legal case went through the court system. This case, *Katie John v. United States*, was the result of Katie John, an Ahtna Athabascan woman from the upper Copper River region, suing the federal government in 1984 to allow her to resume fishing at her traditional fish camp. The State of Alaska had prohibited her from fishing at her family's ancestral fish camp since 1964. The case reached the U.S. Ninth Circuit Court of Appeals in 1994 which ruled that those inland waters that flow through or touch federal lands fall under the protection of ANILCA and that rural residents have a subsistence priority. Implementation of this ruling was delayed by a series of congress-

sional moratoria in attempts to give the Alaska State Legislature time to comply with ANILCA. The required solution would be an Alaska state constitutional amendment that would have to be approved by a vote of all the citizens of Alaska. This vote of the people, however, cannot take place unless two-thirds of the legislature votes to approve putting the amendment to a vote of the people. Despite special legislative sessions (including one in 1999) on subsistence, and numerous regular sessions, there has not been the two-thirds vote to take the issue to the people. This is despite the fact that surveys have consistently shown that a large majority of Alaska voters approve of the subsistence priority for rural residents.

In a move that shocked and disappointed many people in the Alaska Native community, in January 2000 Alaska Governor Tony Knowles announced that the State of Alaska was appealing the ruling of the Ninth Circuit Court in the Katie John case to the U.S. Supreme Court. This action caused the Alaska Federation of Natives (AFN) to call a special convention to decide how to respond to the governor's action. With less than two weeks notice 90% of all AFN delegates showed up at the special convention held in Anchorage on February the 15th. The convention passed six resolutions charting a course of action for AFN. In the first of the resolutions, it was resolved that, "the Alaska Federation of Natives will use all available political, economic, and legal resources to oppose and defeat the State's appeal of the (Katie John) decision." AFN changed its long held course of supporting the return of management of fish and game to the state if the state complies with federal law by saying, "the Alaska Federation of Natives will no longer support efforts to return subsistence management to the State of Alaska, by constitutional amendment or otherwise, unless the State's elected leadership, including the Governor, acknowledges the real needs of Alaska Natives by agreeing to State-Tribal co-management and by formalising and implementing joint jurisdiction over navigational waters so as to ensure subsistence for all Alaska Natives."

While subsistence foods are an important part of the economy in rural Alaska they are much more than an economic need to Alaska's indigenous people. Subsistence lies at the very core of cultural values and identity. And while estimates have been made that say that without subsistence foods, Alaska Natives would have to pay \$20 million dollars a year more for food, it is not for this reason alone that they feel a need for subsistence food. Subsistence is considered a dire necessity for strong mental health and a source of strength for the 100,000 Alaska Natives living in Alaska. Above all, the right to live a subsistence lifestyle is considered a *human right*. "Alaska Native subsistence

is a human right to food and a cultural right to continue to exist as a people" said an Alaska Federation of Natives resolution. Ironically, the subsistence take of fish in Alaska is very small compared to the take of the other two users, commercial and sports. Subsistence users in Alaska harvest only four per cent of fish. The other 96% is taken by commercial and sports fishers.

Native Leader Morris Thompson Dies in Plane Crash

Morris Thompson, one of Alaska's best known indigenous leaders, was one of the 88 people killed on January the 31st 2000 when Alaska Airlines Flight 261 crashed into the Pacific Ocean on a flight from Puerto Vallarta, Mexico to San Francisco. His wife and daughter also perished in the crash.

Thompson, an Athabascan Indian from Tanana, retired last December as the president and chief executive officer of Doyon Ltd., a position he had held since 1985. Doyon is the corporation formed under the Alaska Native Claims Settlement Act to represent the indigenous people of interior Alaska. The corporation owns 12.5 million acres of land, making it the largest private landowner in the United States. Doyon has been considered very successful as a business corporation and it generated \$70.9 million in revenues during Thompson's last year as president. The corporation has 900 employees and 14,000 mostly Athabascan stockholders.

Thompson held many high level positions before taking over Doyon, including serving as Commissioner of the Bureau of Indian Affairs during the Nixon administration, President of the Alaska Federation of Natives, and a cabinet member of Alaska Governor Walter Hickel during his first term in the 1960s. The special Alaska Federation of Natives Subsistence Convention held on February the 15th was dedicated to Thompson's memory.

CANADA

Nunavut

It feels as though I have been watching a revolution in slow motion. Profound changes have taken place in our lives and our society. From the almost total isolation from the outside world of my early years in Resolute Bay in the High Arctic, to the computer space age when the world is at my fingertips, has been a journey of sorrow, joy and adventure.

John Amagoalik

April the 1st 1999 was the first day of Nunavut, the new territory of northern Canada. Nunavut, "Our land" in the language of the Inuit - whose name means 'the people' in the official language Inuktitut - is an area two million square kilometres in size, located in the Canadian arctic regions above Hudson's Bay. By securing Nunavut, the Inuit have control over this territory, in much the same way as if a native tribe were to receive statehood in the United States. As such it was a landmark day for Canada and the First Nations, on which the residents won the right to self-government. It remains to be seen whether this right is not going to be undermined by the need to create jobs in the mineral industry, whose multinational corporations may easily move in and, under the constraints of employment, start extracting the natural wealth of the Inuit in an unsustainable way.

Nunavut was created by dividing the Canadian Province of the Northwest Territories. The western part keeps its original name and is approximately one third of the size of the original state. The eastern part comprises the new territory of Nunavut. Eighty per cent of its population are Inuit. Some important dates in recent history helped pave the long way towards this landmark decision. During the 1920s and 1930s, most Inuit were troubled by fluctuating fur prices, epidemics and shortages of wildlife. A further burden was the establishment of five residential schools that removed Inuit children as young as five, both from their families and from the whole context of Inuit culture, sometimes for years. Incidents of physical and sexual abuse also took place at some church-run residential schools. In general, however, the Inuit retained their language and sense of independence, within or despite the ill-defined authority of the 'Big Three' - the policeman, the trader and the missionary. After the Second World War, in response to the Inuit's migration between hunting and trapping areas, governments began to move families to places of

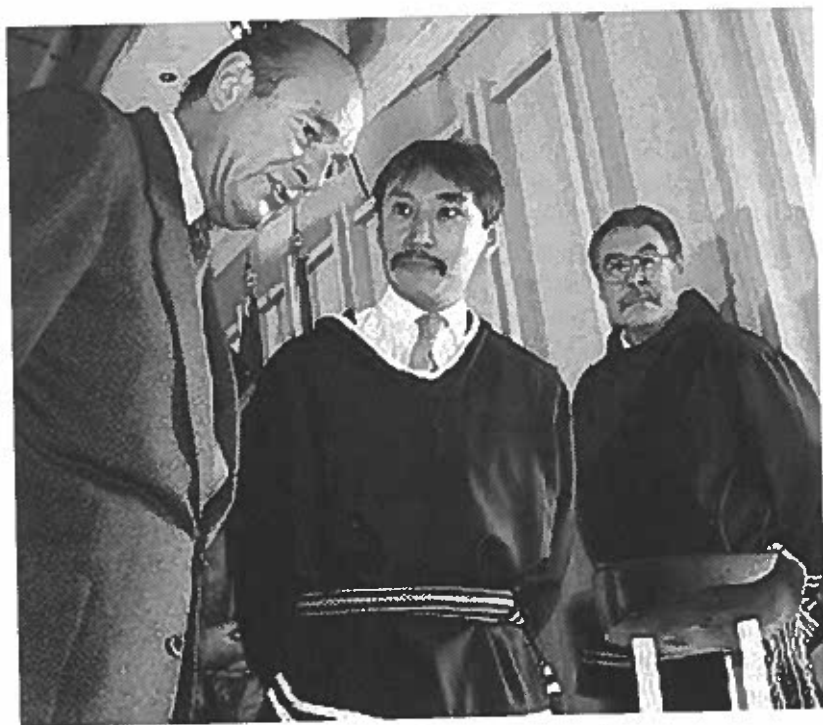
supposed economic opportunity, such as Churchill, Manitoba, and the new town of Inuvik, Northwest Territories (NWT). During the mid 1960s, a federal public housing programme, complete with an orientation phase, created instant villages using prefabricated units. This ended the old scattered camp distribution of the Inuit.

Twenty Years of Tenacious Negotiations

In 1971, the Inuit Tapirisat of Canada (ITC) was formed to pursue land claims in the NWT. Right from the beginning, Inuit-leaders had made clear that land claim negotiations would only be pursued if the final solution was going to result in the creation of an independent territory, "even", as Tom Suluk, an Inuit adviser said, "if the negotiations had to take a generation". In 1976 the ITC proposed the creation of Nunavut to the Canadian government, which did not want to confer jurisdiction of the territory to the Inuit. In 1979 Peter Ittinuar, the first Inuk Member of Parliament, stood up in the House of Commons and spoke Inuktitut. This represented another milestone in the epic journey of the Inuit towards self-determination. In the spring of 1982, the people of the Northwest Territories voted to divide the NWT and create Nunavut. The Inuit tried hard to get a freeze on industrial development during negotiations, without much success. Other controversial issues loomed as well, such as the powers of a wildlife management board, the Inuit's offshore rights, and the boundary between Dene and Inuit claims, a point still contested today by Manitoba Dene in an ongoing Federal Court case. A final agreement was reached in September 1992 - after an agreement-in-principle was signed in 1990 - and ratified by Inuit beneficiaries in a plebiscite held on November the 3rd to 5th 1992. The choice was difficult for some voters, because voting for the land claim agreement meant they would have to exchange aboriginal rights and title to all land and water in the Nunavut Settlement Area, save for the 355,842 square kilometres of Inuit-owned land. In the end, 84.7% of voters still endorsed the agreement.

"It was the Inuit vote that made the deal. It wasn't all the other symbolic acts", said senior federal negotiator Barry Dewar, who was at the Discovery Lodge Hotel in Iqaluit when the ratification committee announced the results. On May the 25th 1993, the final agreement was signed in Iqaluit. In terms of financial compensation it was Canada's largest ever claims settlement. \$1.1 billion to be paid out between 1993 and 2007, and 1.9 million square kilometres of land and water (corresponding to the size of Germany), including mineral rights to 35,257 square kilometres within the Inuit-owned land portion.

In June 1993, the *Nunavut Act* was passed by Parliament, conceding one fifth of Canada's land base to the Inuit who thus govern the country's largest territory or province. And the final step took place on February the 15th 1999, when the first election for the first Nunavut legislative assembly was held.



French President Jacques Chirac confers with Nunavut premier Paul Okalik at a welcoming ceremony for the French head of state at the Nunavut legislative assembly in September 1999 (Foto: Nunavut-website)

Towards a Nunavut Territory

Before division in 1999, the NWT stretched across one-third of Canada's land mass and comprised two main regions - the partly forested Mackenzie Valley in the west, with an ethnically mixed population of Dene, Métis, Inuit and non-aboriginal people, and the almost treeless east, where 85% of residents are Inuit. During the past century, Inuit from Chukotka to Greenland have undergone changes that took the industrialised peoples of the world at

least 5000 years to make. This blizzard of change has taken a heavy toll on the Inuit, both individually and collectively. But some of the qualities that sustained the old hunting culture have enabled the Inuit to adapt remarkably well to an invasive, unstable modern world.

Canadian Inuit have united within an Inuit Circumpolar Conference, in ITC, and the women's organisation, Pauktuutit. There are regional and local organisations of many kinds, including co-operatives and governments. Under this canopy of unity and identity, the Inuit of Canada have negotiated four major land claim treaties. If the new territory is included, the Nunavut agreement is the most extensive of its kind in the world. Those Inuit who repudiated the original 1976 claim submission envisaged a revised claim that embodied the simplicity, humanity and common sense of traditional Inuit society. Given the vast difference between the two bargaining cultures, that goal was inevitably lost. Both the claim agreement and the new territory create bureaucracy, complex financing, and legalities.

The Inuit way did succeed, however, during the long negotiation period, both at the table and away from it. The Inuit negotiators maintained an atmosphere of respect and courtesy, preferring pragmatism and reason to posturing and rhetoric. In this climate, bargaining led to joint planning, particularly in the field of environmental management. Although there were numerous reorganisations within the Inuit camp, a core group of leaders and dedicated consultants maintained a continuity of style and purpose throughout the years of negotiation. The government side, both federal and territorial, responded in kind to the Inuit approach. Most people are aware of the problems that Nunavut faces - among them sparse resources, distant markets, a difficult climate, and an ill-prepared population, all in a volatile global setting.

The following quote from John Amagoalik expresses the hopes that are shared by many supporters and Native Nations alike. "There was a time when many of my generation did not have pride in our Inuit identity and were not sure if they wanted to be Canadian citizens. Today, there is a resurgence of Inuit pride and we have become loyal Canadians. Even though our people have encountered racial discrimination in the past, we want reconciliation and we want all to feel welcome in our homeland. Our patience and our willingness to share, continue to be cornerstones of our society."

Sources

Nunavut '99

John Amagoalik, chief commissioner of the Nunavut Implementation Commission.

Keith Crowe, chief negotiator

INCOMINDIOS Newsletter 1,1999

For more information see:

Nunavut-web site: <http://www.nunavut.com/nunavut99/english/index.html>

The web site of the youngest Premier in Canada, Paul Okalik, 34 year old Inuit and the first Premier of Nunavut: <http://www.inac.gc.ca/pubs/transition/may99/port.html>

Recent Political Developments in Nunavik (Québec)

Ever since the Inuit of arctic 'Nouveau-Québec' signed the James Bay and Northern Quebec Agreement (JBNQA) over their land with the governments of Canada and Quebec and the industrial corporations to build the massive hydro-electric developments in 1975, there been efforts on the part of the Inuit to regain, strengthen, and enhance their political, socio-economic and cultural position as an aboriginal nation within Canada and Québec. Although the Agreement was accepted as a negotiated legal framework for issues dealing with aboriginal rights, land claims and ownership as well as education, health and economy, Inuit, represented by the Makivik Corporation, have never fully been at ease with the various sections of the Agreement. In the year 2000, after a quarter of a century of experience, renewed steps are being undertaken by the tri-partite Nunavik Commission, whose members represent the Inuit of Nunavik (Makivik Corporation), Canada and Québec. This Commission is to seek solutions to the Inuit's wish to establish a political institution that would encompass their homeland - Nunavik - and guarantee broader autonomy and government for that region.

Since 1975, several initiatives had been taken by both Inuit and Canadian governments to find ways to accommodate the desire for aboriginal autonomy under the guise of regional government, a concept that gradually has been accepted as another level of public government within the confederative framework of Canada. In 1983 the federal Parliamentary Commission on Aboriginal People opened a broad discussion of such issues. However, the provincial government of Québec insisted at that time that the Inuit living in Québec would speak as one voice.

After a referendum (1987) and an election (1989) in Nunavik focusing on constitutional issues, the Inuit negotiated among themselves and established the Nunavik Constitutional Committee which entered into discussions with Québec in 1990. However, developments around the Canadian constitution of 1982 that Quebec had not signed led to the Charlottetown Accord being defeated in 1992 and thus interrupted the talks between Nunavik and Québec. However contacts were resumed between 1994 and 1995. But the Québec

referendum on sovereignty in late 1995 and changes in Inuit leadership caused a suspension of these discussions.

In September 1997, lines of communications were opened up again between Makivik Corporation and the Québec government to focus on the creation of a public government north of the 55th parallel in Quebec (the southern boundary of Nunavik also known as Kativik Region in the JBNQA). Both Makivik Corporation and Québec's Secretariat for Indigenous Affairs (Secrétariat des affaires autochtones [SAA]) were given the mandate to explore and settle on an institutional framework for negotiating 'public self-government' for the Nunavik Region. The parameters were discussed in 1998 and 1999. On the fifth of November 1999 the Nunavik Political Accord was signed by the Nunavik Party (Makivik Corporation), the Government of Québec, and the Government of Canada (the latter in with regards to issues falling under federal jurisdiction).

This Accord is seen as a major step towards creating a public government for the residents of Nunavik within the political framework of Québec and Canada. The Accord established the tri-partite Nunavik Commission that began its public and closed deliberations in December 1999 by scheduling meetings and hearings in all Nunavik communities and seats of governments. The concrete proposals by the Nunavik Commission are expected by the end of 2000.

There are eight members of the commission: the two co-chairs representing Québec and Nunavik (both men); two members representing Nunavik (one man, one woman), two Quebec (one man, one woman), and two Canada (men). Three of them are Inuit and five francophone (québécois; a lawyer, an administrator and three academics). Next to Makivik Corporation other existing regional institutions in Nunavik - Kativik Regional Government, Kativik School Board, Nunavik Regional Board of Health and Social Services and Kativik regional Development Council - are represented through the Nunavik Party (Political Accord, Section 2.2). The members, the mandate, and financing were settled upon by consensus. Each party covers its own expenses (travel, etc.). In addition, the federal and provincial governments have made financial contributions for other expenses - in all \$770,000, a considerable sum for such an undertaking.

The Political Accord spells out the exact tasks the Commission has to perform under the general mandate: '... to examine the creation of a form of government which, within the jurisdiction of Québec and Canada, will take into account the Nunavik arctic realities; which will respond to the needs, desires, and aspirations of Inuit and other residents living in this territory,

which will have appropriate resources and powers of self-government for the [sic] Nunavik' (Preamble, second paragraph). Further, the tasks are confined '... to develop a timetable, plan of action, and recommendations for the structure, operations and powers of a government in Nunavik' (Section 1.1), and that these items '... will be ready for implementation in concrete terms' (Section 1.2).

It is also made clear that '[t]he recommendations tabled by the Commission shall be subject to a consensus from all its members.' (Section 3.3). These recommendations are submitted to the Government of Québec and shall cover the following items related to public government in Nunavik (Section 4.1.a-j):

- 'powers, jurisdictions, responsibilities and competencies';
- 'election process';
- 'selection of the Leader and the elected members' and 'role of executive';
- 'initial administrative design';
- 'timetable for the consolidation under a Nunavik Government';
- 'relationship between governments' within the political context;
- 'financing';
- 'measures to promote and enhance the Inuit culture in Nunavik, including the use of Inuktituk in the Nunavik Government';
- measures to fill governmental positions with Nunavik residents in the greatest numbers;
- creation of the government 'to include a vote among residents of Nunavik prior to implementation'.

This range of recommendations is ruled and clearly limited by overriding principles identified in Section 5. Here is a selection of some items.

- 'the Nunavik government will be non-ethnic in nature';
- the government 'shall come under the jurisdiction of the Québec National Assembly';
- rights attained under the JBNQA shall not be modified and any amendment to it can only be made by consensus;
- the Nunavik Government should not prejudice the rights of the Cree and Naskapis under the JBNQA;
- the proposed governmental form has to adhere to existing legal and economic realities. However, 'it may also be innovative in nature'. Still, the

rights and responsibilities of the Québec and Canada governments are not to be curtailed;

- 'the establishment of a Nunavik Government shall respect the arctic character of Nunavik and close relationship between the Inuit of Nunavik and Nunavut.'

Finally, in Section 8, a disclaimer states that: 'This Accord shall not be interpreted as a treaty or a land claim agreement within the meaning of section 35 of the Constitution Act of 1982.'

For obvious reasons, the performance and impact of the Nunavik Commission cannot be assessed at this time. Still, the content of the Political Accord allows some assessment of the situation and the identification of some areas that could be seen as stumbling blocks towards the road to autonomy for the Nunavik region. In summary, these points concern Inuit grievances related to sections in the JBNQA that touch upon the economic development of wildlife harvesting (hunting, fishing, and trapping) and, in general, upon the control over regional development. Furthermore, although matters of Inuit culture and language are included in the overriding principles, it is not clear how secure their legal position will be, for example, Inuktituk as an official language. And finally, Inuit perceive of Nunavik as their homeland, i.e. settlement and land-use area, to include terrestrial and maritime areas disregarding any political boundaries introduced by Canada or Québec. Thus jurisdictional issues that always relate to territory will have to take into consideration the drawing of boundaries, i.e. between Québec and the newly established Nunavut Territory (federal, provincial, territorial jurisdictions) and more specifically between Inuit lands and water, that is between Nunavik and Nunavut and their respective governments. The current boundary set at the low-water tidal mark does not carry much logic!

Sources

Press releases issued jointly by Makivik Corporation, governments of Canada and Québec, November 29, 1999.

Political Accord between the Nunavik party, the government of Québec and the federal government for the examination of a form of government in Nunavik through the establishment of a Nunavik Commission. Signed at Dorval, November 5, 1999. 12 p.

GREENLAND

Structural Adjustment

For 10 years, Greenland's economy has experienced no growth, a fact that endangers its wish to develop a self-centred economy that will allow it to achieve its long-term goal of becoming more independent of Denmark. It is still so dependent on Denmark, that its public expenditure derives from large annual block grants from that country. These economic facts are important factors behind the increased demand for fundamental changes to Greenland's economy, changes that are inspired by the world-wide trend towards structural adjustment programmes, but which the ruling political parties in Greenland try to modify to accommodate local realities. Since colonial days, Greenland's economy has been dominated by public corporations. After Home Rule was introduced in 1979 the colonial trading company was diversified and split up into a number of publicly controlled share-holding companies.

In order to boost the economy even the socialist party Inuit Ataqatigiit which, together with the social-democratic Siumut party, make up the government, has suggested changes that will mean an end to some of the economic benefits enjoyed by people living in outlying villages and districts. Changes have also been suggested to open the door to more competition in sectors which to date have been monopolised or controlled by Home Rule owned companies. The sectors concerned are transport, retail trade, telecommunications and fish processing. Where Greenland differs from many other countries and self-governing regions, is in the way that the ruling parties try to defy the blind application of liberal structural adjustment programmes as suggested by, for example, the OECD, instead trying to take account of local social and demographic factors.

Parliament Election

Elections to the Home Rule parliament in early 1999 gave new strength to the left wing Inuit Ataqatigiit party that together with the Siumut party made up the new government coalition. The Chair of Inuit Ataqatigiit, Joseph Motzfeldt, was the winner of the election with the highest number of personal votes. To some extent the election could be seen as a protest against the old parties with the other winner being a protest movement that took more than 12% of the votes (compared to Inuit Ataqatigiit's 22% and Siumut's 35%). Four government members were not re-elected and 14 out of the 31 parliamentary seats had new incumbents.

The election was also interesting because it was the first time that Greenland voted as one electoral district. When Home Rule was established, the outlying districts had their own electoral districts - a system that favoured these areas. Thus four (out of five) remote districts are not represented in the new parliament whereas the capital Nuuk now has 14 seats. Turning Greenland into one electoral district does not favour remote and less populated areas, but it strengthens the process of making Greenland one nation. This has been a gradual process that has taken place over the years and it has now culminated in Greenland becoming a unified entity as shown in the relationship between parliament and the population. The same process is also to be seen in, for example, a unified price system and the liberalisation of more and more sectors of the fishing industry. The Greenland Minister of Finance, Joseph Motzfeldt characterised the process in this way:

*"Until now there has been a trend for parliament to look into matters of local political character which has been counterproductive to the overall planning of development within our country. We have taken far too much responsibility for even very local affairs. The new election act that has unified Greenland into one electoral district will certainly motivate the national politicians to perceive issues in a broader perspective instead of promoting local politics from the parliament rostrum. This change of focus also prepares the way for our country's politicians to, in the future, put more emphasis on national, overall and structural political factors, that is legislation which is the concern of everyone and that ensures space for initiatives and ensures basic needs in social matters and health affairs and ensures a proper development of the infrastructure."*¹

Although this electoral change should be to the advantage of the political parties, there has recently been some criticism of the lack of checks and balances between politicians in the capital Nuuk and the many party branches along the vast coast. Under the direction of the same political leaders Siumut has ruled Greenland since Home Rule was introduced more than 20 years ago, and voices are now being heard that a younger generation is to take over the leadership. The establishment of a women's party could also point in the same direction.

Self-government Commission

In late 1999, Greenland premier Jonathan Motzfeldt presented a self-government commission to the public and to the Danish government. The members of the commission are all prominent Greenland politicians. The commission's terms of reference strongly indicate Greenland's wish to be more independent from Denmark than the Home Rule structure makes possible:

*"The commission will prepare a report about the possibilities to further develop self-government for Greenland within the frames of the realm based on the principles of conformity between rights and responsibilities."*²

After one of its first meetings the commission wrote:

*"It is the aim, within the frames of the realm, to attain self-government to the highest degree possible. The commission is of the opinion that with regard to all areas of responsibility that can be transferred to Greenland's control it should be investigated when this can take place, and it should be investigated how responsibilities that have already been transferred can be better managed. As concerns matters that according to the [Danish] Constitution are the responsibility of the state, the commission will investigate how Greenland can attain the highest possible degree of influence."*³

Among those areas that the commission will look into are the future position of Greenland in relation to Denmark, foreign policy and security and the economic options for a Greenland self-governing to a greater extent than at present. Of special concern is the dependence on annual block grants from Denmark that constitute more than 50% of all public expenditure. The Commission report is expected within two years.

When Home Rule was introduced in 1979 few people anticipated that Greenland would, in many respects, develop a *de facto* self-governing system of government in such a short time. However, this same development also highlighted the limitations of the Greenland parliament and government to take autonomous decisions without getting permission from the Danish authorities. It may be the case that the Danish authorities have not intervened in most matters, but in order to develop competence and responsibility among Greenlanders as a way of achieving a locally controlled economic and cul-

tural future, the present system is seen by many as an obstacle to development.

A matter of special concern is defence and security. In the early 1950s, the northernmost inhabitants of Greenland, the Inughuit, were relocated without compensation and without their full and informed consent when the US established a large military air force base at Thule. In spite of official Danish policy not to allow nuclear weapons on Danish (and Greenland) territories, the American air force used the Thule air base for its nuclear weapon carrying aeroplanes - with the informed consent of the Danish government. Over the years, several Danish ministers have lied to the public about this matter, a fact which has added to the dissatisfaction of Greenland's Home Rule government and parliament, since they have had very little influence on decisions relating to the area annexed by the military in the early 1950s. Thus, although the base is the only gateway into northern Greenland, regular traffic is controlled by the military authorities which, for example, makes tourism in the region impossible.

Furthermore, since the Inughuit's demands for the return of part of their lost hunting territories have met with very little sympathy from the Danish authorities, this has added to the wish of the Greenland parliament and government to be able to act in matters of foreign policy, defence and security without intervention from the Danish government. 1999 was also the year when the High Court decided that the Inughuit were relocated without their full and informed consent when, following the establishment of the US Air Force Base in Thule in 1953, they were forced to move from their old settlement Ummannaq to Qaanaaq. As a result of being relocated, the hunters lost one of their most productive hunting territories. The High Court admitted that the relocation took place without proper compensation being given to the hunters for the expropriation of their hunting territories, but what collective and individual compensation was offered was very meagre in comparison to the hunters' demands. Moreover, the court ruling neither opened the way for the hunters to return to their old settlements nor did it allow them to regain lost hunting territories. The hunters brought the case against the Danish state, and dissatisfied with the High Court ruling, more than 600 descendants of those Inughuit who were relocated, have since appealed the ruling to the Supreme Court.

The Language Debate

Greenlandic is the country's first language. It is the vernacular of by far the majority of all Greenlanders, who make up 87% of the total population. By

contrast, only very few of the 13% of people who are Danish living in Greenland speak this language. Danish is the first foreign language and it is taught in schools, with many teachers speaking only Danish. The administrative language is also to a large extent Danish and if you want to progress beyond elementary school, further education very often takes place in Danish, either in Greenland or in Denmark.

When Home Rule was established in 1979, a focal ambition of Greenland's politicians was to strengthen the Greenlandic language. In many respects these efforts have been realised, not the least in the sense that Greenlanders now occupy many positions that were occupied by Danes before Home Rule. This is also reflected in the statistics which reveal that the percentage of Danes in the population has decreased from about 20% to about 13% today.

Today, however, many Greenlanders feel that the process has not gone far enough. The unemployment rate continues to be extremely high, and the widespread use of the Danish language is seen by many as an obstacle to independent development. In 1999 a heated debate took place in the Home Rule Parliament on the use of the Danish language. There is only one Danish speaking member of the parliament and there were strong calls for Greenlandic to be the only language used in parliamentary debates. When a member of parliament proposed a resolution to make Greenlandic the only language used in parliamentary debates their proposal was not adopted. However this will not be the end of the discussion.

The situation in parliament has often been confused with the general use of the Danish language in society, which is itself a complex state of affairs. There are Greenlanders who do not speak their mother tongue either fluently, or at all. But it is also a fact that to enter higher education a profound knowledge of Danish is needed. To many therefore, the debate over the position of the Greenlandic language is a matter of improving the educational system and making sure that everyone, not least the Danish minority, is taught Greenlandic better.

Social Problems

Outside Greenland, news about its people in the media has so often focused upon social problems. Greenland has one of the highest suicide rates in the world, alcohol abuse proliferates and violence seems to be widespread. However, the outside world tends to overlook those trends which run counter to the ones that are usually considered as epitomising the current situation. It is with this in mind that an incident which took place in the village of Kuummiut

in East Greenland in the autumn deserves to be mentioned. In this village of 400 people, 60 children made a public protest against their parents' alcohol abuse. Starting at one end of the small village, the demonstration proceeded to the local store where many of the adults gather every day to drink. In even this small community drinking is so severe a problem that a small institution has been opened in which children can stay during the weekends when, because of their parents' heavy drinking, they cannot remain at home.

The founding of a women's party, *Arnat partiiat*, in November can be considered in the light of such social problems or as a response to the passivity of the existing political parties when faced with these serious issues. Six out of 31 members of the Home Rule Parliament are women and one of the seven member strong government is a woman, and the creation of this new party might also be reflection of this numerical imbalance. Among the foremost aims of the women's party are to restore the integrity of families and to put greater emphasis on solving social problems, not least among young people.

Notes

- 1 Translated from *Politica* 32,1:7. Aarhus 2000.
- 2 Translated from the terms of reference of the Commission.
- 3 Translated from press release 19th of April, 2000.

RUSSIA

Legislation

In May 1999, after seven years discussion, the Federal Law "On guarantees of the indigenous peoples' rights in the Russian Federation" was adopted. The adoption of this law is the first step towards the recognition of the rights of indigenous peoples in Russia. This Law provides for the inventory of the rights of indigenous peoples for the protection of their habitat and environment, traditional lifestyle and economy, of the alternative military service, preservation and development of the traditional culture and language. It recognizes the right of indigenous communities to establish "the territorial bodies of public self-government", the right "on the voluntary basis to organize the communities of indigenous peoples... for the social, economic and cultural development, protection of the traditional habitat and the environment, lifestyle, economy and aboriginal activities". The law is of a declarative character, it does not comprise the requirements for the authorities to

assist indigenous communities in the realization of their rights. In the law no compensation is made for the lands utilised by the state or the private companies in traditional land use areas. It also does not provide government funding for the self-government system, cultural development, education and health protection for indigenous peoples. Therefore, there is an urgent need for measures to be taken to ensure the enforcement of the set of laws on the protection of indigenous peoples' rights for their traditional land use, development of actual self-management, the preservation of indigenous cultures and the improvement of their health.

Activities of the Russian Association of Indigenous Peoples of the North (RAIPON)

The basic trend in RAIPON's activities in 1999 was an increasingly close cooperation with 30 non-governmental organizations, i.e. regional associations of indigenous peoples of the North of Russia. These activities included: organizing educational and information conferences and seminars, joint programmes with foreign indigenous peoples' organizations, cooperation with environmental NGOs, the youth, and government agencies in the sphere of the protection of indigenous peoples' rights. RAIPON organized and convened a Round Table with representatives of the Saami Parliament in Moscow, the international conference "Problems of traditional land use of the indigenous peoples of the North", a seminar on indigenous peoples and the environment at Sakhalin which focused on the consequences of oil and gas exploitation on the shelf. In June 1999, the Indigenous Youth Congress was held and the Indigenous Youth Council was established. In September 1999, the 3rd Arctic Leaders Summit took place in Moscow. In December 1999, with financial support from the UNEP/GRID-Arendal and with the participation of IWGIA the first issue of the new RAIPON journal titled "World of Indigenous Peoples – Living Arctic" was printed.

The Current Situation of the Indigenous Peoples in the North

The 3rd Arctic Leaders Summit which was held in September in Moscow was dedicated to the issue of the health and environment of the Arctic indigenous peoples. Special attention was paid to the indigenous peoples of the North in Russia, who are now in a very critical situation.

The reports Ms. T. Stukolova, Russian Federation Deputy Minister of Public Health, and RAIPON Vice-President Dr. L. Abryutina have raised particular interest and concern. The statistical data cited by these authors confirmed

the critical state of the indigenous peoples of the North in Russia, who find themselves at the brink of psychological degradation and physical extinction.



During a festival in Kovran, Kamchatka (Foto: Olga Muraschko)

According to Larisa Abryutina, the main reason for the crisis faced by the indigenous peoples is the overwhelming state patrimony and paternalism policy of the past, as well as the separation of children from their families for their education in boarding schools. These interventions transformed the indigenous peoples into helpless personalities. It resulted in the decline of psychic activity, which again is the cause of their deteriorated health.

Statistics show an increase in tuberculosis. The mortality due to this disease is as high as 40% in the Khanty-Mansiysky autonomous region. A large percentage of the indigenous population of the North also suffer from alcohol addiction. Alcoholics have become a high-risk group for suicide. The mortality rate caused by suicide in Chukotka has reached 83.8 per 100,000, while the index for Russia as a whole is 30 per 100,000.

The average life expectancy among indigenous peoples of the North is 10-15 years lower than the Russian average, and in some regions among men it is as low as 41-42 year olds.

The population of the majority of indigenous peoples of the Russian North is decreasing. For example, the Itelmen people in Kamchatka have had a negative growth-rate of 2.1 per thousand during the last decade. According to the data of the Institute of the Indigenous Peoples of the North (the Siberian Branch of the Russian Academy of Science) of 1998, the mortality rate among Saami, Nganasan, Negidal, Aleut, Enets, Eskimo, Kumandins and Shor peoples has been higher than the birth rate. Compared to 1990, the birth rate in the indigenous peoples of the North in general has decreased by 34%, while the mortality rate has increased by 42%.

During the same period the number of employed persons among indigenous peoples of the North decreased in the agricultural sector by 45%, in industry by 43%, in construction by 68%, and in commerce, communication and transport by 32%. In many indigenous settlements relying on traditional economies, unemployment exceeds 60%. For example, in small villages in the Koryak autonomous region, predominantly inhabited by Koryak people, the unemployment rate exceeds 85%.

Unemployment and the critical state of the health and reproduction of indigenous peoples are connected with the general social and economic crisis in the country and the degradation of the natural environment, provoked by uncontrolled exploitation of natural resources. New forms of development for indigenous peoples in Russia within the existing legislation are urgently needed. Two promising approaches may be noted: Between 1997 and 1999 the ground work for the creation of the ethno-ecological area in Kamchatka was carried out. And attempts to establish biosphere reserves with traditional land use of indigenous peoples are being undertaken in the Khanty-Mansiysk region and in Yakutia.

SÁPMI

Sweden

Mineral Prospecting on Sámi Land

The Canadian company BNP World Exploration has been given a permit to prospect for minerals in an area east of the Sarek national park in Sweden. Reindeer owners, local inhabitants and environmentalists are worried. "I think it's utterly wrong," says Lennart Lántha, who lives in the small mountain village Aktse. The government authority Bergsstaten has granted it a permit to prospect for zinc, lead, copper, silver, and gold east of Sarek. The permit

applies to an area of 11,585 hectares. The area is in uninterrupted mountain terrain, and contains several reserves: the Sitoätmo forest reserve; the Harrejávri nature reserve and; the Tjaktavárri forest reserve. The county government of Norrbotten wants to turn all of this into a single nature reserve called Ultevis. The county government describes the area as unique.

The prospecting area also contains Guorbak, one of the largest reindeer industry sites in Sweden. Here, there are grazing lands, migration routes, slaughterhouses, and housing. Around Guorbak, there are also old Sámi dwellings of great historic value. "A mine here would be a catastrophe", says Bertil Kielatis, spokesman for the Sirka Saami community. The Minerals Act allows companies to prospect for minerals just about anywhere. Only national parks and nature reserves are entirely protected. Other interests just have to yield. Only when mining becomes an issue is the case tested against other interests. However, BNP World Exploration is not yet being allowed to take its machines into what is called Europe's last wilderness. The court will have to decide whether the Bergsstaten permit was legally granted.

Adopt a Reindeer

The Sámi have a customary right to let their reindeers graze in the forests throughout the winter season without compensation to the forest owners. This right was legislated for in 1886 and is essential in order for the Sámi to continue to live from reindeer herding as the reindeer cannot survive in the treeless higher mountain regions during the winter months. This right has been challenged by private forest owners around the Swedish mountain regions of Jämtland, Härjedalen and Dalarna. They claim that the Sámi have not lived long enough in this area to claim their customary grazing rights. But reindeer herding has been taking place here for at least a few centuries. Groups of private forest owners have taken the Sámi communities to court. Since no written documentation exists, which can prove long-standing use of the land, the Sámi risk losing their customary rights. The Sámi cannot afford these legal processes - losing the first round of the court case cost them £1,000,000. All the money raised is meant to pay for the Sámi communities' legal costs in the customary law trial in Jämtland/Härjedalen (see IWGIA Indigenous Affairs No.2 p.20 1997). The foundation hopes to raise some SEK five million with the "Adopt a Reindeer" campaign, and thereby save the reindeer industry in Jämtland and Härjedalen. Those wishing to adopt a reindeer may choose to pay either SEK 100, 500 or 10,000. The adoption diploma has been created by the well known Sámi artist Lars Pirak. The money can be paid to the Swedish bank account: 5243-4933 or Swedish post giro: 1958561-1 Address

'Adopt a reindeer' c/o Kjersten Valkeapää, Box 46.S-84095 Funäsdalen, Sweden.

ILO Convention 169

On Thursday May the 6th 1999 there was an information meeting about the ILO convention in Östersund. It was an event which attracted many listeners, as well as representatives from almost all of the native communities in the area. Many Swedish farmers and forest owners were very much against the ratification of ILO 169 and their stance mirrored the general attitude in Sweden. It will take another five years of hearings before Sweden decides if they will ratify ILO 169. The reason for Sweden's hesitation in proceeding with ratification is article 14, which amongst other things says: "Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession".

Lars Anders Baer, Chairman of Samiid Riikkasearvi /SSR (National Society of Swedish Sámis) and Jörgen Bohlin, Attorney for the Society told the Sámi journal Samefolk: "Sweden has got a 'report card' when it comes to national policies on native matters. The official investigation into the ILO convention has shown that the legislation and lack of action from the government have put Sweden in a situation where the country is lagging far behind in legislation for native populations, and doesn't measure up and won't get a decent mark in an international comparison."

European Parliament Supports Native Reindeer Husbandry

When Sweden became a member of the European Union there were several consequences for reindeer herding. Among other things mobile slaughterhouses were forbidden. This meant that some of the Sámi had to transport their reindeers several hundred kilometres to stationary slaughterhouses. This problem seemed to be solved when in March 1999 the European Parliament agreed to a motion to adopt the following resolution: "To investigate the possibilities of using mobile slaughterhouses to avoid the unnecessary transport of livestock and to increase economic gain." The resolution also called for the creation of a "special support for reindeer husbandry such as investments and other means to refine the products that are locally produced to create a higher degree of employment."

Lavvu in the Middle of Stockholm

A group of Swedish Sámi raised a *lavvu* (a traditional Sámi tent) on Sunday May the 16th 2000 in the middle of Stockholm. "We have learnt from the

Swedish state that you can monopolise land without respecting the landowner. That is why we monopolise a piece of land here in Stockholm for a week", said Olof T. Johansson to the Sámi paper Assu. Throughout that week the Sámis lived in the *lavvu* and told passers by about the Swedish government's encroachments onto the country's indigenous peoples, the Sámi.

Two Hundredth Anniversary of Læstadius.

On the 8th of January 2000 it was the two hundredth anniversary of the birth of Swedish Sámi priest Lars Levi Læstadius's (1800-1861). Læstadius was the founder of a Sámi revivalist movement which was called Læstadianism and which became very important for many Sámi. Læstadianism was not only a religious movement but also an ethno-political reaction against oppression and exploitation. The movement gave many Sámi hope for the future and mobilised them into struggling for social and cultural survival. The relations between Sámi and the nation state were built on an asymmetric power relationship in favour of Swedish values. Læstadianism promoted Sámi values and offered a means of remaining true to your Sámi roots, whilst at the same time remaining an equal member of society. Læstadianism spread to Norway and Finland as well as to the USA. Throughout the year 2000 Læstadius will be celebrated in different places across Sweden. It is important however to emphasise that not all Sámi are Læstadianists and that other Sámi found different ways to react against oppression and ethnocide.

Norway

Norwegian Sámi Association's General Assembly

The Norwegian Sámi Association (NSR) held its general assembly on June the 17th to 20th 1999 in Karasjok. The NSR agreed on a resolution concerning the army's practice and shooting area in Hålkávárre, Porsanger municipality. The area has been under constant enlargement since 1964. The latest development is that bombing exercises using planes are planned. There have been negotiations between the army and the reindeer herding districts, but without any agreement so far being reached. It looks as though the court will have to settle the matter. The NSR is worried that a further enlargement of the Hålkávárre shooting area will continue to reduce the breeding areas of reindeer herds, which means that reindeer herding in Finnmark will be badly affected. The NSR demands that the army stop the enlargement of Hålkávárre.

They also agreed on a resolution about the use of Sámi place names, which will be important as far as strengthening Sámi language and culture goes. With the place name law the NSR assumed that Sámi place names will be

equal with Norwegian ones when it comes to public signs. Language was also the centre of attention in a resolution about education that amongst other things declared: "Beside the special Sámi related education it is very important to work for stronger inputs of Sámi elements in primary schools." The general meeting requested Alta and Kautokeina municipalities to secure the fishing rights of local people in the Alta River. Private organisations have been fishing illegally, by usurping the rights of local fishermen. Apart from in a few municipalities in Finnmark, the Sámi have few possibilities to influence the decisions of the majority. It was agreed that the municipalities in Finnmark should be asked to be more aware of Sámi issues.

Reindeers Starved to Death

The reindeer herding administration in west Finnmark found 80 reindeers that had starved to death. The reindeers belonged to one herd and had starved to death during the winter grazing, according to Mikkel Ailo Gaup from the administration of reindeer herding in west Finnmark. The rain in November had caused large areas to become inaccessible to the reindeers because the grazing grounds were covered with ice.

Russia

On December the 1st and 2nd 1999 a scientific conference was held in Lovozero arranged by the Sámi Public Organisation of the Murmansk region (OOSMO). The subject of the conference was 'The Sámi Language Year 2000'. At the conference it became apparent that the possibilities of teaching Sámi during the first years of school are very good. Schoolbooks and the necessary literature exist. Furthermore once a week there is a one hour radio programme in Sámi. Unfortunately these initiatives are not enough to strengthen the Sámi language. The motivation to use Sámi is very weak. The younger generation has only a superficial knowledge of the language. The conference recommended that a language research centre should be established in Lovozero. Rules and laws should be worked out for the preservation and development of the Sámi language, and the possibility of changing it to the Latin alphabet should be investigated. It is also recommended that a programme for the preservation and development of collecting Sámi audio recordings should be worked out and that teaching in Sámi should be introduced in those oblast schools where there are many Sámi. Sámi culture suffered greatly during the forced collectivisation under Stalin, when they were forced to live in the cities. The men went as before out with the reindeers on the tundra while the women and children stayed in the cities. The children lost the opportunity to

socialise in their own culture and language and to experience life in the tundra. To change this situation the conference asked the co-operative "Tundra" to help to make it possible for the children to stay with their parents while they work on the tundra.

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Countries covered in this issue: Canada, USA

NORTH AMERICA

Native North American Education: A Tool Between Tradition and Modern Technology

"Through the guidance of the tribal elders, Native values and traditions are being taught as the primary key to unlocking the force that will move Native peoples on the path of their own development. The elders have prophesied that by returning to traditional values, Native societies can be transformed. This transformation will then have a healing effect on our entire planet."

The Four Worlds Development Project of Lethbridge, Alberta - an organisation dedicated to individual and community wellness for Native people

The following accounts on the general situation of Indian Education today in both Canada and in the United States present the logical consequence of the article on the foundation of 'Nunavut 99'. Obviously, one of the major issues for the Inuit of the new self-governed territory is the comprehensive 'Indianisation' of the education system of indigenous peoples.

In fact "Indian Control of Indian Education" seems to be one of the prerequisites of a smooth entry of Native communities into a self-determined new millennium. In the United States for example, it is estimated that there are between 300,000 and 400,000 American Indian or Alaska Native children of school age (Butterfield, 93). Over five hundred different tribes or nations are present in this number, yet most of the time the school system ignores these various cultural differences.

However, the kind of Native education that best serves the interests of an emerging Native community - and of course of any indigenous people - has not always been the subject of unanimous agreement. But nowadays, there is a general view that Native education should fulfil the dual purpose of keeping the traditions of a rich Indian culture and art alive (mostly by oral transmission), and that the teachings of "mainstream America" are to be studied as well, so that distinct Native Nations can continue to survive in a globalised white setting. In some instances their continuing cultural survival is under constant pressure. Therefore Indian control of Indian education certainly represents one promising means of coping with living in two worlds.

Differences in Principle

One way in which traditional native people differ from mainstream white society may be their ways of dealing with their own cultural heritage, in particular the way in which they hold their traditions sacred. At the centre of their value system stand people and relationships which leads to such values as respect, community thinking, wisdom, spirituality and sense of humour. Everyday life is guided by a holistic approach to nature and one's environment. Nevertheless, the younger generations especially are knowledgeable in mainstream ways, including teaching along the lines of white education systems and using sophisticated technology.

Now some leaders and teachers fear that exposure to modern technology in the schools will result in the assimilation of young Native people into non-Native culture. But there are other voices arguing that it may be exactly technology that can be instrumental in preserving and teaching traditions. In addition, technology may even serve to educate society at large in Native ways. Computers coupled with modern telecommunications, open up new methods of education - exciting many Indian students and teachers. And these are certainly the skills crucial for the economic development of reservations, and helping Native communities leave behind marginalisation and oppression.

Technology Offers Modern Educational Tools

A few Native American school districts in the US utilise and produce modern technology-based educational tools. The Pine Ridge Reservation in South Dakota, the White Earth Reservation in Minnesota, and the Hannahville Indian Community on Michigan's Upper Peninsula have one or more schools that are truly exemplary in the way they use technology. While these schools are not typical of all Indian schools, they do show the direction in which Indian education may be heading. Some leaders are conscious of the potential that lies hidden in technological tools, nevertheless, they try and combine these modern tools with their people's history and traditions. One renowned example of such a Native leader is Oren Lyons, a respected faithkeeper of the Onondaga Nation whose ancestral lands lie in what is today upstate New York. As a chief of the Turtle clan and a college professor, Lyons does what he can to keep his people's history and traditional values alive. In the fall of 1992 before a gathering of about 2000 Native American college students in Washington D.C., he expressed his feelings about the tightrope Native people walk as they move deeper into the American educational process:

"We've always looked upon education as being a way of assimilating our people. And indeed, if you look at the law on Indian education, it says very clearly that its purpose is to assimilate the Indian people into the mainstream of American life. I've always been against assimilation. I've always been for the Nation, for the people. And so, a little warning: As you move through these times, as you take your steps, not only should you look back, but you should walk back and not make education a brain drain from your territories and from your nations. You should go back. Put your efforts back into the people. Support where you come from, because we are in perilous times. Be careful. I'm a teacher; I'm a professor at the University of Buffalo. That tells you what I think about education. I really moved into that position as a defensive measure to catch some of our people before they were totally assimilated."

Clinton's Visit to Benefit Tribal Colleges

When President Bill Clinton visited the Pine Ridge Reservation in July 1999, he encouraged his listeners to make use of their tribal college, Oglala Lakota College (OLC). The president of the tribe, Harold Salway, who shared the podium with Clinton, was a recent graduate of the college. The visit was designed to bring national attention to the poorest spot in the nation and to stimulate job creation and housing construction. According to the Washington Post Clinton was the first president since Franklin D. Roosevelt to visit an Indian reservation.

The New Market Initiatives that Clinton announced will result in several specific programmes for tribal colleges, according to Carrie Billy, executive director of the White House Initiative on Tribal Colleges and Universities. Several companies have promised substantial financial sponsorship for educational purposes. For example, Microsoft will donate \$300,000 worth of computer software to the Oglala Lakota College.

Sources

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Ecocide in Native North America

"The coal is the liver of the earth. Human beings don't realise what's happening with all these corporations. It's being done just for the money. The mines are destroying everything for the money. This is being done to native peoples everywhere. The earth is our mother. The earth hurts. The planet is in danger...I will die fighting this law. I am doing it for my children and grandchildren and your children and their children. It is everybody's future."

Roberta Blackgoat, Dineh elder (Navajo) and activist

Even at the start of the new millennium the situation has not yet changed. One of the 'hottest issues' in Native America since the days of colonisation has been the exploitation of resources on indigenous land. Many aspects and interests are intertwined when dealing with natural resources and Native Nations. Certainly the issue of land rights (and self-determination) is the first that needs to be looked at, followed by the problem of reversing the destructive effects of gold, coal, uranium and oil mining, etc. The clear cutting of thousands of acres of pristine forests in Canada has led to a new name being coined for the country, the 'Brasil of the North'. Also, in most areas, the question of co-determination and fair compensation for resources extracted by mainly transnational companies has not yet been resolved. And this is quite apart from the question of principle whether the world today would not be much better advised if exploitation of resources was examined from a global perspective, in order to work out our global needs and secure the survival of the world's community of both native and non-native peoples.

Instead economic constraints, the need to create jobs, and political power games between 'traditional' and 'progressive' wings of tribal governments, provincial/state governments and industrial interests very often leave it to a handful of multinational corporations to decide on the ultimate destruction of land that is not only ancestral to many Native Americans but also sacred in the true sense of the word. Yet such companies only care about their own shareholders' future and not about the future of the global community. It may be one of the ironies of American history that after the defeat of the Indian peoples they were very often relocated to barren lands that seemed of no interest to white society. Yet to mention just one example, approximately 70% of uranium ore lies in indigenous lands that belong for the most part to North American Indians and Aborigines in Australia. Interestingly enough,

today's spiritual and traditional leaders keep reminding society at large what many past prophecies had to say about environmental destruction. Just to mention the most popular one among Europeans - the Hopi Prophecy - that tells of the 'Gourd of ashes' falling down from the sky, symbolising the explosion of the nuclear bomb in Japan. These 'warning signals' only underline the necessity to turn to a policy of complete sustainability in everything we do to 'Mother Earth'.

Ironies of Modern Times

Another and probably one of the cruellest ironies is the fact that Native people are among the first victims of the ongoing ecocide in today's polluted world. Yet they have lived in ecological harmony with the earth for thousands of years. This has been shown by their sustainable practices that are based on the interdependence of human beings and nature. But the last 50 years have seen more irreparable transformations of the world, than occurred in the preceding two thousand years. However the ecocide that we are witnessing today started with industrialisation and the waves of white settlement across the American continent. Today it is reflected in the continuing indifference of corporate and government interests to the survival of Native Peoples and their cultures. A final irony of the times is the fact that indigenous peoples were not only made to suffer under the radioactive fallout of uranium mining and nuclear tests (see the Yearbook 1997/98 for the case of the Western Shoshone and the Dineh), but as the nuclear fuel rods are burned out in the Western power plants, they are 'returned' to the lands of indigenous people to be dumped as radioactive nuclear waste - transferring this hazardous legacy to often sacred grounds in highly vulnerable areas. Hence the Yucca Mountains of Nevada (sacred to the Western Shoshone) have been targeted to serve as the American dump for the waste of 110 nuclear power plants that have so far produced more than 40,000 tons of burned fuel rods. And in Canada, the Assembly of First Nations' chief Phil Fontaine is presently fighting federal government plans to deposit nuclear waste on Indian land in the Canadian Shield. (In Northern Saskatchewan Canada has some of the largest uranium mines in the world and is the biggest uranium exporter supplying most of the needs of the European nuclear markets). For nine years a government commission investigated the region and, in 1999 concluded that it constituted the best area for a final deposit. Thus the Canadian Shield not only is a rich 'warehouse' of mineral resources but should now also serve as the nation's dumping ground to get rid of the waste from the stripped mines. Phil Fontaine refers in particular to the Dene of Deline who work in the uranium mines.

Many of the workers have suffered premature deaths from cancer and their lake, which is close to the mine, has been radioactively contaminated. Now the government is once again luring them with offers of money. The National Chief is using his title as representative of Canada's treaty Indians to fight for their inherent rights as keepers of the land.

The 'Vampire Project' (HUGO)

The latest development is that even human genomes are now being considered an exploitable resource that can be mapped, processed, patented and subjected to intellectual property rights by modern biotech companies that have invested billions of dollars in research and development to 'suck out' the essence of life from mainly indigenous peoples to recreate their unique genetic set-up for commercial purposes. The Human Genome Diversity Project, an informal consortium of universities and scientists in North America and Europe, has launched a campaign to take blood, tissue and hair samples from hundreds of so-called 'endangered' and unique human communities scattered across the globe. Among those targeted for DNA sampling from North America are the Delaware and Sarcee (each numbering around 600). The Project is supported by the US government's National Institute of Health, and linked to the multinational, multi-billion dollar initiative to map the human genetic structure known as HUGO - the Human Genome Organization.

No wonder that this global project is called 'the Vampire project' by those who it affects. Here again, the irony is cruel. It will no longer matter if the survival of a people is threatened, as industrial interests would not care so long as they have secured the necessary genetic material to reproduce the distinct features of that people. The material itself may be patentable even without further research.

It seems almost too late, but at least indigenous peoples have finally come up with actions against the patenting of life. In 1999 they issued a joint statement on the trade related aspects of intellectual property rights (TRIPS) in the WTO agreement, and pushed the World Health Organization to call for a special conference to present their concerns in Geneva. In particular, they want to draw attention to the inherent conflict between white and native property views. Indigenous knowledge and cultural heritage are usually collectively evolved and owned and cannot be traded. *Nobody can own what exists in nature except nature herself. A human being cannot own its own mother. Humankind is part of Mother Nature. We have created nothing and so we can in no way claim to be the owner of what does not belong to us.*

Sources

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CANADA

The Innu Nation

The end of the 20th century was marked by deep sadness and introspection among many Innu, as the communities of Sheshatshiu and Utshimassiu tried to contend with a growing sense of alienation and despair among their youth.

For the second time in a decade, these problems became a focus for the world media. A report entitled '*Canada's Tibet*' by Survival International, which critically examined the Innu situation and questioned Canada's much-lauded human rights record and international reputation, became a focal point for an international examination of the problems faced by the Innu. Tragically, the report's launch last September in London by Innu spokesperson John-Pierre Ashini was at once overshadowed and underscored by the news of his son's suicide, which occurred only hours before the launch.

At the time, Innu Nation President Peter Penashue was quoted to say:

"It is true to say that Canada is killing the Innu. This country does not make it easy for us to live as a people. Governments create all kinds of obstacles. We don't control our schools or our social services - we don't control any of the programs in our communities. If you look at the cumulative effects of centralization, the policies of control and

putting people through social assistance, the net effect is that our people are dying."

In late November 1999 a breakthrough of sorts was achieved towards self-government, as the governments of Canada and Newfoundland entered into an agreement with the Innu Nation to transfer control of education and policing to the Band Council in each community. This agreement was intended to provide some interim measures to deal with some of the serious problems facing the youth in each community, as a step towards full control over all community services in a self-government agreement.

There were also a number of other significant developments in 1999 and early 2000:

In March, Innu activist Elizabeth (Tshankuesh) Penashue organized a walk for Innu women to the military bombing range near Minai-nipi. The purpose of the walk, which was done using traditional snowshoes and tobogans following a traditional Innu travel route, was to demonstrate that Innu people are still strong and committed to the protection of their land. The Walk has become an annual event, and attracts women from a number of Innu communities.

In April, the environmental assessment panel established to review the proposed Voisey's Bay mine development ruled that the project could proceed, subject to several major conditions, including the resolution of Innu and Inuit land rights agreement and the conclusion of impact-benefits agreements between Inco and the Innu and Inuit. These recommendations were welcomed by the Innu Nation as evidence that the panel had listened carefully to the Innu people. However, both Canada and Newfoundland rejected the recommendations, and proceeded to give the development a green light to proceed. This decision is now being challenged by the Innu in the Canadian Federal Court.

In June, the Italian air force announced that it was entering into an agreement with Canada and the other Allied countries conducting low-level military flight training over Innu territory. The Italians have recently banned low-level flights in their own country, following a tragic accident in which an American jet clipped the cable of a gondola, causing numerous deaths. The Innu Nation has formally complained to the Italian government, and has asked for an explanation of why the Italians believe that it is acceptable for the Innu to have to live with such risks.

In December, Innu leaders from both Labrador and Quebec were invited to participate in a meeting between Newfoundland Premier Brian Tobin and Québec Premier Lucien Bouchard on the proposed Lower Churchill hydro development. This massive project, one of the largest ever proposed, could begin construction in 2003. The meeting with the Premiers was widely viewed as a recognition by the two governments that the Innu must play a central role in such a development.

In January of 2000, the massive Voisey's Bay project was put on indefinite hold by Inco, following a breakdown in negotiations with the Newfoundland government. The stalemate was applauded by the Innu Nation as an opportunity for the Innu to make progress on land rights, healing and social development prior to any major developments in their territory.

Work continues on many fronts, and for the Innu, the dream of achieving a just land rights settlement, control over their lives, and an equitable stake in the benefits that are being derived from the development of their territory is one that they will continue to fight for.

On Nunavut and Nunavik see section on the Arctic.

UNITED STATES

"It is time we all faced the truth of the hardships ahead of us. It is time to investigate the one form of genocide which threatens us all. It is the environmental and human destruction that American industrial greed is bringing, not only to Indian Nations, but to the other nations of the world."

Leonard Peltier

The words of this renowned Anishinabe-Lakota political prisoner express the essence of the situation of indigenous peoples in general. Unfortunately updates on many cases that have been covered in previous issues of the *Yearbook* would not reveal any major changes that would suggest a promising new direction of justice and self-determination. Instead it is much more the case that many indigenous nations of the North American continent have to keep struggling against unjust structures. Therefore the following accounts should reflect those issues that exemplify the living conditions of Native Americans living in the US, and First Nation inhabitants living in Canada.

Leonard Peltier: Reviewed For Parole and Refused - Clinton His Last Chance

Readers of the *Yearbook* remember the case of Leonard Peltier, who was originally convicted for the murders of two FBI agents on the Pine Ridge Indian Reservation. However documents that had been formerly withheld and which supported Peltier's innocence would later force the prosecution to admit that the courts could not prove who actually killed the agents. Despite this fact, Peltier has remained in prison for 24 years. Amnesty International considers him to be a political prisoner who should be immediately released.

After years of intensive campaigning, the US based Leonard Peltier Defense Committee called upon the international community of supporters to once more intensify the campaigns and focus in December 1999, when continuous actions and campaigns in Washington D.C. and other cities in the States and in Europe should have led President Bill Clinton to finally consider his case and grant him executive clemency for Christmas. However the pressure from anti-Peltier interest groups seemed to be so high that even though Bill Clinton knew he could not be re-elected, he still did not dare to consider the issue. Instead he left it to Justice Minister Janet Reno and her staff to try and keep Peltier's lawyers and activists from occupying government grounds in Washington. In the past, the FBI's anti-Peltier position has been strikingly obvious with advertisement campaigns in major newspapers against his release. Furthermore the FBI is working in the interests of multinational energy companies who wish to keep all that happened on Pine Ridge covered up (*for more information contact: NatAimer@aol.com*). It is certainly not wrong to speak about corrupt dealings within government bodies that have kept Leonard locked up for over 24 years. No wonder he is called the "symbol of Indian resistance". The next step for Peltier's supporters was to lobby for the *parole hearing* scheduled for June the 12th 2000.

June the 12th 2000: Parole Hearing for Peltier

On June the 12th, a parole examiner was to hear the case of Leonard Peltier who is being held at Leavenworth Federal Penitentiary in Kansas, and was to make an initial recommendation as to whether or not the Parole Commission should grant him a date to be released. On the one hand things looked pretty positive since, for the first time, Amnesty International was to attend the hearing in person. The National Council of Churches, the Assembly of First Nations (AFN) and the National Congress of American Indians (NCAI) were also represented. Legal counsel included attorneys Jennifer Harbury, Carl Nadler, and former US Attorney General Ramsey Clark. Jean Ann Day, survivor of

the Pine Ridge 'reign of terror' also testified. And during the previous year several delegations had met with the Justice Department to urge the US to grant Leonard Peltier his freedom.

But on the other hand the Parole Commission had never treated Leonard's case fairly. Peltier underwent his first full parole hearing in 1993, at which point the Parole Commission refused to consider his release for a period of time far beyond that which its guidelines recommend. In spite of the fact that the Commission is required to hold subsequent hearings every two years in order to determine whether there are any circumstances that warrant a change in its original decision, it set his next full hearing for the year 2008. In the meantime it "recognises that the prosecution has conceded the lack of any direct evidence that [Peltier] personally participated in the executions of the two FBI agents." During his 24 years of incarceration Leonard Peltier has maintained a good behaviour record and has been eligible for release for over nine years.

US-Parole Examiner Refuses to Consider New Evidence

Yet the unthinkable happened. Although Peltier's representatives told the Parole Examiner that his health, his serious family needs and his positive programme achievements were all reasons for the Commission to reconsider their refusal of parole, he did not listen to the fact that the Commission had yet to justify their reasons for denying his release. He refused to read a report from Dr Peter Basch who determined that problems with Peltier's health could result in "recurrent central retinal vein occlusion, stroke, heart disease, and kidney failure." Nor did he show an interest in the eight parole plans from various Native organisations and tribes offering Peltier housing and employment. And he refused to accept or consider the 10,000 letters collected over the last three months from US citizens, human rights organisations, luminaries and members of the international community supporting Peltier's release.

Without deliberating over or considering any of the documents presented, the parole examiner recommended that Peltier's sentence be continued until his next full parole hearing in 2008. Those in attendance reported that the examiner wrote out the refusal while the presentation was still being made. Such behaviour needs to be clearly defined as an open affront to basic principles of human rights and dignity. Peltier did not receive a serious or fair hearing at his parole request, and this is yet one more sad confirmation of how his case can easily serve as an example of how indigenous peoples are treated in general. Peltier's defence counsel immediately declared that he would continue to protest against the Parole Commission's refusal of parole in the fed-

eral court. Now supporters have to continue efforts to gain Peltier's release through the granting of Executive Clemency.

Executive Clemency

In 1993 attorney Ramsey Clark filed for Executive Clemency on Leonard's case. Executive Clemency is a power that only the president holds allowing him to grant the release of any prisoner. Normally a petition for clemency goes through a process at the Justice Department before it is put on the president's desk. On average it takes six to nine months for a clemency petition to be reviewed and two years for the president to either deny or grant it. It has been over seven years since the LPDC filed their request, and they have not yet received a response. The only response ever received from Clinton is a form letter stating that the Department of Justice is still reviewing the request. It is now known that the Clinton administration has not yet acted upon letters and resolutions from foreign parliaments, Native Nations, human rights organisations, numerous prestigious people, and millions of signatures and letters.

Canadian Extradition Report

One of the most controversial aspects of the case of Leonard Peltier is the manner in which he was extradited from Canada after his arrest in 1976. At the time of his arrest, the US government did not have enough evidence against him to extradite him from Canada for the murders of the agents. For this reason the FBI, in conjunction with Canadian prosecutor Bob Halprin, obtained affidavits signed by Myrtle Poor Bear, a Native American woman known to have serious mental problems. She claimed to have been Peltier's girlfriend at the time, and to have been present during the shoot out and to have witnessed the murders. But she later confessed she had given the false statement after being pressured and terrorised by FBI agents. A third Poor Bear affidavit directly contradicting those submitted to the courts was withheld by the FBI and would later be uncovered before Peltier went to trial.

According to FBI documents Halprin knew of the existence of this affidavit and he knowingly withheld it during the extradition proceedings. Yet the complete Poor Bear incident was withheld from the jury during Peltier's trial. No action has ever been taken by either the Canadian or the US governments to rectify this blatant abuse of power by the FBI. To this day the Canadian government continues to co-operate with the US government in obstructing justice for Leonard Peltier.

In 1995, as a result of mounting pressure from Members of Parliament, the Royal Commission of Aboriginal Peoples, the Canadian Supreme Court and Canadian citizens, the Canadian Minister of Justice, Allan Rock, announced that he would conduct an official review of the extradition of Leonard Peltier. When doing so, he asked MP Warren Allmand to review the documents related to the extradition and make a private recommendation to him. In a confidential letter to Minister Rock, Allmand stated that the extradition was fraudulent. But Minister Rock changed offices, and never completed his review of the extradition.

More recently, Peltier supporters, labour unions, First Nations, and Canadian MPs began pressuring Allan Rock's successor, Minister of Justice Anne Mc Lellan, to finish the review. On October the 15th 1999, after stating that she had been waiting for the US government's permission before proceeding, Ms Mc Lellan released her results. Her reported results constituted a lazy acceptance of the Canadian and US governments' positions, rather than an actual review that resulted in any responsible scrutiny of the proceedings. Mc Lellan found that the extradition proceedings were legal and based her conclusion on prior court proceedings despite the fact that it was the courts themselves that suggested that a governmental review be carried out, because it was a matter regarding nation to nation relationships that they could not act upon. Outrageously, the minister refused to confront the real issues at hand.

On November the 1st 1999 former MP Warren Allmand, publicly released his previously confidential letter which he had submitted to Allan Rock in 1995 as well as his own response to Mc Lellan's findings. In his response he argued that there is no way Mc Lellan could have determined that there was enough evidence to extradite Peltier without the Poor Bear affidavits. In his letter to Allan Rock he recommended that the Minister of Justice make a formal plea to the United States to either release Peltier through a grant of Executive Clemency or to grant him a new trial. Allmand requested that at the very least he order an independent review, either by a learned counsel or by a retired judge. Mc Lellan neglected to even consider Mr Allmand's advice and she did not post his letter as part of the documents relating to the extradition on her web site. Apparently such blatant governmental misconduct can occur without any rectification.

Native Nations Show Support

For the first time, the Assembly of First Nations (AFN) of Canada and the NCAI of the United States held a joint meeting in Vancouver in honour of Tecumseh's vision. During the historical conference held on July the 21st to

23rd, both organisations passed unanimous resolutions calling for the release of Leonard Peltier. On November the 12th 1999 both organisations met with Janet Reno's office and made a strong plea for clemency for Peltier. On January the 18th 2000 the National Chief of the AFN, Phil Fontaine, his delegation, and Ernie Stevens of the NCAI met with Leonard Peltier in prison to plan the strategy for his release. Together the two organisations represent the majority of Native Nations in the US and Canada.

International Support

The international campaign is an important element in the movement to free Leonard Peltier and as his case gains notoriety, the international campaign continues to grow. After the European Parliament's second resolution in February 1999 insisting that Peltier be freed, other Parliaments have followed, such as those from Belgium and Italy. Both the British and French Parliaments have introduced motions calling for President Clinton to release Leonard Peltier. In April 1999 Danielle Mitterrand, the former first lady of France and president of a human rights organisation, came to the US on a fact-finding mission on behalf of Peltier. She visited him in prison and met with government officials on his behalf.

During the same month, Archbishop Desmond Tutu made a public statement and referred to his case as a "blot on the judicial system of this country that ought to be corrected as quickly as possible." In September various support groups called on their members to join a birthday-card campaign for Leonard who turned 55 on September the 12th 1999. Birthday cards were sent to Leavenworth thereby making international solidarity visible to the US authorities. Additionally, in a letter dated March the 4th 2000, the Dalai Lama renewed his call for Leonard's release, which asked for him to be "immediately and unconditionally released".

The LPDC attended the last session of the United Nations Commissions on Human Rights in Geneva. Several NGOs made oral and written interventions about the human rights violations involved in the Peltier case. During the session the government of Cuba also condemned the imprisonment of and the denial of medical care to Leonard Peltier. The UN-Special Rapporteur on Torture welcomed the transfer of Leonard Peltier to the Mayo Clinic for proper treatment of his jaw, but he also expressed concern about the misinformation he was given by the United States government and he announced his plans to follow through with investigations. He also expressed his own strong support for Peltier's release.

For further information contact:

<http://www.freepeltier.org>

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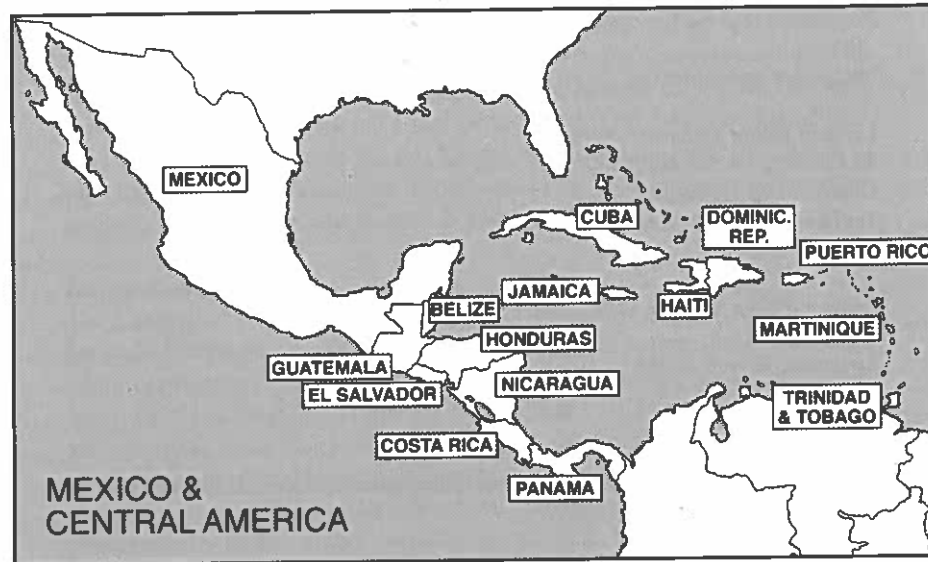
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Letters supporting the minister's response to the Allmand-Report should be sent to:
The Honorable Anne McLellan,
Minister of Justice,
Confederation Building Room 448,
House of Commons, Ottawa,
Ontario, Canada K1A 0A6.

Letters supporting the demand for presidential clemency should be sent to:
President William Jefferson Clinton,
The White House,
1600 Pennsylvania Avenue,
Washington, D.C. 20500,
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President@whitehouse.gov

Sources

Leonard Peltier Defense Committees of USA, Canada.
INCOMINDIOS Newsletter, LP-Action Campaigns.



Countries covered in this issue: Mexico, Guatemala, Nicaragua, Panama

MEXICO & CENTRAL AMERICA

MEXICO

During 1999 and the first quarter of 2000, indigenous issues in Mexico were largely displaced by issues of national interest. The prolonged student strike at the National Autonomous University of Mexico (UNAM) and electoral debates between the political parties and their presidential candidates took precedence in the media. Nevertheless, indigenous peoples regained a proactive role with the visits of a number of international human rights observer missions to Mexico, which noted the precarious situation of justice in the country, in particular in the states of Guerrero, Oaxaca and Chiapas.

During 1999, Mexico received visits from a number of senior officials of the United Nations. In meetings held in Geneva, Switzerland within the framework of the Working Group on Indigenous Populations, the country's indigenous leaders had insistently been calling for the UN to visit Mexico. The Special Rapporteur for Extrajudicial Executions, Ms. Asma Jahangir, thus visited Mexico in July. In November, it was the turn of Ms. Mary Robinson, UN High Commissioner for Human Rights, and in February 2000 that of Ms. Erika Daes, President of the Working Group on Indigenous Populations. In the previous November, a large group of observers from the International Civil Human Rights Observation Commission (CCIODH) had arrived. Deputies from the European Parliament, along with civil servants and government ambassadors from America and Europe, also visited Chiapas during 1999 and the first quarter of 2000.

The Government's Position Regarding Observation Missions

Since 1998, the Mexican government has tightened regulations governing the entry of foreigners into the country. It has thus managed to prevent visitors with tourist visas from reaching the Zapatista communities, as well as those controlled by the Army. In general, the observation missions that have arrived since that time have found themselves restricted and rigorously monitored. Whilst the government has stated that the presence of senior UN officials is welcome and has expressed its willingness to collaborate with the UN system, noting that it (the government) was already taking measures to correct human rights violations, it could not avoid showing its irritation and annoyance at the signals sent out by the Reports. These reports noted differ-

ences between the government's claimed actions and what the observers witnessed on the ground.

At the beginning of the year 2000, the Report on Extrajudicial, Summary and Arbitrary Executions was made publicly known, presented by the Rapporteur, Asma Jahangir, in fulfilment of resolution 1999/35 of the Commission on Human Rights (UNHCHR), dated 25th November 1999. Although the report recognises the difficulties the Mexican government is facing and the efforts it is making to undertake corrective action, it also notes that situations persist which are causing violations and vulnerability of human rights in Mexico. The Special Rapporteur, noted that *"...in spite of the efforts undertaken and commitments made (by the government of Mexico), the situation with regard to human rights continues to be a cause for national and international concern"*.

The UNHCHR Reports, disseminated by the Fray Bartolomé de las Casas Centre for Human Rights (CDHFBC, April 2000), noted that there was a total ineffectiveness in the judicial system in Mexico and a lack of transparency in the functioning of State institutions, affecting the whole country and its population. It also mentioned serious misconduct on the part of public prosecutors and judges and selective impunity of those responsible for human rights violations, since they were neither investigated nor the senior public officials responsible punished. What is more, officials in charge of ensuring that the law was fulfilled had, in a deliberate and premeditated way, used excessive and disproportionate force culminating in several extrajudicial executions and violating their Code of Conduct.

In the same area of concern, the High Commissioner even *"...showed her bewilderment at the enormous distance existing between the Government's declared actions and the complaints of human rights violations to be found in the reports submitted by Rapporteur Asma Jahangir and non-governmental organisations and observed in various field visits to places where the population's rights had been affected"*. Faced with such opinions, the Mexican government's reaction was to discredit the Rapporteur's report in which *"she had exceeded her mandate"*, stating that her report ignored the measures being taken by the government (CDHFBC, April 2000).

The government's double discourse regarding the human rights situation was also perceived by the European parliamentarians when they visited Chiapas. Their interviews with the different players involved demonstrated that there were contradictory versions of the facts, leading them to wonder precisely who was telling the truth. Particular concern was shown towards

complaints regarding the existence of presumed paramilitary groups who were violating human rights and the rule of law. The European parliamentarians said that the validity of the rule of law and human rights were commitments that the government of Mexico had assumed when it signed the free trade agreement with the European Union (La Foja Coleta newspaper, 30th March, 2000). Meanwhile, the CCIODH held a meeting with members of COCOPA in which it mentioned that it perceived that a low intensity war was being carried out against the Zapatistas in Chiapas.

It has to be noted, however, that not all government observers saw the Mexican reality in the same light. The Swedish Ambassador, Ehnneom Palmquist, who spent two days in the Altos de Chiapas region, subsequently met with government officials and human rights bodies and said, *"one thing I have been able to see is that there are no signs of conflict"*. (La Foja Coleta newspaper, 26th May 1999) For his part, the British Ambassador to Mexico, Adrian Thorpe, said that during his stay in Chiapas he had observed no, *"...cases of conflict, but there are difficulties between different groups in Chiapas"* (La Foja Coleta newspaper, 24th March 2000). Jeffrey Davidow, US Ambassador to Mexico, visited Chiapas in April 2000, only days after the public appearance of a new guerrilla group in Mexico City. He stated that he considered the guerrillas of this organisation to be of no great importance. He said that, *"Mexico is heavily involved in a broad and strong democratic process and it is this that defines it, more than any minor guerrilla group that may exist"* (La Foja Coleta newspaper, 25th April 2000).

Following the impact the Acteal massacre had on world opinion and the severe questioning the Mexican government received from abroad, Mexican ambassadors have been trying to improve their government's image. In spite of the quality of reports and the significant efforts made by senior UN officials to make known the Mexican reality with regard to human rights, it is clear that the Mexican government has recovered a certain amount of credibility with some governments. This has led it to relax enough to respond in form but not in content to the recommendations. This pattern of behaviour can be seen in the government's reaction regarding the recurrent issue of "paramilitaries", mentioned in all the reports.

The government accepted the presumed existence of "civil armed groups" and agreed to initiate an inquiry into the issue. To this end, on 17th April 2000, the *"Special Unit to Deal with Crimes Committed by Probable Civil Armed Groups"* was formed, as a substitute for the *"Special Prosecutor for Crimes Committed in the Municipality of Chenalhó"*, reporting to the General Prosecutor of the Republic. Days earlier, the State governor had tried to lower the

profile of the federal decision even further and bring the inquiry under his control, announcing on 10th April, that his government would launch a "*cru-sade against the armed groups operating in the area*" for which he urged the Congress of the Union to approve the proposed "*Law of Amnesty for the Disarming of Civil Armed Groups*", which had been sent to the Congress of the Union two years previously.

In the opinion of some human rights organisations, these measures are insufficient and they are demanding that - given the gravity of the problem - the crime of "*paramilitary operations*" be specified in federal legislation and the corresponding criminal codes in order to punish and prevent the actions of armed groups. This has already been done in other countries, such as Colombia, where the same problem persists.

The Indigenous Movement in the Electoral Climate

Another agreement contained in the San Andrés Accords and that was signed by the parties, including the deputies of the Commission for Concord and Pacification (COCOPA), was a commitment to promote legal reforms that would enable just and fitting indigenous representation in congresses, both local and national, without the necessary mediation of political parties. Four years on, this agreement has still not been fulfilled. The political parties still hold a monopoly over political representation. Indigenous people can sit in Congress only if they are a member of a political party. Given the current climate, the party bureaucracies have been left with virtually all the candidacies in their hands, and they have shut themselves off from any possible alliances with civil society, including indigenous people. A few days prior to the closure of the period for legal registration of candidates, it was clear that no political party had guaranteed candidates for the indigenous movement.

This is a serious situation for the future progress of indigenous people's rights. Since 1988, the indigenous movement has been constantly represented in the Congress of the Union, particularly through the Party of the Democratic Revolution (PRD). It was not by chance that Mexico adhered to ILO Convention No. 169 in 1989 and that article 4 of the Constitution was rewritten around the same time in order to incorporate recognition of indigenous rights. Since then, despite some ups and downs (due largely to individuals), the indigenous movement has established an indigenous legislative agenda in the Congress of the Union. Various initiatives have been instigated, such as the construction of a legislative proposal around the establishment of a System of Pluriethnic Regional Autonomy, known as the National Indigenous Plural Assembly for Autonomy (ANIPA). This was possible, at least in part,

because of the support indigenous deputies gave to the initiative. Things have now changed: the parties have lost interest in indigenous issues and, alongside this, the indigenous movement has become fragmented and is now in a period of decline.

Although the discourse of the PRD candidates continues to abound with praise for the culture of the "Indians of the Pyramids" and lamentations regarding indigenous poverty and exclusion, their proposed solutions do not include recognition of the right to indigenous self-representation. More serious still is the fact that by not guaranteeing representation of the indigenous movement in their lists of candidates, this political party is violating its own statutes. At its last Congress, the PRD agreed that at least 10% of legislative seats should be occupied by indigenous representatives.

Unfortunately, in practice, the proposals of the PRD - a party that defines itself as being on the political Left - lag behind even the indigenist actions currently being implemented by the government party, the PRI (the Institutional Revolutionary Party). Things are no better on the Right of the spectrum. The conservative National Action Party (PAN) ignores indigenous specificity, preferring to emphasise the majesty of their pyramids and the beauty of their art, for which reason the PAN candidate has announced that if he is elected President, the office dealing with indigenous issues will be relocated to the Museum of Fine Art!

Like the rest of the candidates, this party's perspective is dominated by a marginalist view of indigenous peoples. The PAN candidate considers that, in reality, indigenous demands are threefold. He has stated that all indigenous people aspire to having "*vocho, tele y changarro*". Meaning that, in his view, the indigenous struggle can be reduced to a goal of three material items: a small Volkswagen car, a television and a corner grocery store. He advocates a programme of job creation by which to achieve this goal. Other smaller parties, such as the Environmental Greens, have promoted events in which indigenous issues have been treated with some importance. Nonetheless, such interest has not translated into a policy that guarantees indigenous self-representation in the legislative arena.

As things stand, the outlook is that in the LVIII Legislature of the Congress of the Union and the Senate of the Republic (2000-2003) the indigenous movement will have no representation.

The Situation in Chiapas

Throughout the period in question, the situation in Chiapas was characterised by a repositioning of the players, in which the federal and State governments

took the lead in initiatives and pushed the EZLN into a virtual corner, where it now survives surrounded by military forces and harassed by the civil indigenous groups who are its neighbours and opponents. The new governmental strategy has consisted of strengthening these groups, and this has occurred in such a way that the conflict has changed direction and has acquired the form of a virtual *indigenous civil war*, composed of internal confrontations encouraged within the framework of a low intensity war. In Chiapas, the conflicts causing the most deaths and imprisonments have not been confrontations with the police/military forces but intracommunity confrontations. This strategy on the part of the government uses multiple means. Both the distribution of money under the cover of "production projects", along with military advice to these groups and a supply of arms, were clearly visible at Acteal.

However, complementary to these actions have been the government initiatives claiming to "fulfil" the San Andrés Accords in a unilateral manner. The most notable actions have been an ambitious programme of remunicipalisation, which includes the creation of some thirty new municipalities superimposed exactly on top of the Zapatista rebel municipalities. In July 1999, the first seven new municipalities began functioning, namely: Aldama, Santiago el Pinar, Benemérito de las Américas, Marqués de Comillas, Maravilla Tenejapa, San Andrés Duraznal and Montecristo de Guerrero. These can be added to the 111 that are already in existence (see annexed map). The government is now making progress with the process of remunicipalisation and during 2000 and 2001 it is expected to inaugurate another 15.

This programme has been supported by a strong strategy of introducing services and infrastructure in response to requests from the communities who, for decades, have had their demands ignored. Roads, schools and hospitals are now being built in the conflict zones through the remunicipalisation programme. What is more, the most loyal town tends to "win" the seat of the municipal centre, which means that they are additionally provided with a public square, a town hall and a building for the "Courts of Justice and Indigenous Conciliation", amongst other benefits.

For decades these have been the most felt needs of the people who, disappointed by government indifference, decided to opt for the armed option. Now, many of their demands are being met through a counterinsurgency strategy. For both the Remunicipalisation Programme and the accompanying infrastructure and development are clearly in keeping with a counterinsurgency strategy. The federal and State governments are acting unilaterally, excluding the EZLN, although such a proposal for remunicipalisation had been included as a commitment by the parties to the San Andrés Accords. Faced with the

Zapatista absence, the government generally argues that the EZLN should get involved in the work *now* if it does not want to be left out. Meanwhile, the EZLN refuses, demanding that the signing of peace should first be pursued before establishing new municipalities.

It is clear that with such actions the government is implementing a strategy that seeks to weaken the Zapatistas and achieve their surrender. Its actions are not in line with a desire to seek dialogue, as required by the Law of Concord and Pacification of 1995 and the San Andrés Accords of 1996.

As for the EZLN, its actions have been largely undertaken and its presence largely made known through its autonomous municipalities, which survive weakened because important segments of its members have been attracted by the government strategy described above. The rebel municipalities continue to undertake *de facto* activities that challenge the Mexican State and its institutions. Of significance amongst the actions undertaken during the period in question was the decision of some forty Zapatista communities to close their classrooms and expel 140 indigenous teachers from the State sector from their communities, substituting them with promoters appointed by the communities themselves and establishing "schools in resistance", as had already begun in Oventic, Larráinzar. In the same way, during August and September, members of the EZLN, their support base and UNAM students who were accompanying them, prevented the company constructing the stretch of road from Las Tacitas to the Amador Hernández community from continuing its work, even burning their machinery. This road was due to cross through the forest. The Zapatistas consider the road to have a clear military aim whilst for non-Zapatistas it constitutes a benefit that has been requested for years. The issue of this road has held the population in a situation of constant tension.

The EZLN also undertook a number of mobilisations. In November 1999, Zapatistas from the municipality of Cancuc held a march to demand that the government fulfil the San Andrés Accords. More than 600 Tzeltals held a sit-in for three hours in front of the municipal palace, located in the Altos de Chiapas. They also scrawled graffiti on the building in support of their demand. Fulfilment of the San Andrés Accords is the leitmotif that mobilises both the civil indigenous movement and the Zapatista indigenous movement. On 10th April 2000, in San Andrés Larráinzar, a group of around 500 indigenous EZLN supporters gathered to commemorate the 81st anniversary of the death of Emiliano Zapata and the first anniversary of the recapture of the municipal palace offices, now controlled by the Zapatistas. This date was

commemorated in other Aguascalientes rebel communities, who once again showed themselves and mobilised to remind people that "we're still here".

Apart from the EZLN, other indigenous organisations were also active. The defence of cultural heritage and indigenous knowledge took on greater significance during this period. The *State Council of Traditional Indigenous Birth Attendants and Doctors of Chiapas*, made up of eleven regional indigenous organisations, mobilised to denounce (with support from the international organisation, RAFI), and demand the suspension of activities in, a programme of bioprospecting in the Mayan area of Chiapas, funded by the Government of the United States to the tune of 2.5 million dollars. The project is managed by the University of Georgia, in collaboration with the *Colegio de la Frontera Sur* (ECOSUR) research institute in Mexico and the biotechnology company Molecular Nature Limited, based in Wales in the United Kingdom.¹

The projected length of the project is 5 years and it proposes collecting and evaluating thousands of plants and micro-organisms used in the traditional medicine of Mayan communities. The ICBG-Maya project (known as the "*Pharmaceutical Investigation into Sustainable Use of the Ethnobotanical Knowledge and Biodiversity of the Mayan Region of the Altos de Chiapas*" project), is in its second year of operation. Using indigenous knowledge as a guide for its investigation, the ICBG project in Chiapas proposes to discover, isolate and pharmacologically evaluate important components of plant species and microorganisms used in traditional Mayan medicine. A duplicate of all the samples collected will be placed in the herbarium of the University of Georgia - Athens (RAFI).

During 1999 and the first part of 2000, indigenous doctors from Chiapas undertook protests against the programme of bioprospecting, stating that their knowledge and resources were being plundered. The organisations consider that the principles of the Code of Ethics of the International Society of Ethnobiology (ISE) are being openly contravened. The director of ICBG-Maya, Brent Berlin, has been a member and President of this organisation, which allows for the "*Principle of Prior and Informed Consent and Veto*". The project is also violating Mexican law and Chiapas law. Despite the demands of the Mayans of Chiapas and of the indigenous doctors who own the knowledge, the academic institutions involved in ICBG-Maya have refused to suspend the project.

On the other hand, throughout this same period, the Pluriethnic Autonomous Regions (RAP) promoted actions aimed at strengthening indigenous processes of autonomy by means of food self-sufficiency, within a frame-

work of defending and strengthening indigenous maize and local systems of indigenous production. In April 2000, this organisation held ceremonial, cultural and productive activities, along with the "*First Maize Encounter*" and training on the issue was provided in collaboration with the *Training Centre for Self-Development of Indigenous Peoples (CECADEPI)*. This was to inform and prepare people regarding the dangers of the growing penetration of genetically modified maize into Mayan and Zoque communities within the state. Indigenous itinerant salespeople in the town of San Cristóbal de las Casas also undertook actions and mobilisations. On 1st May 2000, a large group were sent to prison, and an indigenous Tzotzil deputy and leader of the RAP, Agustín Pathistan, was also arrested, violating his parliamentary privileges.

Other longstanding actors in the state once again exploded onto the public scene. The legendary Emiliano Zapata Peasant Organisation (OCEZ) "House of the People of Venustiano Carranza", once more came out onto the streets to demand their communal lands. Unfortunately, the enemies of those demonstrating are not to be found outside but inside their ranks. This organisation has been split by many divisions. In reality, this fragmentation is characteristic of most indigenous and peasant organisations at the moment. A large part of this serious problem being experienced by the Chiapas indigenous peasant movement is the result of the express will, and actions on the part of, the government in order to weaken this movement within the framework of a strategy of low intensity warfare. But alongside this, and equally important, are the actions of intolerance and corruption that have also gained ground amongst the leadership of these movements, causing them to lose credibility and legitimacy. Times are changing in Chiapas but there is still a long way to go. At least, to get where many of us would wish to be.

Notes

- 1 See: "*Indigenous Mayan Organisations denounce biopiracy project in Chiapas - RAFT*" (In Spanish).

GUATEMALA

Two events marked the political life of Guatemala during 1999, influencing – the first one in particular – the actions and demands of the Mayan organisations. On 12th March, a Referendum was held to ratify the constitutional reforms that came out of the Peace Process. However, out of the minuscule

12% of voters who exercised their right to vote, 57% decided not to approve the reforms. These included recognising Guatemala as a "pluricultural, multiethnic and multilingual" nation, a product of the 1995 Agreement on Indigenous Rights.

The second event, the consequences of which have yet to be discerned, was the Presidential, Legislative and Municipal elections, the first round of which was held on 7th November and the second round on 26th December. The triumphant party at all three levels was the Guatemalan Republican Front (FRG), a party created by ex-general Efraín Ríos Montt. It was during his de facto mandate from 1982-1983 that the greatest number of planned massacres were committed during the internal Guatemalan conflict and it was this party's candidate, Alfonso Portillo, who became the President of Guatemala on 14th January 2000.

The unexpected result of the Referendum has led to many very varied analyses in Guatemala, all attempting to explain the extremely high level of abstentionism and the response of those who did vote. The lack of interest on the part of the country's political structure itself in moving the peace process forward since its signing has been mentioned. In fact, the 12 constitutional reforms anticipated in the agreements became 45 following their passage through Congress, leaving the initial proposal unrecognisable. The parties themselves – even the recently demobilised Guatemalan National Revolutionary Unity (URNG) – appeared very reluctant to give firm support to the "yes" vote and to a positive response to the referendum's questions, and support for this was thus left to the civil organisations, above all human rights and Mayan organisations, to promote.

The "no" vote was supported by conservative and ultranationalist sectors, in an unexpected and far more united and decided manner than their opponents. Two of their fundamental arguments were that the peace process was a consequence of foreign interference in the internal affairs of Guatemala and that the indigenous proposals assumed a series of privileges that would constitute a threat to the territorial integrity of the nation.

Some of those who analysed the results have noted the high level of rejection, fear or at least incomprehension that exists in society with regard to the progress being made by the indigenous organisations in terms of recognition of the Mayan People. The urban middle class (who overwhelmingly voted "no") and other social sectors are still not prepared to support proposals for a multicultural society in which nobody is excluded, and where indigenous people may fully exercise their citizenship. Not only is it the weight of age-old discourse and internalised discriminatory and racist practices that cause

them to be seen as inferior but also a "fear of the Indian", which forms part of the ideological concept of their place in society.

However, the indigenous people themselves did not seem to lend the importance the organisations had hoped to the power and scope of their constitutional recognition: in spite of substantial efforts, they did not vote in sufficient numbers. Although the departments in which there was relatively more participation and more support for the "yes" vote were largely those of indigenous population, their support was not sufficient to counter the abstentions and negative votes.

For the indigenous organisations, this result was the end of an illusion and also the end of an era. For a long time – at least since 1992 – all efforts at the political level had been aimed at achieving legal recognition of the existence of the Mayan People, through direct participation in the peace process. Following the signing of the Agreement on Indigenous Rights, they set themselves to work in the resulting Parity Commissions in order to achieve its implementation. This meant five years of work with lukewarm – or indifferent – support from the Government and firm support from the international community – which funded a large part of the activities – around a defined programme that is now left without any legal substance. According to one Mayan leader, it was the end of a second stage – following a first "formative" stage – characterised as being achieved within the framework of the Peace Accords and with the support of international cooperation.

It was a hard blow and, instead of moving on to a stage of construction as had been hoped, it has been necessary to pause for reflection. In fact, COPMAGUA, the collective body that coordinated the efforts, "has still not raised its head", according to a source close to this organisation. On the other hand, certain sectors of the intelligentsia and the political class have had their views vindicated by the results of the Referendum, discrediting the aims of the Mayan movement and confirming their reaffirmation that in Guatemala there is no "indigenous problem".

Nonetheless, not all views are so negative and the anthropologist, Jorge Solares, states that, "what has been lost is not the real strength of the Mayans but the laughable and superficial concessions of the Government towards a cause that, when all is said and done, it is indifferent to". And this is partly the view of the Mayans themselves, many of whom consider that the only benefit the Constitutional Reforms would actually have given them was legal recognition of their existence as a People. Of course, this was important because it constituted a legal basis on which to build. But, they say, they worked without recognition for many years in the past and they will just have to continue

to do so in the future. And so whilst the Referendum brings to a halt – but not to an end – one way of working, the political path, there are many other areas in which progress has been made and which “must be continued”. In fact, activities are still continuing at community level with regard to the important issue of education, and relations between the State and the rest of society, creating conditions and building on the efforts of previous years.

This does not mean that there is any triumphalism on the part of the organisations with regard to this unexpected change, or that they are detracting importance from what has happened. The above mentioned leader continued by saying that in this new stage there has to be a reformulation of the day to day tasks and proposals of the Mayan organisations if they are to continue with the work undertaken to date. There needs to be more support and greater links between those creating policy and working at national level and those working in the communities, in contact with the people, and where real progress is being made. These reflections assume more importance if we look at them in relation to the elections which closed the Guatemalan political year and which, for the Mayans, highlighted two important aspects.

Firstly, and as was seen from the Referendum, it is clear that the ethnic issue still has no place on the agendas of the country's political parties. With the exception of the URNG, the rest have not taken on board multicultural issues nor recognised the ethnic reality of the country in their programmes. Furthermore, in spite of the efforts of the Mayan organisations to become involved in political life, the proportion of candidates and deputies was minimal: 3% to 5% in the major parties, 7% in the URNG. Consequently, in a country in which approximately half the population is considered to be indigenous, there are currently 16 indigenous deputies out of a total of 113.

Secondly, it has been extremely difficult to understand the support given in indigenous areas to the party that had previously organised the greatest massacres precisely in those areas. This was already the case in the 1995 elections but since publication of the reports of the Commission for Historical Clarification and the Church, this support becomes all the more difficult to explain. This result raises many questions as to how the people in the communities perceive both their political participation in elections and the current “peace process” and “transition”; how they perceive activism in indigenous organisations in relation to party political life. When all is said and done, if they want to make progress in the political arena, and for this they require popular support, the question has to be asked as to what relationship exists between what the Mayan organisations propose and what the Mayans really need.

And so Guatemala began the 21st century as one of the few Latin American countries still not constitutionally recognising its multiethnic character – in spite of being one of the countries with the highest proportion of indigenous citizens –, and with a populist authoritarian government in which Mayans still occupy no more than cosmetic posts – a Minister for Culture, and two Ambassadors to Scandinavian countries. It would seem scant progress in comparison with what was hoped for, but it must be seen in relation to the speed of the process of transition the country is going through and to the participation of the Mayan organisations in this. That which has taken at least thirty years in countries such as Ecuador or Bolivia cannot be asked of a Guatemalan movement with scarcely a decade of public activism and following a bloody experience whose authoritarian overtones still live on in our memories. Such capacity for convincing people cannot be expected of the Mayan organisations, nor can such capacity for assimilation of new ideas be expected from Guatemalan society in so short a time. And so in spite of this setback, the process continues, falling within and transforming the deep process of transition that Guatemalan society is experiencing.

NICARAGUA

Post-Mitch Nicaragua

Considered to be the worst natural disaster to hit the country in the last 26 years, the damage caused by Hurricane Mitch in November 1998 included numerous *Miskitu* and *Sumu-Mayangna* indigenous communities living along the banks of the Coco and Grande de Matagalpa rivers. A slow process of recovery from the devastating effects of the hurricane is taking place, with help from a number of national and international bodies.

Within the framework of a series of activities relating to post-Mitch project preparation and national strategies for reconstruction and transformation, there has also been integration and work in common amongst the representative sectors of Nicaragua's Caribbean Coast. The authorities of the two autonomous governments and representatives of civil society thus presented a portfolio of projects amounting to 95 million dollars at the meeting of the Consultative Group in Stockholm, Sweden in May 1999. However, to date only 8 million dollars worth of funding for implementation of new projects has been obtained, this being from the Inter-American Development Bank.

Regional Autonomy

1999 was a difficult year for the process of autonomy in the Autonomous North Atlantic Region (RAAN) and the Autonomous South Atlantic Region (RAAS), jointly known as Nicaragua's Caribbean Coast. Firstly, the Autonomous Regional Governments, affected by internal and external constraints, are still far from fulfilling an important role in the long awaited regional integrated development. What is worse, however, is that the work of the Regional Autonomous Councils (CRA) reflects an even more negative outcome. The most important event of the period was unhappily a negative one, being the fact that the RAAN's CRA did not sit throughout the whole legislative year from May 1999 – May 2000 due to internal political disagreements and also in order to avoid having to deal with the issue of the possible dismissal of the Coordinator of the Autonomous Regional Government, a member of the Constitutional Liberal Party (PLC), at a plenary meeting of the Council.

After a year of virtual inactivity, on 4th May 2000 a new Governing Body of the RAAN's CRA was elected, made up of five councillors from the PLC and two from the Sandinista National Liberation Front (FSLN), in accordance with the so-called Liberal-Sandinista pact negotiated in Managua from August to November 1999. This pact consolidates the hegemony of these two majority parties over national political life. The YATAMA indigenous party withdrew from the elections and thus gained no representation on the Governing Body. However, in the RAAS's CRA, the political agreement between the PLC and YATAMA held firm. This meant that the previous Governing Body, made up of four councillors from the PLC and three from YATAMA, was ratified for a further two years. The only change was the new appointment of a second ordinary member, but the FSLN's exclusion continued. As happens in Nicaragua, in both cases the marginalised sectors alleged the use and abuse of improper practices during the electoral process.

During this period, there was no progress made with regard to the regulations governing Law 28, the Statute of Autonomy of the Autonomous Regions of the Atlantic Coast of Nicaragua. The issue was quite simply ignored.

The Process of Legalisation of Indigenous Communal Lands

In order to fulfil a condition of the Global Environment Facility, managed by the World Bank and relating to the "Biological Corridor of the Atlantic" project, the Nicaraguan government drew up, and subsequently sent to the National Assembly, a draft Organic Law regulating the System of Property of the Indigenous Communities of the Atlantic Coast and BOSAWAS, on 13th October 1998. This draft law was prepared by civil servants and consultants from

different State bodies with no participation whatsoever on the part of the involved or interested parties.

Consultation Regarding the Draft Law

With funding from the project mentioned, ten months after its official referral to the National Assembly and through a dynamic process of national and international lobbying on the part of indigenous organisations and other civil society representatives, a process of consultation was initiated under the co-ordination of the Bluefields Indian & Caribbean University (BICU) and the RAAS, and the Moravo Inter-University Centre (CIUM-BICU) and the RAAN. An initial assessment indicates that there are more disagreements than agreements between the official position expressed in the said legal instrument and that of the participating indigenous communities. The majority of discrepancies in positions correspond to the following four aspects: a) the concept of national lands, b) institutional roles and responsibilities as well as the definition of the sphere of competence of the regional authorities and community representatives, c) level of active involvement on the part of the indigenous communities, and d) control of subsoil resources.

Having experienced a six-month delay due to financial constraints, the consultation is anticipated to come to an end in July 2000. Nevertheless, the preliminary results of this process seem to demonstrate that the draft law does not constitute a framework for negotiation with which to facilitate a rapid and effective solution to the problem of lack of legal recognition of the communal lands and territories, given that there are minimal positions and opinions in common. In this respect, the level of political will of all those involved will be the determining factor in negotiating conflictive and/or divergent aspects, along with the relative powers of the social and political groups that support or oppose the demarcation and titling of communal lands on the Caribbean Coast of Nicaragua.

The Persistent Threat Caused by the Advance of the Agricultural Frontier

Through their particular relationship with the environment, indigenous communities are - to a degree - the guarantors of natural resource conservation. Nevertheless, the agricultural frontier is taking giant steps forward, trampling on communal lands. Daily, vast areas of forest on Nicaragua's Caribbean Coast are being destroyed by fires caused by migrant peasants seeking to convert the forest into areas suitable for extensive livestock rearing. One factor that enables this advance is the lack of demarcation and titling of communal lands.

This is a focal point of tension, and one which could end in serious armed conflict if the demarcation of indigenous lands is not urgently dealt with.

The lack of legalisation of indigenous communal lands and the consequent legal insecurity of communal ownership is one of the main causes of conflict and agrarian legal problems in the RAAN and the RAAS.

A Dry Canal Mega-project: A New Area of Conflict for Communal Property

During 1999 and to date, a development mega-project involving the RAAS has held the people's interest. This corresponds to the construction of an inter-oceanic channel for the transportation of merchandise between the Pacific Ocean and the Caribbean Sea and vice versa. This mega-project, known popularly as the 'dry canal', is being promoted by two companies: Nicaragua's Inter-Oceanic Canal Company (CINN) and Intermodal Systems of Global Transport (SIT Global). The construction plans include a deep water port at Monkey Point on Nicaragua's Caribbean Coast, which would link up with another port on the Pacific by means of a rail network.

However, the process of discussion and official approval of the different feasibility studies suffers from a lack of wide and effective participation on the part of the regional authorities and the population living in the actual area of interest. The possible concession of operating rights over a dry canal once more highlights the contrasting interests of the national State and the indigenous communities of the Caribbean Coast, in this case indigenous *Rama* communities, not to mention the Creole and Afro-Caribbean community of Monkey Point. Given this situation, and in order to support those people affected, a group of non-governmental organisations, coordinated by the International Human Rights Group (whose headquarters are in Washington), is undertaking the necessary procedures by which to submit a petition to the Inter-American Commission on Human Rights of the Organisation of American States (OAS) in May 2000. This will request that this body adopt three preventive measures requiring the Nicaraguan government to halt the concession granting procedure until a process of consultation, dialogue and negotiation with the above mentioned communities has been initiated and also to establish guarantees that this mega-project will not cause irreparable damage to their identity or to their economic, political and religious rights.

This would be the second time that sectors of the Nicaraguan population have appealed to the Inter-American Commission on Human Rights. Previously, in 1996, the *Sumu-Mayangna* community of Awes Tingni appealed to the Commission to oblige the Nicaraguan government to fulfil its legal obli-

gation to demarcate and title the indigenous communal lands of Nicaragua's Caribbean Coast. This community is still awaiting a favourable judgement from the Commission, whilst in the last few months the Nicaraguan government's willingness to negotiate an agreement between the two parties has increased. Nevertheless, there is still a huge difference between the territorial demands of Awes Tingni and the successive proposals of the government.

The Dispute Over Forest Resources: Wealth and a Source of Accumulation for Some, Plundering and Dispossession for Others

Exploitation of forest resources continues to be an issue of disagreement on the Caribbean Coast. In general, the practice of damaging the forest continues to prevail, and accusations and counter-accusations of corruption in the granting of logging concessions at national, regional, municipal and communal level are rife. A lack of accountability on the part of a number of communal councils when negotiating with third parties, not to mention transparency in the use of the income received, is contributing to an erosion of the credibility and legitimacy of this communal authority.

The forest resources constitute one of the main and most immediate sources of cash income for significant sections of the indigenous and mestizo population. Thus, alongside a weakening of the indigenous culture of caring for the forest, the last ten years have seen a phenomenon of re-evaluation or commercialisation of forest resources in many indigenous communities, for whom timber extraction may now represent their main source of cash income. This situation is also common amongst demobilised and displaced indigenous people who, along with their mestizo counterparts, are demanding the individual titles to lands that are abundant in precious woods.

The struggle to participate in the distribution of profits caused by forest exploitation is a common factor in inter-community conflicts. However, there is also general dissatisfaction in the majority of communities with regard to the distribution of profits from the exploitation of natural resources that are communally owned. The wood in nearly all the communities and the sand in Kamla, in the municipality of Puerto Cabezas, are two good illustrations of situations in which an absence of control and fair distribution of profits is argued.

By Way of Conclusion

There is little harmony between the draft Organic Law regulating the System of Property of the Indigenous Communities of the Atlantic Coast and BOSAWAS proposed by central government and the proposals from the com-

munities consulted. However, there is also an awareness in the autonomous regions that the demarcation and titling of communal indigenous lands is a necessary condition for the stability and legal security of land tenure and territorial organisation. Legalising the land tenure of the indigenous communities is also a necessary condition for the promotion of investment that will enable greater exploitation of the natural resources, as well as access to funding and the benefits of development projects.

1999 was not a particularly good year for the *Miskitu*, *Sumu-Mayangna* and *Rama* indigenous peoples, nor for the minority Afro-Caribbean ethnic groups, the *Creole* and *Garífuna*. An unequal distribution of benefits from the exploitation of natural resources persists in the autonomous regions, the relative power of the Regional Governments continuing to be weak in relation to central government. Meanwhile, the deficiencies and weaknesses of indigenous political structures seem to grow ever deeper with passing time. The people are crying out for a new leadership which, with a vision of the future and genuine political commitment to the process of autonomy, will be able to stand up to the challenges of regional development with greater chance of success.

PANAMA

For the indigenous peoples of Panama, the final year of the 20th century was one of intense political activity. The arrival of a new government and a woman President brought new hope, whilst the legalisation of new indigenous territories over the last ten years has meant that dreams have been achieved, albeit by means of fierce struggles that have left the country's indigenous people with much grief and pain. However, alongside these small windows of opportunity appeared new problems, and many old ones continued unresolved. Statistics relating to poverty and misery continue to highlight the fact that indigenous communities remain the worst affected in the country.

Throughout the May 1999 elections, our people's strongest demands were: the legalisation of the *comarcas* (territories) and their immediate demarcation (this latter is yet to be defined by the new government); improvements in living conditions and respect for indigenous dignity; ratification of ILO Convention No. 169 by the party gaining power and the prioritisation of laws favouring indigenous peoples in order to combat the poverty that the national authorities were highlighting.

It should be noted that the elections had a negative effect on the unity of our regions for, unlike in other countries, there was no independent indigenous participation. In other words, indigenous candidates had to be put forward by the traditional political parties. Out of 71 deputies elected to the new Legislative Assembly (Panamanian Congress) in this round of elections, 5 were indigenous - from the provinces of Bocas de Toro and Chiriquí (two Ngobe), Darién (1 Emberá) and two from the Kuna Yala *comarca*.

On 1st September 1999, on the day that the Legislative Assembly was inaugurated, the Kuna deputy Enrique Garrido Arosemena was elected its President (this is the second most important State body). He is from the 10-2 electoral circuit of the Kuna Yala *comarca*. Honourable Legislator Garrido is a philosophy graduate from the Catholic Santa María La Antigua University, re-elected for a second time as a Deputy of the Republic.

This event has radically changed the political life of Panama and this country's vision of its indigenous people. On the part of the indigenous peoples, astonishment aside, there was unanimous applause and recognition. And the majority of non-indigenous people were also happy that, for the first time in the history of the country, an indigenous person was leading one of the most powerful State organs. This event is unique at parliamentary level throughout the Abya Yala continent.

From this moment on, indigenous issues have taken a new turn. It has meant that responses to some of the demands of our peoples have been sped up, particularly with regard to Laws. On 12th October 1999, there was a special session of the Panamanian Parliament, not to celebrate the date but to highlight the indigenous struggle. In front of the national deputies, the President of the Republic and other guests, the General Kuna Cacique Carlos López made an official speech, accompanied by other indigenous leaders.

In November, in the meeting of the General Kuna Congress, for the first time in the history of this country the Kuna community formally retired the Caciques (traditional leaders) Carlos López, Julián González and Leonidas Valdés for health reasons (these posts were previously held for life) and elected three new leaders, Gilberto Arias, Harmodio Vivar and Ospino Perez, and William Perez as General Secretary. This change came at a time when the Kuna people are consolidating their autonomy, increasingly undermined by mining companies, tourists from the industrialised countries and Panamanian companies supported by multinational capital.

In 1999, the national government approved the internal regulations for two indigenous comarcas that had been created by legal means: the Emberá-Wounaan comarca created by Law No. 22 in 1983 and the Ngobe-Buglé comarca created by Law No. 10 in 1987. With this stage finalised, the indigenous authorities were required to present internal regulations to the Executive for ratification; these are known as Organic Charters.

The Emberá comarca had to wait 16 years to get its Organic Charter recognised, although it had the agreement and approval of all those it affected. The document was finally approved as Executive Decree No. 84 of 9th April 1999, "by which the Administrative Organic Charter of the Emberá-Wounaan de Darién comarca was finally adopted", published in Official Gazette No. 23,776 of 16th April 1999.

In the case of the Ngobe-Buglé they did not have the best of luck because the document approved by the government contained many errors and had neither the consensus nor the approval of representatives from all areas comprising the Ngobe comarca. By means of Executive Decree No. 194 of 25th August 1999, "the Administrative Organic Charter of the Ngobe-Buglé comarca was adopted", published in Official Gazette No. 23,882 of 9th September 1999.

This comarca has already experienced its first problems of the new millennium, during the appointment of the general caciques, which highlighted divisions between the regional congresses. There is thus a general opinion that the Organic Charter needs to be reformulated. This was adopted by the previous government largely for political ends and does not benefit this indigenous community.

Another underlying problem of recent years that has yet to be resolved is that which exists on the border with the Republic of Colombia, where groups involved in the conflict have been invading or making incursions into indigenous territories in Panama. There have been clashes causing fear and terror amongst the communities, above all the Emberá-Wounaan and Kuna. This has also meant that some Panamanian politicians have again raised the issue of the possible installation of a North American military base in Kuna Yala. This proposal was rejected in 1997 and, indeed, was rejected again on this occasion. However, the Kuna community did agree to recruit some of their young men to form part of this region's Panamanian border police.

One event worth mentioning was the formation, at national level, of an Indigenous Committee for ratification of ILO Convention No. 169. Since Novem-

ber 1999 and because of a note sent by the President of the Legislative Assembly to the ILO Regional Director for Central America, Panama and the Dominican Republic, which has its head offices in San Jose, Costa Rica, this body has been promoting a series of training courses at different levels amongst the indigenous peoples of Panama, and this has increased the government's concern for this issue a little. By mid-2000 it had still not been ratified, but the pressure continues.

On 19th April this year, the Presidency of the Republic formally established the National Council for Indigenous Development (CNDI) in order to implement the Third Goal of its Social Agenda, entitled "A social policy for and with indigenous peoples". To this end, the President of the Republic, Mireya Moscoso, and the Minister of the Interior and for Justice, Winston Spadafora, signed Executive Decree No. 1 on 11th January 2000, creating the Council for Indigenous Development.

There are different interpretations regarding the creation of the CNDI. Some are in favour, because from now on it will report directly to the Ministry of the Presidency and indigenous demands may thus be more quickly dealt with. But others consider it no more than a structural change from one ministry to another without resolving indigenous problems, moving the Office of Indigenist Policy from the Ministry of the Interior and Justice to the Presidency. What is, however, significant is that indigenous issues at governmental level are now being expanded on all fronts.

At the beginning of March 2000, there was an International Meeting of Indigenous Women of the Continent, where they analysed different issues of concern at local country and international level. The Panamanian host was the National Coordinating Body of Indigenous Women of Panama.

At the beginning of April there was a great scandal in the country when a group of Panamanian deputies visited the sugarcane plantations in the central provinces in order to carry out a mission of the Human Rights Committee and found that indigenous children were working alongside grown men and living, with their parents and young brothers and sisters, in subhuman conditions close to the plantations. The last straw was when the Minister of Labour, in trying to justify this exploitation of our Ngobe-Buglé brothers in the plantations of wealthy people who are allied to the current government declared that, "the working conditions are clearly not the best, but where they (the indigenous) normally live it is worse. At harvest time they eat up to three

times a day and the sanitary conditions are much better than in their own homes. When they come down from the mountains (...), it is like going on holiday". (El Siglo, 12th April 2000). It was as if his task was to justify the existence of rich and poor in this country and that it was the rich who made the orders and imposed the working conditions. Complaints made by the Ombudsman to the Human Rights Committee of the Legislative Assembly could thus not be justified.

At the same time, and in the same town, it became known that a young indigenous child had been left to die because her family did not have enough money to go to the doctor. The disgust and lamentations of the people living there were only to be expected, and these were followed by hollow and almost inhuman explanations that attempted to find the family itself guilty. They only stopped short of saying that the child herself was to blame for falling ill. The case is still under investigation. All these events indicate that there continue to be violations of the human rights of indigenous peoples in Panama and that, in spite of having achieved some recognition, they continue to be seen as second class citizens.

At the end of April, the Annual Conference of Private Business was held and this year the theme was "Poverty in Panama". As was to be expected, all the speakers and documents devoted their attention to indigenous peoples, who they called "the poorest of the poor". A considerable number of documents were produced but very little activity on the part of either the State or private enterprise has been seen with the aim of tackling "poverty in the indigenous communities".

During the first and second weeks of May 2000, almost four years since a *sui generis* Law on the intellectual property of indigenous peoples of Panama was first presented, it was approved by the Legislative Assembly following various consultations and discussions with different ministries of the national government and consultation with the indigenous peoples of Panama. This is considered to be the first of its kind in Central America, and possibly the continent as a whole.



Countries covered in this issue: Venezuela, Colombia, Peru, Bolivia, Brazil, Paraguay, Chile, Argentina

SOUTH AMERICA

VENEZUELA

During the second half of 1999, the Venezuelan government of Hugo Chávez Frías undertook its first political project, commencing the formulation of a new Constitution of the Republic. The drawing up of the new *Magna Carta* was to be undertaken within the framework of a National Constituent Assembly (See THE INDIGENOUS WORLD, 1998-99, chapter on Venezuela). The 30 indigenous peoples of Venezuela were offered the chance of achieving recognition, within the constitutional order, of their specific rights as the country's native ethnic groups, characterised by their specific cultural traditions.

The National Constituent Assembly comprised 103 members, 100 of whom were elected at national level. The three remaining members were appointed by the Indigenous Communities of the country, with the participation of indigenous people's organisations.

The work of drawing up the new Constitution began in the 21 special Assembly Commissions. It had initially been anticipated that the indigenous issue would be dealt with by the Commission on discriminatory issues. However, through the personal intervention of the indigenous Constituent member, Noheli Pocater, who spoke to the Venezuelan President, Hugo Chávez, himself, a "Commission for the Rights of Indigenous Peoples" was formed, made up of three indigenous Constituent members, and other members with expertise on the indigenous issue.

In September 1999, this Commission presented a draft of various provisions to be included in the new Constitution. Starting from the basis of an article that acknowledged recognition of the pre-existence of indigenous peoples and a reaffirmation of the multiethnic, pluricultural, multilingual and plurijuridical nature of the country, various broad rights of indigenous peoples were declared, such as the inalienability of traditionally occupied ancestral territories and lands; the right to use, manage and conserve the natural resources existing on their territories; the right to maintain and promote their own economic models and their own legal systems; wide cultural autonomy, such as, for example, the right to own education, access to an intercultural and bilingual education system and the right to integral health care, in accordance with their way of thinking and cosmivision.

Soon after making public these draft provisions regarding the rights of indigenous peoples, political adversaries began to attract the public's attention to this issue by means of the media.

In an editorial in the influential Venezuelan newspaper *El Nacional*, it was affirmed that plots against the territorial integrity of States were currently proliferating and that many countries had paid a high price for overlooking this fact; that it was "not only indisputable but also necessary" that the new Constitution should take into account the struggle for the equality and preservation of the "prehispanic cultures" but that, at the same time, the members of the National Constituent Assembly had to eliminate from the constitutional text all references that could give rise to doubts regarding the integrity of the national territory.

In a press interview, Gustavo Pérez Mijares, President of the ultraconservative movement *Pro-Venezuela*, stated – far more abusively than the stated editorial – that, by recognising the "political, social and economic organisation" of indigenous peoples, along with their languages and religions, the State would be promoting the dismembering of its own territory. To this exaggerated polemic he added the further question, "who would hand over control of the majority of natural resources, along with an area equivalent to almost half the geographic area of Venezuela, to a minuscule percentage (1.4%) of the population?"

To cap it all, he stated that Venezuela, "would regress to times prior to the General Captaincy (colonial regime - author's note), and consequently risk a possible confrontation between ethnic groups that no longer exists in Latin America".

The press gave extensive coverage to the opinion of the relatively unknown "National Council for Security and Defence" (SECONASEDE), dominated by the President's adversaries within the army. SECONASEDE had published a report in which it stated that the application of national law was likely to be limited by the provisions of the new Constitution. The authors of the report argued that by applying indigenous people's own methods of punishment or restraint, which are different to those established in the Criminal Code, internationally-demanded respect for human rights would be put in danger – a cynical argument taking the demand for fundamental rights to absurd levels. It warned that the aim of indigenous peoples was firstly to become "native peoples", with their own collective territories, in order to use this as a springboard from which to proclaim themselves "independent nations" (sic!). As usual, they resorted to the conspiracy theory: these *indigenous micro-states* would in no way be in a position to achieve the (sup-

posed!) proclaimed objective of self-determination; on the contrary, their weakness would merely encourage the intervention of foreign interests. SECONASEDE also believed it knew who these foreign interests were: at the beginning of the 1980s, some international human rights organisations had declared the whole of the Amazonian region "the common heritage of Humanity", thus awakening indigenous separatist movements. Foreign economic forces using these groups as a front thus wanted to reduce the right of sovereignty of the national States.

Such polemical attacks aimed at preventing the planned constitutional recognition of the rights of indigenous peoples came from the political enemies of President Chávez – particularly from some sectors of the private economy and from politicians discredited for their corruption and linked to the political parties of Democratic Action and the Christian Democrats. The indigenous issue was used as a pretext and vehicle with which to sow prejudice and misunderstanding amongst the general public with regard to the long awaited new Constitution and the native peoples.

The Ministry of Foreign Affairs of Venezuela, José Vicente Rangel, decided it was necessary to highlight the absurdity of these attacks against the anticipated recognition of indigenous rights in paid press advertisements. He stated that it was a question of increasing these people's participation in order to ensure their enjoyment of human rights as rightful Venezuelan citizens. He noted that none of the provisions of the new Constitution would imply any detriment to the national sovereignty of Venezuela and that the Government would propose that Parliament supported ILO Convention No. 169.

As a consequence of the public debate, the initial plans of the Commission on the Rights of Indigenous Peoples were to some extent reduced. It was only thanks to this compromise that the approval of the other Commissions of the Constituent Assembly was possible. The final version of these rights thus remains incorporated into the complete text of the new Constitution, which was approved by 71% of voters in a referendum on 15th December 1999.

The constitutional recognition of the rights of Indigenous Peoples has placed Venezuela amongst the most progressive countries in the world with regard to this issue. Starting from the preamble that states that the people of Venezuela decree the new Constitution with the aim of restructuring the Republic in order to establish a democratic, participative, multiethnic and pluricultural society, the articles most relevant are found in a chapter apart, entitled "The Rights of Indigenous Peoples".

Recognition of the rights of indigenous peoples to their lands plays an important part. But what land does this recognition refer to? The Constitution talks, on the one hand, of those lands that they ancestrally and traditionally occupy. However, it also refers to the land necessary to develop and guarantee their way of life – that is, it also adopts a criteria aimed at the future needs of the native peoples.

The fact that the land is a collective and inalienable right, imprescriptible, nonseizable and non-transferrable, now remains recognised as a right of Indigenous Peoples.

The new Constitution, however, does not talk of indigenous "Territories"; it only notes "Lands" and, in some contexts, "indigenous environments". Use of the term "Territories" was dropped in order to avoid possible implications regarding right of sovereignty.

The exploitation of natural resources "in the indigenous environments" on the part of the State will be permitted if it is undertaken without injury to the cultural, social and economic integrity of the indigenous communities, - a provision of particular importance, dealing with the extraction of the subsoil wealth which, *in situ*, continues to belong to the State. For the exploitation of these resources, the indigenous communities affected will be consulted in advance. These people – as agreed in subsequent and complementary legal provisions - must receive benefits from this exploitation. An appropriate application of these new constitutional provisions, in a similar spirit to that which inspired their writing, will from now on be sufficient guarantee of the interests of Indigenous Peoples affected by mining and hydrocarbon projects.

The less controversial rights to autonomy over cultural issues also remain enshrined in the Constitution. The article on protection of the collective intellectual property of Indigenous Peoples contains one interesting provision: the registration of patents over genetic resources and associated knowledge is prohibited. With this, the new Venezuelan Magna Carta is the only constitution in the world that tries to put a block on the biopiracy practised by international pharmaceutical and seed consortia.

Article 126 states that Indigenous Peoples form part of the Venezuelan Nation and that the term "peoples" as used in the Constitution should not be inferred as having the meaning given to it in international law. This put an end to the polemic regarding the Rights of Indigenous Peoples: this provision attempts to make it quite clear that in no case may this be deduced as a right of secession from Venezuela.

Not all the articles that refer to indigenous peoples are to be found in the constitutional Chapter especially devoted to their rights. In the Chapter on Judicial Power and the Justice System, it is established that the legitimate authorities of the indigenous peoples may apply, within their own environment, legal and justice systems based on their ancestral traditions. This indigenous jurisdiction, according to the Constitution, has its limits in the Constitution, in law and in public order. We will have to wait and see whether this formula – which is similar to those used in other constitutions on the continent – will be interpreted in a very restricted way or not, and whether it strengthens the application of indigenous jurisdiction in practice.

Indigenous jurisdiction is subject to another restriction: it can only be exercised over members of indigenous peoples.

In the new Venezuelan Legislative Assembly – the previous bicameral system has been replaced – there will be three deputies elected by indigenous peoples, "as has been established in the electoral law, in accordance with their traditions and customs".

One week before the Referendum on the new Constitution, a workshop on National Indigenous Preparation was held in the city of Caracas. In a temporary provision of the new Magna Carta, it was anticipated that the demarcation of the indigenous environment would take place within two years of the new Magna Carta entering into force. In this workshop, indigenous people set their sights on the short term political future with great optimism, clearly aware however, that work to ensure fulfilment of the temporary provision needed to start at the beginning of the year 2000. Success in the demarcation of their lands would depend largely on the extent to which the constitutional rights of Indigenous Peoples are translated into practice.

Furthermore, the achievement of the rights of indigenous peoples consecrated in the new Constitution will be largely based on the national legislation with which to implement them. For example, indigenous jurisdiction must be coordinated with the national judicial system by means of a law that is yet to be announced. Equally, legislation must be adopted to establish the options for a system of municipal government that takes into account the cultural situation of the Municipalities that have indigenous populations. The future will show whether, within the new Republic, these laws will be announced and whether the indigenous peoples will have access to these legislative processes, in accordance with the spirit of the new Constitution.

Recent cases show that the threats against their rights continue. A short while ago, the Piaroa indigenous communities complained that the General Directorate of National Parks had granted authorisation to representatives of the famous *Instituto Venezolano de Investigaciones Científicas* (IVIC – Venezuelan Institute for Scientific Research), whose head offices are in Caracas, to undertake research that involved the collection of living plants and their chemical study. The authorisation granted the IVIC the right to use and exploit the biological resources within the framework of a project called “Biomedicine in the Tropical Forest”. The Piaroa consider this project to be a violation of their constitutionally guaranteed right of collective intellectual property. The Regional Organisation of Indigenous Peoples of the Amazon (ORPIA) and the Office of Human Rights of Vicariato Apostólico in Puerto Ayacucho is requesting support from the public for an “Urgent Action”. They are asking that letters be sent to the Director of the IVIC and to the Ministry for the Environment and Natural Resources requesting nullification of this authorisation.



Indigenous participants in Caracas discussing the new Constitution (Foto: IWGIA Archive).

The recent achievements of indigenous peoples in Venezuela in terms of the Constitution must be assessed positively. However, there is a continuing imprecision in Venezuelan indigenous legislation and policies, with a consequent and significant legal insecurity. The current government continued with its decision to ratify a project for the construction of a high voltage electric line connecting the Orinoco basin with the north of Brazil, enabling the transmission of 200 megawatts per day to Brazil. This project had originally been initiated by the previous government of Rafael Caldera (see details in *THE INDIGENOUS WORLD*, 1998-99, chapter on Venezuela). The construction of the electric lines means extensive destruction of the environment and the violation of various rights of the indigenous peoples of the Venezuelan Guyana. Unfortunately, the first Minister for the Environment of the Chavas government, Atala Uriana, a member of the Wayúu indigenous people, demonstrated a complete lack of clarity with regard to this problem. More recently, the government began negotiations for a peaceful agreement with the Indigenous Federation of the State of Bolívar (FIB), yet at the same time intending to continue with the electric power line project, after having interrupted it a year earlier due to protests from environmentalists and indigenous people due to the environmental and socio-cultural impact. According to international reports, the Venezuelan President said at the beginning of April 2000 that an agreement had been reached with the peoples and that it was hoped to conclude the work within eight months.

This news caused a sensitive situation, and one which may lead to tension within the indigenous movement in the State of Bolívar. At the time of writing this report, it was not possible to evaluate the latest developments in any greater depth.

COLOMBIA

Everything points to the fact that, in the face of the serious economic and political crisis in Colombia, the government and economic/political elites are on the offensive against indigenous rights, placing them under siege in what could be the prelude to their annihilation.

Most notable in 1998 and 1999 was the legislative and administrative offensive, motivated by the national government's need to obtain the natural resources on indigenous territories in order to try and resolve the fiscal deficit and economic crisis.

The Colombian State currently recognises more than 30 million hectares of indigenous property, whilst in 1960 it officially recognised scarcely 600,000. This has been the result of fierce indigenous struggle, plus national and international solidarity. It is also in line with the apparent victory for indigenous rights as expressed in the 1991 Constitution and in ILO Convention No. 169, approved by Law 21 of 1991.

Nevertheless, it should be noted that virtually all of the land that has been recognised as indigenous property was already in the hands of indigenous people. Of the 30 million hectares, less than 200,000 were actually recovered from the hands of landowners, through purchase on the part of the "Colombian Institute for Agrarian Reform" (Incora). This effectively means that in 95% of cases, property claims were accepted as long as the State considered the land to be "vacant". But the property of landowners was only returned to the indigenous in 20% of the cases that were brought.

In reality, recognition of the ownership of indigenous lands was influenced by the power of the large landowners and their traditional farming interests. However, in the current context of globalisation, Colombia has increased its imports of food eightfold since 1990 and more than a million hectares have been left unsown, particularly on the large estates. The land is no longer valued in terms of its farming potential but in terms of its proximity to large investment projects such as oil, mining, hydroelectricity or transport (roads, canals, rivers over which concessions can be obtained etc.).

Under these conditions, Colombia is once more being divided up into large estates and, over the last 15 years, the share of land owned by large landowners has increased from 32% to 45%, this land being gained largely through violent means and the displacement of peasant farmers from the strategic areas of investment projects.

This is how things are now: the vision by which the titling of indigenous lands was made possible has been replaced by another. Until recently, the political class thought the fact that the 1991 Constitution declared the State to be the permanent owner of the subsoil was sufficient guarantee against indigenous rights. But the Constitution prohibits the exploitation of natural resources in indigenous territories if it puts at risk the social, economic and cultural integrity of the natural inhabitants and ILO Convention No. 169 establishes the obligation of prior consultation with indigenous people regarding any legislative or administrative measure that is likely to directly affect them.

The indigenous territories recognised by the State - 45 Colonial Reserves, 4 Republican and 541 recognised by Incora - cover 21% of the national territory and within these areas can be found a high percentage of the exploitable natural resources, both renewable and non-renewable. In the case of oil, for example, more than 50% of exploitable oil in the country is found within indigenous territories.

It seems as if the indigenous ancestral spirits played a dirty trick on the Spanish *conquistadors*: the Europeans ejected the indigenous from the lands most suited to agriculture, restricting them to supposedly "poor" lands, such as forests, plateaux and deserts, but this is where the oil, gas, coal, gold, biodiversity, navigable rivers and sources of hydroelectric power are now to be found. The indigenous people are living on great wealth and western society now wants to take this away from them.

For the government, the situation is an infuriating one. Application of the neoliberal model has left the State with no resources and no option other than to provide concessions and associations over natural resources that give the State budgets some relief. For the United States, inflation caused by the hike in oil prices is a threat to its current economic boom and it urgently requires exploitation and exportation by countries such as Colombia, which are not affiliated to OPEC, to be increased.

On the other hand, the Colombian government is working to stabilise the balance of trade, seriously affected by the international crisis that affected Asia and Latin America and which caused a fall in exports, whilst competition from cheap imports has bankrupted national producers. The government devalued the currency and is looking to export more oil in order to benefit from its increase in price on the world market.

In November, in Houston Texas, President Pastrana and his first Minister of Mines, Luis Carlos Valenzuela, agreed to guarantee the best working conditions possible for the oil and electricity transnationals.

All these interests have a direct effect on indigenous peoples. In fact, in areas in which megaprojects are being planned, recognition of indigenous reserves has been frozen. Such is the case of Juradó (Chocó) where, in spite of three studies with similar results having been carried out, the last three governments have not recognised the *Embera* territory. For it is here that the planned Atrato-Truandó dry canal, an alternative to the Panama canal linking the Atlantic with the Pacific, will join the Pacific. The politicians use black communities' rights as the excuse but this is not valid because the rural black communities are not asking for their lands to be titled.

Oil projects are another obstacle to territorial recognition. Such is the case of the Putumayo communities where, recently, more than 85% of the territory of the *Kofán* people was left outside the recognised reserve. The *Mokaná* people of the Atlantic, fraudulently stripped of their Colonial Reserve by a general in 1885, are in a process of cultural and territorial recovery. But they are opposed by a contract for exploration that has been drawn up and signed with British Petroleum (BP), and the Department of Indigenous Affairs of the Ministry of the Interior is thus trying to paralyse the process of formation of their reserve.

In any case, a good part of the indigenous territories have already been recognised. However, the territories that coincide with oil contracts, such as that already signed with Canadian companies over 300,000 hectares located within the great *Wayúu* reserve in Guajira or that formalised with Amoco (BP) in the Catatumbo on the territory of the *Bari* people, already decimated by oil exploration on the part of Mobil, Texas and Gulf since 1930, are not safe.

The inclination of the government, the transnationals and the political elite - enriching themselves on backhanders from the oil, hydroelectric and mining companies - is towards a progressive attack against indigenous rights. This was already clear when they refused to concretise the demarcation and functioning of indigenous territorial bodies recognised in the 1991 Constitution, which were aimed at giving geographic expression to the political autonomy of Colombia's indigenous peoples.

The Legislative and Administrative Offensive

In 1991, Colombia ratified ILO Convention No. 169 and indigenous people thus had the right to prior consultation regarding any legislative or administrative decision affecting them and any exploitation of natural resources or implementation of megaprojects within their territories.

Before the end of the Samper administration, and without prior consultation with indigenous people, Decree 1320 of 1998 was issued, modifying the requirements governing the granting of natural resource exploitation licences on indigenous territories. Decree 1320 restricted consultation to cases where areas "inhabited on a regular and permanent manner" by "indigenous communities" were affected, it determined that consultation would be achieved through a maximum of two meetings and that, should an agreement not be forthcoming, it would be for the government alone to decide what path to take.

This Decree ignores the concept of territoriality, established in ILO Convention No. 169 and found widely developed within national legislation. This concept includes areas of access to traditional or subsistence activities, whilst the decree restricts it only to areas occupied in a permanent way. This implies a serious violation of indigenous rights and could be the beginning of a denial of their territorial rights and the ethnocide of these peoples, for they are seasonally mobile and thus do not live permanently in one place. The government's intention was to restrict this right in order to make works and projects previously paralysed by indigenous peoples possible - firstly, in the case of the *Embera Katío* people of the upper Río Sinú, where a hydroelectric plant was built flooding part of their territory and, secondly, in the case of the *U'wa* people, who are opposed to the drilling of the Gibraltar 1 oil well, both projects being in areas of their territory that are not permanently inhabited by their communities.

Although Decree 1320 doubly violates ILO Convention No. 169, as it denies the definition of territory in article 13 of this Convention and because there was no prior consultation, the State Council declared it valid in 1999. However, the Constitutional Court then declared it inapplicable to the *Embera Katío* when these people brought a legal action of protection against the Urrá S.A hydroelectric plant.

The jurisprudence of the Constitutional Court has contradicted that of the State Council on various occasions, but the government has hidden behind the fact that it is the State Council that has the power to determine the validity of administrative acts, using this power to flagrantly violate the constitutional rights of indigenous people and ILO Convention No. 169. The State Council is the Achilles heel of the Colombian Constitution.

The offensive against indigenous peoples has been demonstrated in other regulations, for example, in article 142 of Decree 1122 of 1999 - brought in by the Pastrana government - which attempts to leave open the possibility of the government unilaterally declaring indigenous ownership rights over the lands of their collective Reserve invalid.

This Decree was issued whilst President Pastrana was benefiting from the extraordinary powers Congress gave him and, because this gave it the character of a law, its constitutionality was examined by the Constitutional Court, which declared it unconstitutional. Although fortunately this regulation was halted in its path, it clearly demonstrates the anti-indigenous intentions of the current government.

The Draft Agrarian Law

A new draft law, No. 151 of 1999, amending the Agrarian Reform Law (160/94), was presented to Congress by the government on 25th October last.

This government project signifies a serious attempt to avoid fundamental indigenous victories. In the first place, it demands that all cases of land purchases on behalf of indigenous peoples are subject to the prior approval of a business-oriented production project. It wants to impose a condition that is foreign to many cultures, obliging them to take on business-oriented projects in order to receive the land to which they already have a right.

In reality, it is the current government's way of moving forward its project, which seeks to force the local communities to revolve around the large oil, mining, hydroelectric, transport, river privatisation, African palm plantation and timber projects.

As far as the government is concerned:

"farming and forestry production units will be promoted, and State efforts in support of rural development will be focussed on these. These are understood as socio-economic processes generated around a main activity in which the rural communities are involved alongside the business sector in strategic alliances within successful production projects already being undertaken or with high probability of competitiveness... This strategy will also rely on funds from the private sector, public funds and those originating from the Fund for Peace and from international cooperation."

In those regions where it is feasible, a link with private capital will be sought through financial resources or lands in order to improve access to resources on the part of landless workers under the modality of a programme of production alliances for a sustainable reactivation of the farming world, which will be driven by the Ministry of Agriculture and Rural Development.

*With this policy we are trying to convert rural areas into a productive business for all, promoting decentralised investment projects..."*¹

For "main activity" read "large investment projects", for "strategic alliances" read "large-scale sharecropping". The priority system for plantations is that which has been undertaken in Malaysia, Thailand and Indonesia where there have been terrible ecological effects, destruction of the forests, massive con-

tamination of the air with smoke² and, furthermore - in the name of "development" - the cultural and ethnic destruction of indigenous populations³.

To complete this scenario, it is worth mentioning that markets such as those for African palm cannot currently look forward to a secure future because, for example, in the first quarter of 1999 production increased by 24% and exports by 12% whilst alongside this international prices fell by 25% and domestic prices dropped 31% over the same period⁴.

*"There are various reasons for the fall in prices. There has been an increase of 1.8 million tonnes of soya bean in the United States in comparison with 1998. A greater supply of soya and sunflower oil is also expected, due to record harvests in Argentina and Brazil. World production of palm oil will show an increase of 1.3 million tonnes on the previous year. On the other hand, the significant devaluation of the Brazilian currency, the reduction in taxes on Indonesian exports and the lesser purchases on the part of China, the country which, alongside India has been creating 50% of the growth in overall demand for oils and fats in the last three years, are all additional factors that have contributed to the change in prices."*⁵

But despite the importance of the discussion on the economic prospects for palm oil, the first thing that has to be considered is the perspective of the large cattle rearing landowners and agroindustrialists who wish to continue an historic system of domination and concentration of land ownership and the economy, alongside the destruction of indigenous and forest cultures.

For the Colombian government, with its so-called "Plan Colombia", it is now harvesting economic support in various states, linking these "production plans" with the destruction of illegal crops in the Amazon by means of aerial fumigation with herbicides and fungi and their substitution with crops for "production projects, primarily permanent crops... through strategic alliances"⁶ between investors, large and small landowners, offering "opportunities for alternative employment and social services for the population in the areas under cultivation". The Plan will subsequently be extended to other areas of the country.

Now that the coffers of the State have been emptied by the fiscal crisis and the political corruption of the leaders of the traditional parties, they will use the "Plan Colombia" to gain money from the "international community" for an operation that will be of personal benefit to the agroindustrial business sector.

To this perspective must be added that of the foreign investors, which complements and influences the landowners' perspective. The intention of various of these investors, for example, the oil companies, is to use the "stick" of the Plan Colombia⁷ to "freely" extend their activities. This "freedom" has historically implied ignoring the rights of local communities, avoiding the need to defend the environment and ecosystems and reducing State royalties and participation.

The government's draft agrarian law, in accordance with this vision of the supremacy of "production projects" and of "principle activities that will serve as a productive nucleus", eliminates the need to come to an agreement with indigenous peoples, their authorities and organisations, and ignores the programmes for formation, extension, restructuring and reorganisation of the Reserves, an obligation which is still valid by means of decrees 1397 of 1996 (regulating ILO Convention No. 169) and 1690 of 1997 (this latter has the character of law as it was issued by virtue of the extraordinary powers of President Samper).

To complete this, with regard to agrarian reform activity - including the acquisition of lands for indigenous peoples - the official plan demands TOTAL consistency with municipal and departmental plans. For the indigenous, this means the possibility of recovering land will be dependent upon the will of the municipal mayors and departmental governors who, in the vast majority of cases, are the political agents of the landowners or are themselves estate owners. In fact, to give but one example, the furious opposition to the formation of the indigenous reserve of Juradó has been headed by the successive governors of the Chocó, the mayors of Juradó and the Chocó political elite.

To that which is being proposed by the official plan must be added the fact that, whilst the law for the Development Plan already established the "production projects" and "principle activities" in 1999, it stipulates that the Peasant Reserves, a conquest of the peasant movement, will not be established on the agricultural frontier but in settlement zones, thus seriously affecting the indigenous territories, and safeguarding the interests of the owners of agricultural lands. These owners are currently not putting their land to good use, awaiting a price rise that may be brought about by the large investment projects.

The government wanted its draft law to be processed as quickly as possible and it thus sent an "urgent message" to the Congress of the Republic. But it has still not been possible to get this project approved, thanks to the submission of an alternative project drawn up by the peasant organisations with support from indigenous groups.

The Violence

It is within this context of transnational pressure on their territories that the violence occurring against indigenous people has to be seen. More than three hundred indigenous leaders have been assassinated since the 1991 Constitution recognised the rights of indigenous communities. The paramilitaries, the national army, the police, the guerrillas, the landowners and their paid assassins have all committed these atrocities which, in any case, all revolve around the aim of usurping territory from the indigenous.

Not only the indigenous but also their collaborators are murdered or threatened. Such was the case of the Basque aid worker, Iñigo Egiluz, and the Colombian priest, Jorge Luis Mazo, who were murdered in November by a paramilitary group in Quibdó, Chocó. They were working with indigenous and black communities and particularly with those displaced by the violence. Such was also the case of the murdered leaders of the Embera Katío people of the Alto Sinú, Alejandro and Lucindo Domicó, killed at the hands of paramilitary groups operating in the region and defending the hydroelectric plant. The continual threats against other leaders of this people and their advisors, the disappearance of the *Embera Vive* campaign manager, Jairo Bedoya, the murder of the aid worker working with the U'wa, Terry Freitas, and the indigenous workers from the United States, Ingrid Wishinatawok and Lahenae Gay, by a front of the FARC guerrilla in Arauca, also need to be mentioned.

In many cases, indigenous peoples have avoided being displaced largely due to their great knowledge of their territory, which has enabled them to flee or hide when threatened and because the 1991 Constitution declared the Reserves inalienable in order to avoid expropriation on the part of large economic projects. Nevertheless, there have been forced displacements, particularly in the area close to the river Atrato where the inter-oceanic canal is planned.

With the precedent of article 142 of Decree 1122 of 1999, and the repeal in Mexico in 1993 of article 27 of the Constitution, which declared the inalienability of communal lands, indigenous people fear that the guarantee of inalienability over their lands may be withdrawn at any moment and that they will be subjected to the same system of forced displacement as the peasant farmers.

In fact, President Pastrana announced to the business community in a Congress in Cali on 11th February 2000 that he was planning Colombia's entry into NAFTA and a constitutional reform to give full freedom to investors, which is the double formula applied in Mexico and which led, on the one

hand, to the elimination of the inalienability of indigenous lands and, on the other, to the Zapatista uprising.

Notes

- 1 "Cambio para construir la paz. Plan Nacional de Desarrollo 1998-200, Bases" pp. 260-261
- 2 SIMONS, Lewis M (text) and Michael YAMASHITA (photos) "Plague of Fire" *National Geographic*; August 1998.
- 3 DJUWENG, Stepanus 1996 "Desarrollo contra Sustentabilidad: una cuestión de confrontación ideológica", in *IWGIA Indigenous Affairs* July/August/September 1996 N°3.
- 4 "Cultivadores de palma con futuro difícil" *El Espectador, Diario Económico*, 29th May 1999.
- 5 *El Espectador, Diario Económico*, 6th June 1999.
- 6 "Plan Colombia: Plan para la Paz, la Prosperidad y el Fortalecimiento del Estado", draft annexe in support of draft law S1758 Alliance Act, by Senators Coverdell, Dewine and Grassley, "grass roots" translation, special supplement N°1, October 1999, p. 27. The European version of Chapter Five presents "the construction of strategic alliances (private investment)" as "Democratisation and Social Development". The version of the High Commissioner for Peace and the Department for National Planning, "Plan Colombia", Puerto Wilches, December 1998, maintains that, "economic alternatives that are the result of a process of agreement, with private companies, distribution companies, government and active participation on the part of the community, "strategic alliances", will be sought. The projects must take into account criteria of economic, social, environmental and institutional sustainability."
- 7 Vice President of Oxy defends the aid package for Colombia "Estados Unidos debe proporcionar el garrote" *EL TIEMPO*, 18th February 2000, Bogotá.

ECUADOR

The June 1990 uprising was the start of the official entry of the Ecuadorian indigenous movement into the political and social affairs of the country. Its power to organise, which has developed gradually over the past fourteen years (since the Confederation of Indigenous Nationalities of Ecuador – CONAIE – was established), has led to a progressive and overwhelming role at national level. The fundamental characteristic of the indigenous movement in Ecuador (apart from the fact that indigenous people constitute approximately 45% of the national population of 12 million inhabitants) is that it is the only social

movement that has a consistent policy of structural change of the country towards a new State organisation.

In fact, during the government of Abdalá Bucaram (and his desire to control the indigenous movement), it was precisely the indigenous uprising that contributed enormously to his downfall on 5th February 1997. Then, the central premise of CONAIE was the establishment of the National Constituent Assembly as a possible way of re-establishing the foundations of the country. It was in this context that the indigenous peoples achieved constitutional recognition of their collective rights and ratification of ILO Convention No. 169. However, the plurinational premise was not accepted by members of the Assembly.

Undoubtedly, indigenous participation in the fall of Bucaram and the political negotiation around the Constituent Assembly have formed the milestones in the new role of the indigenous peoples. At the same time, national demands and proposals have been added to the more specific demands on the indigenous agenda. This means that, although indigenous demands and proposals were based around their own rights, they also included issues relating to the wider national agenda. This became clear during the Mahuad government, which had to resist three uprisings, the last culminating in its downfall.

The first uprising against Mahuad (March 1999) had its origins in his unpopular adjustment measures, the absence of social policies and his clear subjugation to the interests of the private banks. Here, CONAIE demanded the creation of a Fund for the Development of Indigenous Nationalities and Peoples, resources for bilingual intercultural education and frequencies for community radio. Other demands were: the unfreezing of Ecuadorian bank accounts, the freezing of fuel and electricity prices and the establishment of a process of national dialogue in order to search for a jointly agreed solution to the crisis and to discuss the modernisation of the State.

After six months of fruitless discussions and an intensification of measures in favour of banks and economic power groups, the second uprising took place in July 1999. Here, the March proposals were reiterated and a proposal to clean up the corrupt financial system was also included. In the following six months, fifty discussion meetings were held with no concrete results; the absence of will to fulfil the agreements signed during the two previous uprisings was more than evident.

To all of this had to be added the government's decision to allocate 52% of the State budget to payment of the external debt, the determined efforts to privatise the social services, the proven bribery of the bank in Mahuad's electoral campaign and the decision to make the economy a "dollar" economy.

These were measures that contrasted with levels of poverty affecting 70% of the population, a 60% rate of child malnutrition, a basic salary equivalent to 40 dollars, corruption, etc etc. It was in this context that the third uprising took place, which led to the overthrow of the government.

Antonio Vargas, President of CONAIE, led the indigenous uprising and formed a triumvirate that replaced the outgoing President (Mahuad) for approximately three hours. In the days following the event, the explosion of racism on the part of the traditional power groups, for whom the very idea of the presence of an indigenous person in a leadership position within the government meant the collapse of their status quo, was truly incredible.



*Indigenous mobilization in Quito against Mahuad
(Foto: IWGIA archive).*

Alliance with the Military?

In recent years, and increasingly following the signing of peace in Peru, the mistrust and confrontation between indigenous peoples and the army has given way to a process of rapprochement. This is related to the fact that the armed forces wish to seek a new role in the country without losing any of their real

power. For their part, through a logical pragmatism, the indigenous consider the military to be actors alongside whom they have to face conflictive issues.

During the last uprising in Ecuador, the military hierarchy - in an unprecedented action - undertook a direct rapprochement with the CONAIE leadership. The armed forces, experts on CONAIE's challenging of the institutional decomposition of the country and the dramatic economic crisis, proposed a joint action aimed at putting an end to the causes of the crisis, principally the corruption. It was clear that the military had closely followed the indigenous process and its plan.

The strategy they proposed was one of large-scale social mobilisation, capable of bringing about a non-violent structural change within the country. However, due to internal and external pressures, and because it sought to avoid appearing to be staging a coup, the military hierarchy fell into the trap of using a double-sided discourse: speaking of a strategy for change with the indigenous but in public showing support for the "democratic order". And so when the indigenous uprising had gained strength, and with the National Congress and the Supreme Court of Justice already involved, the sector that intervened regarding the ambiguity of the leadership was that of the army's middle ranking officers, largely colonels. They are currently in prison and being tried by the military courts in a kind of internal purge that seeks to mend the huge internal rift caused within the armed forces and which will undoubtedly take a long time to be resolved.

The indigenous leadership's decision to accept the support offered by one section of the military in order to fulfil the aims of the uprising was a strategic one that did not work because the said support was withdrawn at a crucial moment. This was due in part to the fact that there were divisions within the three branches of the armed forces, and that the decision for an exclusively military coup was conceived in the heat of the moment.

With this decision to opt for a kind of alliance with the military, the indigenous put into practice what many of the traditional sectors had considered but which, because of the hypocrisy characteristic of many Ecuadorians, they had not done for fear of appearing to be involved in a coup. But it should be noted that CONAIE did not make the first move towards the military by proposing support of their objectives. It was the military who made the first approach in order to exchange views on the crisis and to propose the possibility of an alliance. This signified a break with the traditional Ecuadorian policy of "knocking on the doors of the barracks". And it also shows how the armed forces' understanding of indigenous peoples was undergoing changes, because it now seems that they consider them not so much as "subversives" or

"a threat to national unity" but rather that they recognise them as the subjects of social change.

In the face of a doubtful democracy, indigenous people - whether in favour of a coup or not - accepted that the military should be involved in their project for transformation. This was undoubtedly an error, as such a possibility could only have been considered via the process of a peace treaty between the military and the indigenous. Only then could they put an end to the age-old confrontation between the defenders of national unity and those seeking to build a pluralist country. But, for this to happen, much time still needs to pass before the mindset of the armed forces - and the current framework of the State - changes.

Closer to Home

Over the three last years, the organisational process in which the indigenous peoples and nationalities of Ecuador have found themselves is one of a complex transition from the "union" style indigenous structures to structures of self-government. It has been a question of overcoming the stage of corporate style of organisation, with an almost union type of discourse, in order to commence - under the focus of nationalities and peoples - a process of revitalisation of indigenous society that would imply self-determination.

One fundamental task in this process is the unification of the different organisational factions regarding indigenous democracy in practice. Their tendencies and motivations are often religious or unionist and have, to this very day, divided the peoples. Another aspect for fulfilment of this process is the need for a clear definition of electoral participation as a strategy aimed at guaranteeing indigenous presence within the instances of power, in accordance with the State model being proposed. Finally, the ground rules need to be established with regard to relationships between the Indigenous Nationalities and the State, so that fulfilment of indigenous rights, including participation in governing the country, does not mean the creation of institutional ghettos for indigenous peoples nor their being co-opted by the monocultural State.

The Current Situation

Following the events of January, Mahuad's successor (Noboa) proposed reopening the dialogue with CONAIE, thus forming a *sui generis* body known as GANE (the Great National Ecuadorian Agreement). However, within this context, the absence of a will to discuss and find answers to the basic issues that had formed the basis of the uprising was once more revealed.

Under the paternalist and prejudiced understanding that 'a solution to ethnic problems will help maintain social peace and consequently national unity' - an absurd interpretation - the regime aimed to make aspects where the State is already constitutionally obliged to provide guarantees to indigenous peoples (without the need for grandiose accords) appear as "great agreements", things such as: greater attention to education, handing over of sites of historic and cultural value, electrification, etc.

Three months have now passed since this attempt to ridicule the indigenous movement, without the government or other state bodies embarking upon a discussion of the structural crisis the country is experiencing. Because of this, in the middle of April, CONAIE suspended all discussions with the government. The country's situation post-Mahuad has worsened and the Government is ready to seal the 'dollarisation' of the economy and to apply the structural measures proposed in a letter of intention to the IMF which, amongst other things, will imply a 120% increase in the price of oil derivatives. CONAIE is preparing for another uprising.

PERU

Throughout 1999, the political arena was marked by a strained pre-electoral climate. The government, which has been campaigning for some time now, has been forced to pass over legislation, the Constitution and even ratified International Treaties to achieve its re-election. There is a general awareness amongst the public that democracy is in severe decline, and confidence in State institutions, which are put - like the budget - to the complete service of continuity, is very precarious. The legislative and judicial powers, public ministries, electoral system and the State apparatus as a whole are visibly subordinated to the interests and objectives of a few decision-makers. The Ombudsman, a lobbying body, autonomous but not self-sufficient, has remained the only (overburdened) democratic recourse that still retains credibility amongst the people.

Although few doubt that a detailed and widespread electoral fraud is being prepared (for which the previous processes have served as a test), the population has remained polarised between those who opt for civic responsibility and who are not prepared to permit an electoral farce (whether they consider Fujimori has had positive achievements during his term in office or not), and those who opt for a precarious survival which the government now

guarantees them through programmes of food aid, whether they approve of the authoritarian nature of the regime or not.

The unusual presence of central government in the furthest corners of the country, with social programmes that have deprived the municipalities of this role, has been directed at creating a mass movement of popular support amongst the most needy and dependent people and at generating local supervisory and coercive teams that have a strong bearing on critical social movements.

As far as indigenous peoples are concerned, their treatment during the pre-electoral year has hovered between compromises with which to polish the government's image and real policy proposals. With little electoral power in relation to the migrant workers who aspire to occupying indigenous lands and who are receiving titles en masse from the PETT (Special Land Titling Project), indigenous peoples are not functional to the interests of the government, as has been made clear in the legislative reforms. In fact, in terms of State interest in the Amazon, the following are crucial: oil and mineral policy, the privatisation of land plots, a long term policy of concessions, a policy of road building and a policy of promoting investment aimed at facilitating income complementary to private business, generally on the basis of activities with an immediate return on investment. All these areas of interest find one single social sector blocking their path: indigenous people, who see in each of these an underlying threat to their autonomy and their rights.

Nevertheless, important sources of international funding and human rights monitoring bodies - for different reasons - are particularly careful to keep the indigenous issue in the news, which forces the State to maintain a dual policy of declaring agreements and recognition at a visible level alongside irreversible actions at local level, by mobilising a social contingent of government followers.

Indigenous Lands

In spite of the fact that 55% of the farming land of the country is collectively owned, this type of property has remained unprotected and subject to common private law ever since implementation of Law 26.505 (the Land Law). On the other hand, in spite of the ease with which individual titles are awarded by the PETT (requirements are the presentation of witnesses and demonstration of one year's possession), the difficulties in titling communal lands become ever greater by the day and approximately 28% of indigenous communities are either not titled or hold incomplete documents. The organisation claims a lack of resources but since September 1999 more than 220,000 individual titles have been awarded.

One critical area is that of territorial security and development policies. Latent threats continue in the Amazon from the system of privatisation of free lands and the decisions regarding which plots are put to auction. Indigenous populations can be found on many of these plots, including some uncontacted peoples (those who are voluntarily isolated).

The announcement of any construction of, or repair work to, penetrative roads has had an immediate effect and has led to mass invasions onto the routes announced, as in the case of the *Aguaruna* communities of San Ignacio. Other legal or administrative initiatives, for which there has been no consultation, put the indigenous territories at risk. Thus the creation of natural protected areas on titled territories, the new Forestry Law proposals, the laws affecting the property of the urban centres of Traditional Peoples, the Law of Exploitation of Natural Resources, the promotion of the individual division of plots, the relentless taxation of Communities undertaking forestry activities, the virtual paralysis in granting collective titles, the refusal to accept proof of the illegality of forestry contracts in the Selva Central, the invasions promoted by official projects such as the PAR and other initiatives, all seem to complement the aggressive treatment of indigenous property that is made possible by the Land Law (Law 26.505) and which marks the sharp contrast between the indigenous model and the official model of exploitation of the Amazon.

In concrete, it has been the logging sector that has been the most aggressive over the last few years, beginning to split the cultural and social bases on which the traditional management of territorial resources are based.

Condemned to Exile

The *Asháninka* communities were decimated by the violence in which they participated in defence of their peace. Many communities were forced to leave their territories because of this. In the Pangoa region and other neighbouring areas, the existence of large logging contractors who were granted illegal rights at the time of greatest conflict and who are now firmly defended by the local officials, has put obstacles in the path of their return. Decree 838, aimed at encouraging the rapid titling of those affected by the violence, has been denied the indigenous communities but has been used to provide lands to recently arrived settlers, discouraging indigenous hopes of recovering their ancestral lands.

For the past seven years the regional indigenous organisation, ARPI, has been organising numerous operations and campaigns amongst its members,

as well as at national and international level, but their rights continue to be denied them.

A recent study by CARITAS Peru notes that, amongst these populations, child malnutrition can be as high as 91%.

From Aggrieved to Aggressors

The *Huambisa* community of Villa Gonzalo, which is situated on the right bank of the Santiago river, achieved the titling of its community over an area of 13,200 has. of which only 2,112 has. are suitable for agriculture. This titling took place when the community had only 850 inhabitants and three annexes. The population has now increased to 3,000 and there are seven annexes, leading to greater demand for - and pressure on - the natural resources and land. For this reason, in 1986 official negotiations with the Ministry of Agriculture began regarding an extension of the communal plot over a bordering area traditionally occupied and arbitrarily excluded from the original demarcation. The community had been undertaking actions of reforestation in this area, their plantations and good management being recognised by the Río Santiago District Municipality.

In one of the annexes, Puerto Galilea, settlers coming from Cajamarca and Piura, in collusion with and supported by some local government employees from the Nieva Agrarian Agency, invaded an area of 3,179 has. and formed a cattle producing cooperative on the traditionally occupied lands. Since their arrival, these settlers have been in constant conflict with the community of Puerto Galilea, which has been requesting a peaceful and permanent solution to the problem from the Ministry of Agriculture. A sight inspection was carried out, whose recommendations recognised the rights of the community and the need for a solution in their favour.

From that moment on, the settlers began to denounce community members - in collusion with the authorities - to the Provincial Prosecutor's Office of Condorcanqui. The judge accepted the inquiry, a legal process was undertaken and on 10/02/97 four community members were found guilty, by trial, of crimes of misappropriation. Their conditional release was offered in return for payment of S/250.00 per person every month for two and a half years, a sum outside the means of all community members, who do not have the financial resources to cover such amounts.

On 19th April 1997, twelve police, together with the Provincial Public Prosecutor, tried to arrest the community heads and members, which led to a clash with the *Huambisa* women who managed to throw out the police and the Prosecutor. As a consequence of the disturbances, the settlers denounced

a group of 12 indigenous leaders and members - this time for the crime of breach of public security. The head of the Chosica community was sent to prison. The national organisation, AIDSEP, took up the case and he was given a conditional release. More recently, the Community teacher, Simón Noningo, who was travelling to the town of Nieva to start work, was arrested and he is now in the Bagua Grande prison. There remains an order out for the arrest of 15 more community members.

"Paradoxically, and in spite of the fact that we are the age-old indigenous possessors of our lands, we have been declared the "usurpers" of these lands for that very reason, that is, for defending our territorial rights, our physical integrity, tranquillity and communal and social peace. Our families feel unprotected by legal processes and national (Civil Code) and international (ILO Convention No. 169) laws because they are constantly violated by the courts of the area." (AIDSEP campaign document).

National strategies, Natural Areas and Indigenous Territories

The Peruvian State has established 6 Reserves covering a total of 6 million hectares in the Peruvian Amazon, largely superimposed on top of the titled or traditional territories of indigenous peoples.

In accordance with the Law of Natural Protected Areas, these zones are established because they exhibit the necessary conditions enabling them to be considered natural protected areas (ANP), falling into one of the existing categories although, in some cases, they correspond to international commitments on the part of the State.

One of the Reserved Zones, called Gueppi, covers the districts of Putumayo, Torres Causano and Napo, and includes in its area the lands of the indigenous *Secoya*, *Quechua* and *Huitoto* communities of FECONAFROPU. Another, that of Santiago Komaina, includes 52 Aguaruna and *Huambisa* communities with titled lands.

In spite of the fact that more than six years have passed since the country signed ILO Convention No. 169, which prescribes the consultation and participation of indigenous peoples in all activities of concern to their territories and their future as peoples, the indigenous communities in these areas have not been consulted by the State regarding the protection of their lands under State supervision and management, despite this already being established by Law.

The indigenous people's organisations involved in these Reserved Zones have reiterated the constitutional right to ownership of the land and its autonomous use on the part of the indigenous communities.

In order to rectify the process, INRENA is negotiating funding - with GEF funds through the World Bank - of a project entitled "Indigenous Co-management of Natural Protected Areas": the project proposes implementing specific projects in order to establish 5 natural protected areas in the Amazon with participation from the indigenous population of the zone in order to formulate a viable future for them.

The proposal includes local training in the appropriate management of the area's resources and self-management, conservation and development plans for the area. Furthermore, the Law of Natural Protected Areas establishes that a Reserved Zone requires that complementary studies be undertaken in order to determine the most appropriate and permanent category for conservation purposes, its legal condition, purpose and permitted uses. For this purpose, the State formed a Multisectoral Technical Commission in charge of formulating a proposal for the territorial organisation of these five zones, to include planning with participation from the local population.

The indigenous people are proposing Communal Reserves that will enable them to manage and supervise the area's natural resources in accordance with their traditional knowledge.

In any case, the speed of the establishment of these reserves, which responds to a State strategy, is in contrast with the slowness of the areas requested by indigenous organisations within their own territorial strategies.

Destruction of the forests and the uncontacted indigenous population of Madre de Dios

Since October 1999, the department of Madre de Dios has been thrown into confusion by the scandalous events that have occurred in the logging sector, and which have obliged central government to declare a state of emergency in the most important timber province in the department, Tahuamanu, in whose most remote areas an indigenous population live in isolation.

The roots of the conflict lie in the fact that the Regional Agrarian Directorate gave preference to a powerful sector of the local logging industry - in association with a North American transnational - granting them large areas of forest in places where extraction was not permitted in exchange for support to fund the electoral campaign of government officials in the agrarian department, who were standing for seats in the province's municipalities.

These contracts affected another powerful and interested logging sector. They submitted complaints to the central government authorities regarding

these illegal contracts, which had already caused the deforestation of 500,000 hectares in only the first year of opening up of these new areas to logging.

During 1988, in what was to be the largest deforestation undertaken in the country, 217 illegal contracts were granted in the province of Tahuamanu, covering an area of one million hectares. With the aim of extracting as much wood as possible, the illegal loggers did not think twice about building a road more than seven metres wide and 180 kms long using heavy machinery.

Preliminary calculations show that they extracted tens of millions of board feet of wood from this area, representing hundreds of millions of dollars profit.

When the government found out that these companies had armed personnel working as foremen in their operations camps, it declared a state of emergency in the province and mobilised army troops to maintain order. The government subsequently decreed the suspension of all forestry activity in the province and dismissed the Regional Agrarian Director and the President of the CTAR (regional government), who was closely linked to one of the President of the Republic's main advisors, this latter also being accused of involvement in illicit actions of granting large forestry concessions in unauthorised zones. An inquiry was launched to determine all those responsible.

The paralysis has caused a negative impact on the population of the province, which is made up of small extractors devoted to logging as a principle source of subsistence. They are demanding that the government normalise logging activity by means of a system that prioritises forest contracts for those who are native to the area, thus avoiding the entry of transnational companies and forcing resources to be extracted in a planned and rational manner. They are afraid that the suspension might be a preparatory strategy with which to initiate a public tender in which large concessions will be offered to foreign companies.

FENAMAD (the local indigenous federation) had, months earlier, expressed its concern regarding the devastation of the forest in the Las Piedras basin in Tahuamanu province, warning in public fora and the local media that if extraction continued at such an accelerated and uncontrolled rate then it would be moving dangerously close to the indigenous population living in isolation and that, if this were the case, their lives would be at risk of contagion from the illnesses of foreigners.

On receiving no positive response from the local authorities, FENAMAD decided to alert national public opinion and the international community regarding the imminent danger in which the isolated indigenous peoples found themselves. A fierce campaign was undertaken to raise awareness of the local

population with regard to the issue, gaining the support and solidarity of private institutions and the population of Madre de Dios.

FENAMAD proposed the establishment of the Las Piedras river basin as a study zone in order to determine the area in which the isolated indigenous people were living and to commence negotiations in order to establish a Territorial Reserve in favour of these people. A letter was signed by many of the region's institutions and sent to central government bodies, the Minister of Agriculture, INRENA, the Ombudsman and the Human Rights Commission of the Congress of the Republic.

There has been no response from these bodies, but it is known that the paralysis of logging activity in the zone, ordered by central government, is also in response to the pressure exercised by FENAMAD through its campaign in defence of the life and territory of these isolated (or not contacted) indigenous peoples.

Up to the end of 1999, the social turmoil caused by the protests of the logging union continued. These protests were aimed at the government's decision to suspend extraction activities of fine woods in the provinces of greatest forestry importance in the department.

No results have yet been forthcoming from the inquiry and it is understood that they will not be presented until after the general elections, with the aim of avoiding criticism from the opposition parties, if government employees are found responsible.

This waiting game is also affecting the safety of the isolated indigenous peoples, as the authorities have not yet responded to the proposal for territorial demarcation in their favour, in spite of the fact that FENAMAD has substantiated the urgency of the requested measures.

Given this silence on the part of the administration, a FENAMAD commission has travelled to the United States to make its views known to international organisations. It has visited the Inter-American Commission on Human Rights of the OAS; the Inter-American Development Bank (IDB), funders of the Economic and Ecological Zonification of Madre de Dios; the Secretary of State of the North American government, requesting this administration to intervene with the Peruvian authorities in order to protect the rights of their indigenous brothers in isolation; and the UN Office of Human Rights and Indigenous Peoples to request their support in defence of the indigenous peoples in isolation, on the basis of the application of international commitments and agreements signed by the Peruvian State.

The campaign has begun to show results. On 3rd May 2000, FENAMAD signed an agreement with the Subregional Agrarian Department of Madre de

Dios in order to commence a study of the area used by the indigenous peoples in isolation in the basin of the Las Piedras river and its future determination as a Territorial Reserve in favour of these peoples.

Mining in the Mountain, Drilling in the Forest

The rights reserved by the State over the natural resources located on indigenous lands, both surface (forest soils) and subsoil, have become the main threat to the peaceful enjoyment of indigenous rights.

The concept of an eminent right, motivated by and based on sovereignty, has become a concept of dominion that enables the State to dispose as it wishes of indigenous resources.

Together with the issue of timber, which we have discussed above, the cases of mining in the mountains and oil drilling in the forests are both problems that prevent indigenous peoples from freely and fully exercising their territorial rights.

By 1998, the 4 million hectares under mining concessions had increased to 23 million. This enormous increase in mining has largely occurred on the indigenous lands of Peasant Communities. In fact, of the 5,680 Communities recognised, 3,500 coexist alongside mining concessions. The mining work compromises the water, the soil and the biodiversity, putting at risk all their traditional activities as a whole. The Communities affected by mining have organised to confront these problems, mainly those that originate in the unfair mining rights regulated by article 7 of the Land Law.

In 1999, the number of hectares of Amazonian land conceded to oil companies in exploration and exploitation contracts reached 24 million. All these fall within indigenous territories, either titled or traditionally occupied. Nevertheless, within the whole legal system covering hydrocarbons no regulations protecting the territorial rights of the indigenous forest communities are contemplated. AIDSEP's proposal for regulating the oil companies on indigenous territories brought the government, the companies and indigenous representatives to the negotiating table. The frustration this initiative has caused due to lack of fulfilment of agreements highlights the lack of political will with which the State undertakes commitments to indigenous peoples.

Towards Assimilation: Leaving no Trace

The attempts to deactivate indigenous people's survival mechanisms and historical continuity are not limited to territorial insecurity. The Public Administration of sectors with social or development programmes has a systematic bearing on aspects of indigenous autonomy and culture. Rules of a constitu-

tional nature (and thus the subject of binding treaties), such as prior consultation or participation in public service management, are given no consideration by the sectoral authorities, whose political objectives are rarely consistent with the indigenous reality.

In terms of access to administrative posts in sectors sensitive to identity and culture, such as health and education, there has been a clear regression during 1999. General regulations (such as qualifications required, amongst other things) are applied to indigenous candidates in order to put obstacles in the path of their career. A growing percentage of teachers in the indigenous communities are thus *mestizos* with a lack of knowledge concerning, and prejudiced towards, indigenous language and culture. This policy is even being applied in the primary levels of education.

Similarly, during 1999, a number of different alarm signals were received by the national organisations regarding harassment of indigenous health workers. Coercive programmes such as birth control, which accounts for a high percentage of the sector's rural budget, have been rejected by these health workers due to the hostility with which they have been received in the communities. To complaints made regarding a lack of basic inputs for crucial problems such as leishmaniasis, respiratory and gastro-intestinal infections can be added the cases denounced to the Ombudsman of unsolicited sterilisations and cases of death due to deficiencies in the sterilisation programme. The political response has to been to review the administrative situation of all the indigenous health workers. All the places are being allocated to *mestizo* staff and in several regions of the country unqualified indigenous health workers are being threatened with dismissal.

The numerous programmes of social support which, in practice, have deprived the municipalities of their traditional area of responsibility, are being designed in such a way that many indigenous leaders are becoming suspicious. Firstly, the promotional package (water, electricity and satellite dish) forces lineal concentrations of communities that were previously dispersed, thus multiplying the social and sanitation problems. The farmlands end up further and further away and subsistence begins to depend, to a large extent, on State food aid. The State also controls the messages transmitted by the television channels that reach the communities. Secondly, there are not unfounded suspicions that because they are dealing with distant zones that can be monitored only with difficulty, the work budgeted for does not coincide with that undertaken and social support could thus be facilitating the funding of other political operations. Many organisations are demanding that the real

costs be compared with those implemented in mass programmes such as latrine provision.

On a positive note, at the end of the year the Indigenous University of the Amazon was approved. This has been an ancient struggle of the indigenous organisations in order to benefit from the installations left behind by the ILV.

Agreements and Frustrations

As a pre-electoral year, 1999 has been a protracted one in the opening up of spaces for agreement.

Two official drafts of the Indigenous Law were presented by Congressmen of the governing party. Although there was no subsequent follow-up, they led to an initiative on the part of the Indigenous Coordination (COPPIP), which participatively organised its own proposal. This is currently being discussed and improved by the indigenous movement's grassroots.

The creation of a Commission for Indigenous Affairs within Congress also opened a window of hope on the possibility of having a specialised instrument to receive indigenous legal initiatives. The struggle for the Presidency of the Commission amongst Congressmen of the governing party frustrated its establishment and to date it is still not up and running.

Other initiatives put to consultation, apart from that of INRENA for the programme of Natural Areas and the frustrated agreement on the oil issue, have been the Laws of Access to Genetic Resources and the issue of the Protection of Indigenous Knowledge. These are issues of great importance but, obsessed with being the region's pioneer, the body responsible (INDECOPI) has forced them to be dealt with inadequately, which may well have consequences on their subsequent legitimacy and acceptance.

Within the Executive, perhaps the most important initiative has been the creation of a specialised body within PROMUDEH (the Ministry of Women and Promotion) but this body has not undertaken anything of any significance to date. In any case, the deactivation of the Indigenist Institute, ineffective but autonomous, has not been compensated for by these types of structure, which report to offices of a lower level in the State structure.

The judicial power has made no efforts to adapt its sentences and reasoning to the new pluricultural nature of the country. The application of common law, principally relating to criminal law, and the new discretionary powers of the judges in the summary trials (the major activity), together with discriminatory prejudices and a greater sophistry due to the frequency of clashes between indigenous and non-indigenous on the borders of the colonised areas has all caused severe problems of imprisonment, arrest warrants and other

inconveniences that affect the tranquillity, identity and dignity of the indigenous community members.

The large number of prosecutors and provisional judges makes the situation a very unstable and dependent one, such that there is a generalised mistrust of the judicial power in the country (being the least credible power, gaining between 18% and 21% in surveys). It is assumed that it acts on orders from the Executive.

The problem highlights the urgency of developing article 149 of the Constitution, which recognises indigenous jurisdiction and the wide applicability of customary law. Far from paying any attention to this, the government proposal is to create "equitable arbitrators" which, yet again, is a dysfunctional solution from the point of view of indigenous autonomy and its aspirations for an unbiased legal administration guided by criteria of impartiality and a lack of discrimination.

International Meeting of Indigenous Women in Lima

Indigenous women from around the world met from 24th to 27th November 1999 in Lima, Peru in order to participate in the International Workshop "Indigenous Women and the New Millennium". We exchanged experiences regarding what we were doing in our own provinces, countries and regions and at the same time we reflected on the achievements and constraints of the ongoing process to achieve our rights as indigenous women. We also drew up strategies for work and actions to take us into the new millennium.

Given that our opportunities for meeting up are few and far between, our agenda was an overloaded one. However, we arranged things in such a way as to ensure we could achieve the workshop's objectives, establishing communication between indigenous women leaders in Peru and the rest of the world in order to jointly discuss and analyse issues related to indigenous women and to plan common actions by which to promote our participation in continental and international fora.

Our greatest achievement has been that of building our own space in which to meet together as the world's indigenous women leaders, particularly since the meeting was organised by indigenous women from the South. This meeting was a privileged space for multi-directional discussion, enabling north-south, south-south and north-north dialogue.

During the end-of-workshop evaluation, Peruvian women were all agreed that, "sharing our experiences as indigenous women with our sisters in other countries has given us greater strength to continue".

During these 4 days of work, we came up with many different and viable results and proposals, which were the product of our work in group and plenary sessions. The project that emerged from the Beijing+5 committee is worthy of mention here, as it concretised the idea of organising a Caucus of Indigenous Women in June 2000 in New York, to be held prior to the conferences of NGOs and States. We chose the International Affairs representative of the Assembly of First Nations of Canada (AFN) to coordinate the organisation of this event and to seek the necessary funding, first sending a letter to the Head of AFN requesting that he allow her to take on this role full time. This he did.

We also drew up the Declaration of Lima, signed by the 18 members of the international group, and the Statement of Indigenous Women of Peru against Discrimination and Racism, which the women of the international group all supported. This Statement will serve to promote an awareness raising campaign against the different forms of discrimination and racism suffered by indigenous women in Peru and the rest of the world.

We would like to highlight another important achievement, which is a product of this rapprochement amongst ourselves, that of the creation of the International Network of Indigenous Women. It is through this network that we will disseminate the results of this International Workshop and exchange strategies for involvement and action in the coming continental and international events. We will take advantage of the coming Caucus of Indigenous Women in June to consolidate our International Network and to develop future actions.

Our challenge now as united Indigenous Women of the world is to find the necessary means by which to make our proposals concrete and to ensure that other meetings of this kind are possible in the New Millennium.

BOLIVIA

1999 has been another year of hoping in vain that the territorial rights of the Indigenous Peoples of Bolivia would finally be consolidated. The process of rationalisation and titling of indigenous lands made little progress, with few results by the end of the year. Of the 30 plus TCOs covering close to 11,750 million hectares that had been requested, and which a 1996 law had prescribed should be titled within 10 months, less than 660,000 hectares had been titled by December 1999, these being in four areas belonging to the Ayoreo people and one of the five areas of the Guarayo territory.

The approval of manuals with which to verify the rights of third parties settled on indigenous lands on the part of the National Institute for Agrarian Reform (INRA) and the adoption of a methodological guide with which to measure the titling needs of communities on the part of the Vice Ministry for Indigenous Affairs and Native Peoples (VAIPO), both without any consultation and in clear contradiction of indigenous rights, has led to a virtual paralysis in the processes of rationalisation and restructuring.

On the other hand, the National Director of INRA issued Administrative Resolution 098/99 regulating the extralegal procedure for declaring the State lands available for concessions and the national government promulgated Supreme Decree 25532 converting the exploitation of non-timber forestry products into a system of 40-year renewable concessions.

But not only did the government adopt measures that were in contradiction to indigenous rights. It has also shown apathy in implementing decisions adopted by the agrarian reform institutions themselves with the aim of safeguarding indigenous territories. It does not fulfil agreements reached with the organisations such as the issuing of new regulations governing the INRA Law, which were agreed by the National Agrarian Commission following more than a year of discussions between the government and representatives of the agrarian sectors, nor does it comply with the decisions of international bodies, such as the report issued by the Committee of Experts of the International Labour Organisation, concerning 27 forestry concessions granted illegally by the Forestry Superintendence within the area of 8 Native Community Lands.

All this can only be explained by the government policy of promotion of foreign investment and exploitation of natural resources, for which the indigenous territories are strategic, and by favouritism towards individual families, contacts, friends or, all in all, the political allies of the governing party.

Progress in the Rationalisation of the Native Community Lands (TCOs)

Three years having passed since Law 1715 was promulgated (in October 1996), and little progress can be discerned in the area of titling. The recent titling of one area out of the five that make up the territory of the Guarayo people and four community lands of the Ayoreo people must be mentioned as examples of processes that will hopefully not be repeated.

Titling of Area 1 of the Guarayo Territory

Only last December, an area of approximately 413,000 ha of the indigenous Guarayo territory was titled. This process was affected, as were other indigenous territorial demands, by the political links existing between the State authorities and "third parties" located within the territory. Initially, INRA delivered preliminary rationalisation resolutions consolidating all third parties in the area being reorganised (all of them illegal), including one forestry concession – also illegal – ("*Lago Verde*"). Apart from unfairly reducing the area, this implied a serious precedent in the application of legal regulations relating to indigenous people's rights. The only argument INRA put forward to justify this measure was based on the large amount of "excess" territory the indigenous people had in relation to the insignificant reduction that consolidating the third parties and the concession would cause, despite being at the cost of sacrificing the most fundamental principles of agrarian law.

One sector of the Guarayo people rebelled against such an unjustified decision but the government initially turned a deaf ear to their demands. This resulted in a subsequent blockade of the Santa Cruz-Trinidad highway in July by the Yotaú community. Because of the blockade, INRA did a U-turn, granting rights to only one third party, still legally unjustified, and serving eviction notices on the other five. As for the "*Lago Verde*" forestry concession, due to the publication of the ILO Committee of Experts report, INRA refrained from consolidating it, leaving it "pending" until conclusion of the rationalisation process.

Up until September, it was thought that the area to be titled would be around 500,000 ha. However, a last minute intervention on the part of the Forestry Superintendence meant that this figure was reduced to 413,000, in anticipation of the provisional recognition of an area of more than 80,000 ha as a contract for forestry exploitation that was currently involved in a dispute being considered by the Supreme Court of Justice.

What we are witnessing with regard to the way in which government bodies apply indigenous rights when bigger interests are involved is clear: only large-scale mobilisations on the part of the communities make effective application of the Law possible. Even so, the mere "intervention" of a State body was sufficient to take 80,000 ha of forest away from its legitimate owners.

In the Spatial Needs Study, the Vice Ministry of Indigenous Affairs and Native Peoples (VAIPO) recommended that an area of 1,350,000 ha out of the total request for 2,205,000 ha be titled. The practical consequence of this reduction in area will be an exclusion from areas in which communities are

settled, areas that are virtually completely invaded by third parties. This will mean that the areas that are finally titled, apart from being insufficient for the development of this people and their identity, will be several dozen kilometres from the places of settlement of their owners, making access, use and effective control of the territory and its native forests difficult.

Titling of the Territories of the Ayoreo People

In 1990, the Eastern Lowlands Project (PTBE) for the development of agroindustry, funded by the World Bank, approved a budget heading known as the "Indigenous Component" in order to mitigate the negative effects of the project on the indigenous populations of the region. A sum of US\$800,000 was set aside for the Ayoreo people. Over a period of five years this was squandered on welfare-oriented programmes, backhanders and corruption, whilst their traditional territory was gradually being eroded away. In 1995, in an agreement between the PTBE, the Union of Native Ayoreo of Eastern Bolivia (CANOB), State institutions, the Church and support institutions, preparations began for what was one year later to become the Ayoreo's demand for territory.

During a march in 1996, the Ayoreo people presented their territorial demand, which covered four areas. This was accepted by Law No. 1715 of INRA, along with 15 other demands from indigenous peoples of Bolivia. According to the law, all demands had to be titled within a period of 10 months.

By October 1996, when Law 1715 was promulgated, there was just US\$200,000 of the "Indigenous Component" left, and so this was put aside for the process to be undertaken in titling the four areas requested. In order to implement the rationalisation, an agreement was signed between the PTBE and INRA, with the support of the Ayoreo Union and the Coordinating Body of Ethnic Peoples of Santa Cruz (CPESC). This process was to end with the hand over of titles. After a year, and when the final report was presented, it was noted that the measurements did not comply with the technical specifications. This was because information regarding what was required had been neither precise nor sufficient - those in charge of the project had lost the documents. The irresponsible project management made it necessary to repeat most of the work and the funds were depleted.

By this time, new work which was to have an impact on the Ayoreo people's environment had begun - the construction of the Bolivia-Brazil gas pipeline. This earmarked significant funding towards mitigating its harmful effects on the communities and so the Ayoreo people decided to use these resources to recommence the process of titling their territory once more. At the

end of 1998, a second interinstitutional agreement was signed between the Development Plan for Indigenous Peoples (PDPI), which managed the gas pipeline compensation funds, the Confederation of Indigenous Peoples of Bolivia (CIDOB), the Ayoreo Union and INRA. This finally made the rationalisation possible.

Before the titles were issued, however, pressure had to be put on VAIPO to recommend titling of the whole of the area requested. It was attempting to get the area reduced, despite it being in the possession of the communities and there being no third party presence. Only under the threat of mobilisations did VAIPO recommend the titling of the whole Ayoreo territory.

Between October and December 1999, the 4 property titles for the communities of Tobité, Santa Teresita, Rincón del Tigre and Zapocó were delivered, covering a total area of 244,736 has.

Administrative Measures That Put Obstacles in the Path of Rationalisation

The process of rationalisation of the native community lands, as defined in the regulations governing the INRA Law, is in itself an obstacle to the indigenous people's obtaining full ownership. The time-scale of 10 months granted by the Law for titling became 700 days in Supreme Decree 24784, the decree that governs this law.

The INRA Law established that the areas requested by indigenous peoples could be modified depending on the results of the rationalisation and the "identification of needs and titling". The regulations governing the Law went further. The process of rationalisation was divided into an innumerable number of stages and it established that the needs had to be identified by means of a study. This study would recommend the areas to be titled taking due consideration of the social, economic and cultural characteristics of the population applying and the quality and capacity for use of the land requested, among other aspects, and that INRA would provide and title the communities with available areas until the spatial needs of the communities were satisfied, in accordance with the study's final recommendations.

These regulations have virtually left the decision regarding how much land to be titled to indigenous communities in the hands of the Vice Ministry of Indigenous Affairs and Native Peoples, a political organ that forms part of the Ministry for Sustainable Development and Planning, whose responsibility it is also to negotiate and grant forestry and mining concessions, concessions for hydrocarbon exploitation, research, ecotourism and so on.

The spatial needs studies have become one of the most difficult bottlenecks to overcome for the indigenous communities in the long and difficult

path towards titling of their lands. The Vice Ministry of Indigenous Affairs defined the methodology for undertaking these studies and adopted a model of mathematical calculation to determine the spatial needs of the communities which, apart from being extremely complicated, does not take into account the reality of the indigenous peoples nor their territorial rights.

The studies carried out for the first territorial demands, the Ayoreo, Guarayo and Chiquitano de Monte Verde territories - apart from consuming large quantities of international funding - involved drastic reductions in the areas demanded. Only following pressurised negotiations by the organisations was an increase in the areas recommended made possible. In the case of the Ayoreo lands, the whole of the area requested was finally recommended as there were no territorial disputes with third parties nor with other interested parties on these lands. In the case of the Guarayo people, out of a request for 2,205,000 has., the study only recommended the titling of 1,350,000 has (it had originally recommended titling 800,000 has). The final study for the Chiquitano de Monte Verde territory, only recently approved, recommends the titling of 944,000 has. out of the 1,060,000 has. requested (the initial version recommended the titling of 828,000 has.).

The indigenous organisations have rejected the content of the studies for several reasons, including the manipulation of community information in order to justify the reductions by means of the formula used to calculate the needs, and the lack of definition regarding fundamental aspects such as the location of areas recommended for titling, aspects which were not corrected in the cases mentioned. The methodological guide and the model for calculation of needs have been particularly questioned, as they are in open contradiction of indigenous rights.

Due to intervention on the part of the international agencies that funded the studies, the Vice Ministry agreed to make some modifications in conjunction with the indigenous organisations. A first agreement was reached by the end of 1999 but, as of writing, this agreement had not been fulfilled. The needs studies continue to be one of the main obstacles to the titling of lands requested by the indigenous people.

Experience to date suggests that VAIPO has exploited this study as a way of reducing the lands claimed by the communities significantly, to the benefit of many illegal third parties who are claiming properties on community lands and forestry concessions (also illegally granted in 1997), and in order to free up areas of strategic importance for natural resource exploitation so that the State can grant concessions over them. In the cases of the Guarayo and Monte Verde territories, for example, the concessions cover areas of 386,000 has.

and 122,400 has. respectively, and these may be consolidated by INRA at the end of the rationalisation process, excluding the best forests from the indigenous territories.

In the same way as the methodological guide for the studies was drawn up by VAIPO, the National Directorate of INRA adopted a number of manuals with which to verify fulfilment of the legal requirements for consolidation of third party properties: fulfilment of the Socio-Economic Function of the property (FES) and the absence of errors nullifying the titles or the agrarian processes on which their right to the land was based. The manual for verification of the FES establishes that whatever type of work, however insignificant, on a minimum proportion of the property requested, consolidates the whole of the piece of land in favour of the private applicant. The manual for verifying nullity converts into "relative nullity" that which the law considers "absolute nullity", a situation that can be compensated for by the FES.

The application of these two manuals means that all properties of up to 2,500 has. that are claimed by third parties within indigenous territories are handed over to the applicant third parties, even if they are based on false titles or processes and do not fulfil the socio-economic function.

The manuals were approved by Administrative Resolution of the National Director of INRA in December, with no prior consultation of the organisations or the National Agrarian Commission, despite the fact that there exists a formal commitment on the part of INRA to submit all technical regulations to this body's consideration.

In order to avoid a large part of the Chiquitano de Monte Verde territory being lost into the hands of illegal third parties, the applicant organisation challenged the said manuals. Those applying for the Indigenous Territory and Isiboro Sécure Natural Park (TIPNIS) in the Department of Beni and the Indigenous Multiethnic Territory (TIM II) in the Department of Pando did the same. But despite the challenges, INRA continued using these manuals when rationalising other territories, seriously endangering community rights.

Two meetings have been held to reach an agreement between the organisations and INRA on the most important amendments to be made to the manuals but, on rewriting the manuals, INRA did not incorporate the changes.

Against this background, the process of rationalisation and titling of the TCOs was moving forward only at a forced pace and under great pressure from the communities in order to avoid the loss of their territories. In some cases, where the communities did not have strong organisations or specialist advisors to provide follow-up to the process, the results have been disastrous. The territories belonging to the Weenhayek and Tapieté peoples are examples

of this. Of the 194,000 has of the Wehneyek Territory, the area was reduced to 13,000 hectares. Following studies in the field, the requested Tapieté Territory of 51,366 has, was reduced to approximately 12,000 has.

New Regulations Governing the Granting of Concessions That Threaten the Indigenous Territories

The government is painstakingly seeking to hand over large areas of forest in concessions without first legalising the indigenous and peasant rights to the land, overriding fundamental rights that run the risk of ending up extinguished. The National Directorate of INRA passed Administrative Resolution 098/99, which enables available State lands to be declared for concession without the process of rationalisation of agrarian property having been concluded. The government issued Supreme Decree 25532 transforming the rubber and chestnut exploitation being undertaken by companies known as "*barracas*" in the Amazonian north of the country into 40-year concessions.

Both measures perfectly complement each other. In order that the concessions referred to in the Supreme Decree can be granted, it is essential that the lands have first been declared State lands. According to the INRA Law, this can only legitimately be done on completion of the rationalisation of agrarian property. Anticipating this obstacle, INRA issued Resolution 098 which enables them to be declared State lands in only 60 days and with no rationalisation.

INRA's Resolution 098/99

One of the most serious attacks against the rights of the Indigenous Peoples of the Bolivian Chaco, Oriente and Amazon areas is the issuing of resolution 098/99 by INRA in July. This resolution, which the government tried to promulgate throughout 1998 by means of a Supreme Decree, has established an extralegal and summary procedure for the determination of Available State Lands. The aim is to grant them as forestry, research, ecotourism or biodiversity conservation concessions to private firms, NGOs etc. To do so, it evades a fundamental requirement established in the INRA Law, that of the rationalisation of agrarian property, in order to determine the State ownership of agrarian lands.

Those most affected by this measure are the indigenous peoples, for the procedure enables lands belonging to them but that are yet to be titled to be declared State lands for concessions, with no possibility for them to intervene in defence of their rights. In effect, of the areas to be declared available for concessions, only lands that are "*duly recognised*" are excluded, a term which

the government has interpreted - for the purpose of forestry conversion - as being those that have permanent and finally delivered titles. Even lands currently under the process of rationalisation are not spared, which is inexplicable if you take into account that areas subject to other methods of rationalisation are excluded.

As this resolution enables lands in the process of rationalisation to be declared State lands available for concessions, it obviously also does not exclude the possibility of recognising as State lands those indigenous lands that have yet to be requested. The procedure approved by INRA does not anticipate the exclusion of areas used by indigenous peoples or communities that have not yet been requested. Neither does it admit opposition with this as the reason. The indigenous and peasant communities that are created with land rights have a period of ten days in which to intervene, having to present for this purpose a whole string of documents and certifications from authorities that may even have an interest in the areas being declared available for concessions.

There thus exists no provision within the procedure approved by Administrative Resolution 098/99 that clearly indicates that the native community lands, whatever they may be, recognised or not, with final title or not, will be excluded from the areas to be declared State lands available for concessions. Quite the contrary, the procedure seems to have been meticulously drawn up with the aim of restricting indigenous rights over their native community lands, at least, those in which there still exist forests of interest, with the purpose of granting these lands as concessions.

So, in the face of concessions, fundamental agrarian rights that take preference in agrarian and forestry legislation end up being unfairly discriminated by having to be subjected to a long and costly process of rationalisation, at the end of which the land available for provision is decided whilst, in a rapid and effective procedure - and without prior rationalisation - State lands available for concession are determined through a process of preferential treatment. If one considers that, as established in Law 1715, the requests of the rural landless and of those who have insufficient land (populations along the banks of Lake Titicaca owning unproductive furrows and mini-plots, land that has been destroyed by the effects of mining such as that to the north of Potosí, or the overpopulated valleys of Chuquisaca and Cochabamba) cannot be accepted or processed until the process of rationalisation of agrarian property in each area has been concluded, then it is completely unfair to undertake and satisfy requests for forestry concessions via a preferential path, as if they have the greater right.

It did not take long for this resolution to be applied. In August 1999, INRA issued 10 certifications of State lands in the dry forest of Chiquitano, covering an area of more than 800,000 has. in order to grant forestry exploitation concessions there. The Chiquitano dry forest is a fragile ecosystem, the only one of its kind still in existence in Bolivia and one of the few existing in the whole world, home to a wide biodiversity that has been the source of survival of the Ayoreo and Chiquitano peoples. These peoples have for centuries used these forests without damaging them, and for this reason they form part of their Native Community Lands, which to date have not been requested. It was not possible for the communities to intervene in the process because appeals were only accepted after certain periods of time had expired.

Indigenous organisations and a number of National Deputies, faced with this new violation of the rights of indigenous and peasant populations, filed appeals for nullity and unconstitutionality before the Constitutional Court. The appeal for nullity was rejected in an absolutely unfounded judgement. As the Court itself recognised in its Ruling, no analysis of the content of the challenged resolution was undertaken. An indirect appeal of unconstitutionality, filed against the resolutions that declared the Chiquitano dry forest available, was rejected by the National Institute for Agrarian Reform itself, which had no power to do so, and its decision was arbitrarily ratified by the Constitutional Court, avoiding even an analysis of its competence. A third direct appeal of unconstitutionality, filed by the National Deputies, was denied by means of a further ruling lacking the most minimal analysis of the alleged violations of the constitutional statute. The Court declared the challenged resolution valid, basing itself on brief affirmations or negations. It should be noted that within these statements, the Court stated that the agrarian rights of indigenous and peasant communities were not being damaged because they were defined by Law, assuming that the mere legal statement of such rights implies their fulfilment.

Supreme Decree 25538

On 6th October 1999, President Hugo Banzer promulgated decree Nº 25538 by means of which *"the chestnut and rubber companies known as 'barracas' are recognised as forestry concessions for non-timber products"*, with exclusive rights of use over timber products. This Decree is not only in contradiction of the Forestry and Agrarian laws, but also endangers the titling rights of indigenous and peasant communities throughout the whole of the northern Amazonian region and denies them their right to exploit forestry resources. But more serious still is the fact that the Decree implies recognition of the

right to titling over the areas exploited on the part of the companies in an attempt to revive the effects of legislation brought in at the end of the 19th century and which was abolished by the agrarian reform of 1953 and by reforms to the Constitution and to the forestry and agrarian systems adopted during the 1990s.

One of the highest rates of land concentration in the hands of rubber and chestnut companies can be observed in the department of Pando and the north of the departments of Beni and La Paz, which make up the northern Amazonian region. Here they control more than 90% of the lands, along with the respective access to forests and forest resources. According to recent information from the National Director of INRA to the Apostolic Vicariate of Pando, 240 owners of "barracas" have requested a total of three million four hundred thousand hectares. If Decree 25532 is applied this will consolidate yet more the excessive concentration of land into a few hands, despite the fact that division of land into large estates is prohibited by express regulation of the Constitution. It also ignores the mandate of the authorities to protect and guarantee the agrarian rights of indigenous and peasant peoples and rules out the possibility of providing land to the majority who have no or insufficient land.

Although D.S. 25532 establishes that areas superimposed on native community lands and peasant communities may not be submitted to the process of conversion, it is foreseeable that what happened in the case of forest conversion for timber products will occur. These were approved by the Forestry Superintendence in 1997 with the argument that they were not "duly recognised". In the Amazonian north not one single metre of land has been reorganised and only recently, with the pressure and mobilisation of the communities, has INRA been obliged to undertake promises of rationalisation, which have not yet come to fruition.

Rubber and chestnut exploitation is being undertaken in regions traditionally inhabited by the Araona, Chácobo, Esse Ejja, Pakawara, Tacana, Yaminawa, Machineri and Cavineño indigenous peoples, whose population is currently around 15,000 people. The peasant communities total more than 20,000 inhabitants.

The process of exploitation of non-timber resources in this region dates back approximately 140 years. First cinchona bark and later rubber exploitation led to the loss of most of the lands of the Amazonian peoples, their reduction and subjection to different means of domination, even slavery. Exploitation currently uses temporary salaried workers or a form of piecework, whereby gatherers are paid by the kilo of rubber or by the box of chestnuts collected, at

highly undervalued prices. Salaried workers are regularly paid in kind, with goods required for basic needs being distributed by the owners of the "barracas", themselves and their value being highly overestimated.

The experience of the Amazonian peoples with the extractive industries of rubber, chestnut etc. is a bitter one. The Araona people are the survivors of two families who escaped their captors, when they had been taken to work as slaves on the rubber plantations at the beginning of the last century. At that time their population numbered 20,000 but today there are only 82 of them left.

The indigenous and peasant organisations of the region, the Indigenous Union of the Amazonian Region of Bolivia - CIRABO, the Federation of Peasants of Vaca Diez and the United Confederation of Unions of Peasant Workers of Bolivia, in a Decisive Vote made public on 14th December last, denounced, *"the system of semi-slavery in which thousands of families from the Amazonian north are struggling, a situation that has taken place and continues to this date within the barracas, places where they continue to ignore social rights despite the fact that systems of servitude were abolished by the laws of the Republic many years ago, and which nevertheless continue to benefit those who call themselves businessmen by means of Decree 25532."* By means of various declarations and mobilisations they have demanded that the national government repeal the decree and, as a method of conciliation, they have proposed that it should not be applied until the process of rationalisation of agrarian property in the region has been concluded.

But INRA is continuing with the procedures to declare the areas claimed by the "barraca" owners as State lands, in application of the stated Administrative Resolution 098/99, and the Forestry Superintendence has almost certainly begun the administrative procedures for the conversions.

As can be seen, this new decree will have a disastrous impact on the traditional hunting and gathering areas of the Indigenous Peoples, as the areas claimed by the "barraca" owners are superimposed on top of them, the decree giving precedence to the rights of these latter over the native indigenous people of the area. This is a new adaptation of what was suffered in 1997 by these same peoples and others of chiquitania cruceña and the Chimanés forest, when more than 700,000 hectares of forest were taken from them in order to grant them to timber companies.

The ILO Declaration Regarding Forestry Concessions on Indigenous Lands

In the first months of 1998, the indigenous organisations affected by the forestry conversions superimposed on indigenous territories, represented by the Confederation of Indigenous Peoples of Bolivia - CIDOB, presented a formal demand to the ILO, with the aim of gaining from this body not only a response consistent with the principles enshrined in Convention 169 on Indigenous Peoples but also support in terms of pressure placed on the Bolivian government to force it to change its mind with regard to the decisions adopted.

Their argument was based on the fact that articles 14 and 6 of the Convention had been violated, namely that due protection of the rights of property and possession of lands traditionally occupied and used by the affected communities had not been established and that due consultation regarding the administrative measures approving the superimposed concessions had been lacking.

Following the case study on the part of the Committee of Experts, the Board of Directors published its report in March 1999. The final recommendations that were approved by the Board of Directors established two important principles.

Firstly, that article 15 of the Convention must be interpreted in accordance with articles 6 and 7 of this same legal instrument, thus meaning that the government had an obligation to ensure that the indigenous communities affected were adequately and appropriately consulted with regard to the scope and implications of natural resource exploitation. Secondly, despite the fact that the final legal regularisation of the territories was not yet resolved and that the rights granted to the Indigenous Peoples went further than mere consultation, it recommended that the government undertake environmental, cultural, social and spiritual impact studies jointly with the peoples concerned, *prior* to authorising the activities of exploration and exploitation of natural resources in areas traditionally occupied by them and that, as far as possible, their participation in the benefits of these concessions and their fair compensation for damages suffered because of these exploitations should be defined.

For the Indigenous Peoples of Bolivia the decision represents an historic and legal milestone of great significance. However, the ILO failed to pass judgement on the fundamental demand, which was protection of their right to property and possession of the lands, for it had been hoped that it would recommend revoking the concessions in the areas superimposed on the indigenous territories, rather than recommending a process of consultation, impact studies, participation in benefits and compensation for damages caused. By

this latter path, it seemed to imply that indigenous territories could be affected as long as these conditions were fulfilled. This is, notwithstanding, a big step forward for communities that may wish to accept such activities being undertaken on their territories by third party companies. However, the Bolivian government has given no indication that it will comply with these recommendations, and, on the contrary, it is making efforts to consolidate and extend the concessions.

Amendments to Regulations Governing the INRA Law

For a large part of 1998 and up until October 1999, the so-called Technical Commission of the National Agrarian Commission (CAN) sat in session, formulating the agreed new text governing the INRA Law that was to substitute Supreme Decree 24784, adopted by the previous government without consultation only hours before the end of its term in August 1997.

The multisectoral composition of the National Agrarian Commission (State, business and sectoral social organisations) made it possible to obtain a consensus around important achievements in favour of the peasantry and indigenous peoples who participated in this body.

The amendments agreed within the offices of this technical body were aimed at providing a solution to the previously mentioned problems that are threatening to lead to the disappearance of the indigenous lands. These included the reduction of deadlines for processes to be fulfilled at the different stages of rationalisation; the express provision that the rationalisation of agrarian property, its reversion and expropriation, were the only administrative procedures through which State lands could be identified in the country; and the definition of criteria by which to verify the socio-economic functions of agrarian property cited by third parties during the rationalisation of indigenous lands and for the identification of errors by which to nullify the titles or files on which their rights are based.

As a complement to this last measure another regulation was agreed, aimed at ensuring that third parties claiming large areas of traditional indigenous use – and who are basing fulfilment of the Socio-Economic Function on activities of conservation, ecotourism, research or forest exploitation – have to prove they have the authorisation of the appropriate authority, issued prior to the Immobilisation Resolution relating to the indigenous territory. This provision is very important, given that the simple presentation of plans or projects for implementation of these activities is currently serving as a means to access large areas over which third parties have no right.

A provision that makes it possible to challenge the final report of the Spatial Needs Study undertaken by the Vice Ministry of Indigenous Affairs is also worthy of mention, which may be an important means of control in the face of the undeniable political exploitation of the Study on the part of this Ministry, which is using it to reduce the areas to be provided to Indigenous Peoples considerably.

But INRA has taken it upon itself to betray several of the agreements reached by the National Agrarian Commission, including the adoption of measures formulated to consolidate third party properties, and to this end has introduced an article that has not been agreed by consensus, and whose promulgation will automatically leave the manuals approved in December without effect.

The agreed text for the new regulations was sent to the national government two months prior to the end of 1999 but by the time of writing had still not been promulgated as a Supreme Decree.

Conclusion

As can be seen from this summary, the situation of Indigenous Peoples in Bolivia is a particularly difficult one. There is a legal framework that demonstrates really significant progress but the government's will to apply what is provided for in these regulations is in actual fact zero, and the signals that can be perceived on the horizon with regard to a change in attitude are increasingly obscure. This is all the more so when you consider the absence of legal control demonstrated in the cases brought before the Constitutional Court.

The organisational stage of the 1980s and the struggles for demands based on the mobilisations of the 1990s would lead one to suppose that the last year of this five year period would be the one in which the rights that have been gained would finally be exercised. But the government, in keeping with the continental trend to prioritise large transnational investments, is slowly and inevitably contradicting that assumption. The achievement of the rights of the most vulnerable sectors of the population, in this case indigenous and peasant peoples, quite clearly forms no part of the structural plan for social exclusion that is in force throughout the continent.

It seems that, as in 1990 and 1996, for the indigenous peoples of Bolivia there is no other alternative but to resort to such action as may make it possible for them to break free from the state of siege that the State has subjected them to in order to deny them their social demands: a huge national mobilisation is brewing amongst various peasant and indigenous organisations, who

are convinced that their rights and demands are most certainly very far from being realised.

BRAZIL

Indigenism in Brazil

Within a general context of debilitation of the federal executive power, various events took place in 1999 that point to a new and unfavourable climate for indigenous interests in Brazil:

- The urgency given by the National Congress to the processing of Draft Law 1610 that regulates mining activity in indigenous areas;
- The delay in the vote on the Statute of Indigenous Peoples;
- The creation of a Parliamentary Committee of Inquiry (CPI) to investigate FUNAI's performance in the demarcation of indigenous lands.
- The reintroduction, on the part of politicians and the military, of the discourse against a supposed internationalisation of the Amazon, associated with the actions of non-governmental organisations (NGOs);
- The opposition of politicians to the creation of Special Indigenous Public Health Districts (DSEIs) in collaboration with indigenous organisations and NGOs.
- The growing coordination of parliamentarians from the so-called Amazonian Group (a group of parliamentarians camouflaged in a discourse of development for the region) in favour of the mining, farming and timber interests that are increasingly intensifying their penetration into indigenous lands.

This scenario is developing at a sensitive time for the indigenous peoples of Brazil and it points to difficult times ahead, in which no-one can guarantee whether the age-old struggle to gain land rights and to maintain a way of life according to custom and tradition will come to fruition or not.

Processing of the Mining Law

The Brazilian Constitution of 1988 establishes a legal distinction between ownership of the soil and subsoil. Being part of the subsoil, mineral deposits are the property of the Union and this latter authorises their exploitation according to the Law.

This has opened up the path to exploitation of mineral resources on Indigenous Lands (TIs), whose exclusive usufruct is owned by the indigenous people. However, this usufruct relates only to the "natural wealth of the soil, rivers and lakes" and not to use of the subsoil. This use depends upon the authorisation of the National Congress and it is an indigenous right to participate and be listened to in the process of concessions concerning areas under investigation. In this context, and not forgetting that a large part of the mineral resources existing in Brazil are found on indigenous lands, pressure for regulations and authorisations for exploration is increasing.

To date, the process of regulating the laws relating to mining has not been approved and within the various proposals that are being studied by the National Congress there are some points that need special attention in order to ensure application of the rights gained by indigenous peoples in the 1988 Constitution, such as:

- Restriction of the area of subsoil exploitable in any particular Indigenous Land;
- Participation on the part of the indigenous community in the financial profits of mineral exploitation;
- The free use by Indigenous Communities of resources deriving from participation in the results of mineral exploitation;
- The obligation to undertake an Environmental Impact Study and, importantly, the hearing of the Indigenous Communities affected, that is, the National Congress may only authorise mining on Indigenous Lands after listening to the Indigenous Communities affected.

Exploitation of mineral resources on Indigenous Lands by third parties thus requires well-defined government strategies and policies, particularly with regard to supervision, which it is difficult to envisage in the current Brazilian climate. Today's reference point, that of illegal and predatory "garimpo" (prospecting), has caused serious problems for many communities in terms of health, social degradation, loss of productive lands, and contamination of rivers and sources. Such is the case of the *Yanomami*.

It is also important to stress that, even if indigenous rights are enforced, the communities will have to be prepared to battle with all the social and environmental changes that the results of financial participation in exploration will bring.

The Draft Law still has to be analysed by the Constitution and Justice Committee before moving on to a plenary session of the Congress, where a

vote will be taken. A coordination of NGOs, in collaboration with opposition deputies, last year managed to delay the processing of the mining law, holding it up until the Statute of Indigenous Peoples is approved.

Indigenous Health

After many years of discussions, a provisional measure (MP) was reissued in 1999 by which responsibility for indigenous health is transferred from FUNAI to the Ministry of Health via the National Health Foundation (FUNASA).

In fulfilment of the MP, a presidential decree must be promulgated, establishing the principles and standards for implementation and functioning of a national system of Special Indigenous Public Health Districts (DSEIs).

The health situation of the indigenous peoples, particularly with regard to epidemics, has worsened considerably in recent years due to growing contact between indigenous society and the outside world, particularly those populations living around the TIs. This time, the change has the force of law and proposes a system of DSEIs with its own pre-indicated bodies. A good part of the activities and qualities attributed to these bodies will arise out of broad discussions involving the Ministry of Health, FUNAI, NGOs and the indigenous communities themselves, by means of various seminars and conferences.

This is how the new model will look and FUNASA will appoint a "manager" to accompany the development of the project, hold resources and, supposedly, accompany and be responsible for the quality of implementation of the project. In some regions, where the indigenous movement is more organised or where reliable organisations are involved, there have been many actions undertaken in the area of health, such as in Roraima, in the Río Negro region of the Xingu Indigenous Park. There are also non-governmental coordinations that can take responsibility for organisation of the districts and so this means that it may well be a viable model in terms of results.

However, there are some regions in the country where there are no qualified private institutions with a history of relations with indigenous communities. This consequently means that the necessary conditions in which to implement health services do not exist, putting the viability of the model at risk.

In any case, this new policy must be seen as an attempt to improve the catastrophic situation of indigenous health to date, although the results will need to be closely monitored to ensure their effectiveness.

Demarcation of Indigenous Lands

There was no progress on the part of the Government in the process of demarcation of TIs during 1999. This delay has caused a climate of tension in various parts of the country, particularly in the State of Roraima, whose elite is known for its strong capacity for mobilisation of the State's population against indigenous interests. This power of mobilisation dates back to when the Yanomami Indigenous Land was demarcated. This process began in the 1980s and was only finalised in 1992. Current criticisms revolve around demarcation of the Raposa do Sol Indigenous Land, belonging to the *Macuxi*, *Wapixana*, *Ingaricó* and *Taurepang* indigenous peoples. These peoples have for years been arguing that their territories should be demarcated as one continuous area of 1,678,800 hectares.

But the Roraima elite is not satisfied with this proposal from the National Foundation of Indians (FUNAI) and has begun a fierce campaign, along with the State's population, to create antipathy towards the demarcation process and the indigenous peoples of the region. This campaign has also caused concern amongst the Catholic missionaries, indigenous organisations (such as the Indigenous Council of Roraima - CIR) and NGOs in general. The State Governor, Neudo Campos, even reached the point of threatening to close the 138 indigenous schools within the Raposa-Serra do Sol Indigenous Land, should the process of demarcation continue to be concretised.

The campaign intensified in the second half of 1999, with posters being put up in the street and on the walls of houses, with anti FUNAI and NGO propaganda. Armed conflicts are also being forecast in the Raposa Serra do Sol region between indigenous people and landowners and the delay on the part of the federal government in resolving the demarcation once and for all is only aggravating the situation.

Parliamentary Committee of Inquiry for FUNAI

In May 1999, a Parliamentary Committee of Inquiry (CPI) was established by the Brasilia Chamber of Deputies in order to investigate the performance of FUNAI in the demarcation of indigenous lands.

This CPI is largely made up of parliamentarians from the so-called "Amazonian Group" and the direction of the work throughout 1999 demonstrated that FUNAI was not the main objective of the Committee. In reality, this CPI is an attempt to create anxiety by which to sustain an absurd hypothesis, and that is that the demarcation of TIs and the support of some NGOs to a number of indigenous societies is a threat to national sovereignty, thus opening up a space in which to attempt to reduce the lands being demarcated.

To date, this CPI has not managed to achieve anything concrete, as was to be expected. But the simple fact that its establishment was approved by the Chamber shows that the deputies of the "Amazonian Group" are gaining increasing power within the Legislature.

Statute on Indigenous Societies

At the beginning of this year, following six years of paralysis, the Government once again began processing the draft law that establishes the Statute on Indigenous Societies. This replaces the now outdated Statute of the Indian of 1973.

The new proposal, now entitled "Statute of the Indian and of the Indigenous Communities" does not envisage the concept of indigenous society (or people). So what does it envisage?

The text will be sent to the National Congress for amendment and vote. Amongst the changes submitted with relation to the 1973 text in force can be highlighted the revocation of the tutelage of the Union over indigenous peoples, establishing other instruments of special protection for indigenous rights. It does, however, retain powers of a tutelary nature for the indigenist body FUNAI, specifically in relation to the "uncontactable" indigenous peoples and their lands.

The Government proposal reaffirms the permanent nature of indigenous rights as laid down in the 1988 Constitution and thus governs and consolidates them, as well as opening up a space for a more up-to-date discussion on economic, inheritance and business issues.

PARAGUAY

The situation of indigenous people's rights in Paraguay is generally worsening in terms of growing threats to their survival. The 1999 budget for the Indigenous Institute of Paraguay (INDI) – the main body in charge of restoration of indigenous territories – was cut by 58% in relation to the previous year, illustrating the Paraguayan State's policy in relation to the indigenous sector this year.

At one point, whilst promising to respond to the demands made by native peoples during the "March for Indigenous Dignity" held on 12th October 1998, the President of INDI during the last few months of the Cubas government, Mr. Martín Lezcano, was actually devoting his energy towards organising

further tax evasions. The fall of Cubas and the arrival of the Government of National Unity, led by President Luis González Macchi, frustrated his intentions. However, neither did the successor appointed by this government to take over from Mr. Lezcano, Mr. Optaciano Villamayor, fulfil the minimum requirements for suitability and capability to run INDI. Remarks made by Villamayor regarding rejection of legitimate territorial claims, attempts at fraud in land purchases, internal administrative corruption and other acts of a similar nature meant that a number of the sectors involved in indigenous affairs – NGOs, indigenous organisations, INDI employees and so on, were throughout 1999 demanding – by different ways and means – the dismissal of this official.

In the face of pressure from the leaders of the Enxet and Toba Qom and other indigenous peoples of the Association of Indigenous Supporters (API), President González Macchi finally appointed Mrs. Elena Pane de Pérez Maricevich as President of INDI on 12th October, 1999. She has a better background than her predecessors but her appointment demonstrates that if the State is to develop an indigenist policy that responds to the demands of the indigenous peoples, officials with good intentions are not enough: structural change and real political will on the part of the government are necessary, along with a greater allocation of resources.

Given this need, and INDI's budgetary limitations for 1999 (Gs 15 thousand million = US\$5 million), which was implemented to a minimum percentage, no territorial claims pending from previous years were resolved. In formal terms, the situation for the year 2000 was even worse, only Gs. 2,500 million (US\$680,000) being allocated. Not surprisingly, by April the Treasury had declared that INDI had exhausted its budget for 2000, which means there are few possibilities for any territorial claims being resolved throughout the rest of this year. This neglect of indigenous issues is also illustrated by the lack of any reference to indigenous peoples in the proposed State reforms that have been presented by the Government of National Unity.

Other alarming and unfavourable occurrences took place during 1999 and the beginning of 2000, such as an increase in indigenous migration towards the capital and towns of the interior – where they form part of the most marginalised sector –, the prolonged drought that largely affected the Western region, the repeated occupations of indigenous lands by poor peasants and the deforestation of these lands. All these things contribute to a scenario of defencelessness and vulnerability on the part of the communities, demonstrating the al-

most complete abandonment of the tutelary role the State is obliged to provide to these peoples.

The Offices for Indigenous Affairs within the country's departmental governments played a more significant role in 1999 by disputing a significant part of INDI's budget – that relating to land restoration. Their conduct, far from being promising for indigenous peoples, has multiplied state bureaucracy at local level. The actions undertaken by these Offices are limited to welfarism and the manipulation of indigenous peoples according to sectarian political interests. The example of the Indigenous Office for the Department of Presidente Hayes, Chaco, is particularly illustrative. Despite being run by an indigenous person, Mr Amancio Benítez, it has demonstrated that the mere occupying of an official post does not necessarily bring about indigenous participation. The Coordinating Body of Indigenous Leaders of the Bajo Chaco, an organisation that groups together representatives from the Enxet, Toba Qom and Nivaclé peoples from throughout the department, has complained that the funds allocated to the said Office have been misappropriated by the provincial government and have in no way benefited the communities. They also demand true participation within the structure of the said organisation, in contrast with the existing orchestrated body which lacks representativeness and legitimacy.

In June 1999, three indigenous Enxet communities - Sawhoyamaya, Yakye Axa and Xakmok Kásek - comprising around 270 people, held a march to, and subsequent demonstration in front of, the Parliament in Asunción, with the aim of putting forward demands to the three state powers. At first, two of them – Yakye Axa and Sawhoyamaya – managed to get the Executive to decree a state of emergency for their benefit. This was due to the difficult conditions they were experiencing, camped along the road in front of their claimed lands. But implementation of this decree (consisting of aid in the form of food, health care and education for these communities) has been undertaken only on a sporadic basis by the government. During the aforementioned indigenous action, two proposals for expropriation were also presented by the Xakmok Kásek and Sawhoyamaya communities (in this latter case for the second time) and rulings were demanded from the Supreme High Court in favour of Yakye Axa, but only one of these culminated in a favourable outcome (see further on).

There is a clear lack of fulfilment with regard to guarantees and rights that are recognised to indigenous peoples by the Paraguayan State, in spite of the existence of an extremely favourable constitutional framework. There are

certain actions and circumstances that exemplify this lack of fulfilment and, although some of these can be regarded as historical constants that have not changed despite Paraguay's "democratic" transition and successive governments, given their recurrence during the period under analysis, 1999-2000, some of these actions and situations betray a negative trend in the direction of indigenist policy in Paraguay. These actions are:

1. The reduction in INDI's budget for purchase of lands claimed.
2. The repeated attempts to defraud the State of these funds, noted in both the Lezcano administration and in that of Villamayor.
3. The manipulation of legitimate and conflictive demands with the aim of satisfying the interests of the private landowners affected. Such is the example of the indigenous Yakye Axa community. In this case, both Lezcano and Villamayor tried to convince them to make demands over other lands.
4. With regard to parliament, the manifest slowness and lack of political will to sanction the laws of expropriation in the cases that have reached this body constitute a violation of the territorial rights of indigenous peoples. This is demonstrated by the case of the 78,000 hectares claimed by the Ayoreo-Totobiegosode people (part of a larger claim for 600,000 hectares), a proposal that has been with the Agrarian Reform Committee of the House of Senators for two years, awaiting a favourable judgement.
5. The Supreme High Court denied the Yakye Axa community, stationed along the Concepción to Pozo Colorado road, the right of access to lands they have traditionally occupied in order to hunt and gather there, whilst its restoration is processed. This community – as mentioned – held a demonstration in Asunción in June 1999 in order to demand a final ruling from the Supreme Court, having waited a year for an answer to the action of unconstitutionality brought against the negative rulings of the 1st and 2nd Courts prohibiting them from entering the lands in question in order to hunt. The negative ruling issued by the Supreme Court exhausted all internal possibilities on the part of the community to enforce its rights, and it has thus submitted its case to the Inter-American Commission on Human Rights.

6. In light of the above, it can clearly be seen that there exists no national indigenist policy that places priorities on the area of restoration of lands claimed nor is there a restoration plan in coordination with all the other government bodies involved. There is no clear picture of the amount of land already returned or due to be returned, nor any identification of landless communities, nor of the land required to ensure greater areas for those communities that need it.
7. With regard to health, State assistance for indigenous peoples is completely inadequate. During 1999, many communities faced immense problems with regard to drinking water due to the prolonged drought, which seriously affected many communities. Indigenous people in the department of Itapúa were particularly affected by contamination of the streams they usually take their drinking water from, due to the intensive use of toxic agrochemicals by their neighbours. A number of children actually died because of this.
8. The government has no real or effective programme of formal indigenous education, restricting itself to limited budgets to cover indigenous teachers and a number of academic and administrative supervisory posts, aimed at serving these teachers. Educational materials directed at the cultural specificity of indigenous peoples are few and far between, and tend to be provided largely by private initiatives.
9. The absence of government input into any plans becomes increasingly noticeable with the rise of indigenous migration to the cities. They move for different reasons: lack of secure lands, internal conflicts and lack of subsistence alternatives. Such is the case of the indigenous Mbya, originally from Capi'ibary in the department of Caaguazú, who now live on the Asunción rubbish dump because INDI took no steps to secure the 250 hectares they were occupying in their place of origin.
10. The State has not duly assisted indigenous peoples to protect their habitat from deforestation and environmental degradation. Both in the Chaco and in the Eastern Region, indigenous leaders have denounced the deforestation of their lands at the hands of third parties or by members of their own communities under pressure from poverty. Communities in the Eastern Region, such as the Ava Guaraní community in Itakyry and the Aché community in Chupa Pou are now forced to confront problems of this nature.

11. The State has taken no preventive or dissuasive measures to stop the occupation of indigenous lands by poor peasants. Lands such as those of the Mbya community in Arroyo Claro, in the department of Itapúa and those of Arroyo del Sur in the same department were invaded by peasants, and this is the reason why the indigenous peoples there are facing a situation of conflict and insecurity in their own environment.
12. The State has adopted no firm actions to combat unemployment or to improve the working conditions of indigenous peoples where this is required. One example is the various Ayorea communities in the central Chaco, whose sources of work have dried up and who, for the moment, have no substitution alternatives.
13. Indigenous peoples enjoy the same procedural laws and have the same rights to protection of their physical and emotional integrity from the forces of law and order as other citizens of Paraguay. The public bodies in charge of safeguarding these guarantees and rights are the Judicial Power and the National Police. However, these rights are violated by the very people who should be protecting them. This is demonstrated by the detention of 28 indigenous people from the Mby'a people – of which 8 were minors – in the Pedro Juan Caballero prison, without any trial whatsoever.

This panorama makes it clear that there is a persistent absence of a national indigenist policy which has as its priority the satisfaction of these people's demands in terms of: territorial restoration, health, education, cultural respect, absence of discrimination, real participation, tutelage and implementation of their rights through institutions that are not corrupt, appropriate human resources and sufficient budgetary resources.

CHILE

In 1999 the largest indigenous group in Chile, the Mapuche (approximately 10% of the population) have been very visible on the public scene, mainly because they are publicly regarded as creators of conflicts. Since 1997 the Mapuche movement's central demand - its desire to be acknowledged as a people - has emerged more clearly. They have achieved this by pressing home their demands to the 'ancestral right' to 200,000 hectares of land in the South of Chile, which today is in the hands of private farmers and private compa-

nies. As a consequence acts of vandalism and violence, between on the one hand the Mapuche and on the other farmers and employees in privately owned timber companies, were reported almost daily by the Chilean press. This has caused great concern to the Chilean government, which has demanded that respect be shown towards Chilean law.

The Mapuche consider the application of the Indigenous Law of 1993, which guarantees that "land defined as indigenous will enjoy protection from this act and cannot be disposed, confiscated, encumbered nor acquired through prescription, except between communities or indigenous individuals of the same ethnic group" (Article 13) as a major source of the conflict with the Chilean government and private companies. According to the Article indigenous people who can prove their direct kinship with persons who were granted the right to a territory (called a '*titulo* of Merced') between 1884 and 1927 can rightfully claim to be owners of the said land. A supposed aim of this article was to prevent the exploitation of indigenous land by private landowners and companies. To the Mapuche land stands as the symbol of preserving their identity, and consequently it is of fundamental importance that there is respect for the land rights of the Mapuche peoples.

The policy of past Chilean governments, however, has turned this matter into a complicated one. Under Allende's government, law 17.729 provided the Mapuche with land and credits in order to increase production. This process was completely overturned under Pinochet's dictatorship, when Mapuche communities were divided up and ascribed individual allotments. In addition, according to law 2568 of 1979 rural property "will stop being considered indigenous land with indigenous people the owners". As a consequence, private companies were given the possibility to buy and exploit what formerly had been defined as indigenous land. During the last decades thousands of hectares of indigenous land have been planted with non-native pine forest with subsidies from the Chilean government.

Today many Mapuche are alarmed by the effects of private timber companies' expansion into indigenous communities' lands. On average a Mapuche family has three hectares of land at its disposal. In addition, in many areas this land is extremely eroded, and water resources are very scarce. This is thought to be a consequence of the many pinewood plantations on indigenous territory, as pines absorb huge amounts of water which leads to an impoverishment of an area's biodiversity. The extreme poverty and the poor harvests of the rural Mapuche are therefore often ascribed to the presence of timber companies. As a result of these circumstances the majority of young Mapuche

migrate to the big cities, where they work in low paid jobs as domestic employees and employees in bakers' shops in order to support their families.

The government of Eduardo Frei (1993 to 1999) sought to solve these problems by implementing Indigenous Law 19.253 of 1993 and by having the governmental institution for indigenous people CONADI (la Corporación Nacional de Desarrollo Indígena)¹ buy 150,000 hectares of land. This land was subsequently transferred to Mapuche Indians under the rubric '*titulo* de Merced'. The efforts of the Frei government, however, could not keep up with the Mapuche's demands, since they continued to claim their 'ancestral right' to land. In addition, under Frei's government the green light was given to further pine plantations as well as to the energy company ENDESA's plan to construct six hydroelectric dams on indigenous land. The first dam, Pangué, was completed in 1996. The construction of the second dam, Ralco, continues to be a matter of dispute, due to both the negative impact it will have on the environment and to the fact that it will necessitate the relocation of 700 indigenous people.

In the autumn 1997, with the above facts as the background, various Mapuche organisations initiated the present process, which has become known as the 'territorial recuperation' whose goal it is to recover 400,000 hectares of land. From this date onwards the terms 'conflict' and 'violence' have come to colour the relationship between the Chilean government, the private companies and the Mapuche Indians.

The Violence and the Territorial Recuperation

In 1999 the Mapuche's conflict with timber companies took precedence over those disputes in which they are involved, that have been caused by the construction of highroads and hydroelectric dams. The Mapuche, motivated by the right to land granted them by the '*titulo* of Merced', occupied a large number of *fundos* or haciendas owned by timber companies in the South of Chile. The companies Mininco and Arauco S.A. were the most severely affected (53%), while private farmers suffered 37.6% of occupations and national parks 4.3%.² In addition to territories being occupied, highroads have been blocked, bridges have been cut and machines have been burned. These actions have caused violent clashes between employees from the timber companies, private farmers, the police force and the Mapuche. Moreover, throughout the year there have been reports of a huge number of fires being deliberately started. In October alone more than 30 fires on pine plantations were reported. On various occasions scenes from the conflict have mirrored those of a civil war, with the Mapuche (including women and elderly people) armed

with stones and wooden clubs on one side, and on the other a heavily armed police force equipped with tanks, police dogs and tear gas sent in to protect the timber companies' property.

If we look at the events of 1999, a number of conclusions can be drawn, all of which indicate that violence is an inherent part of the acts of territorial recuperation. Even so it arises for many different reasons and depends on all of the various players, namely the timber companies, the Mapuche movement, the Chilean press and the Chilean government.

For the *timber companies* economic growth and profit margins are the prime considerations. By exporting millions of dollars worth of timber they contribute to Chile's general economy to the benefit, supposedly, of Chilean citizens as a whole. As far as the Mapuche go, the timber companies provide their communities with jobs. According to a statistic referred to by the Chilean Wood association (Corporación Chilena de madera), about 12% of the timber companies' employees are Mapuche.³ The activities of the timber companies, however, are seriously effected by the 'Mapuche conflict'. While figures from 1994 to 1996 show that 100,000 hectares of exotic forest were planted, in the following three years this figure dropped to 30,000 hectares, with a figure of only 20,000 hectares expected for the year 2000.⁴ This drop is mainly ascribed to the systematic activities of terrorism and vandalism against employees and private property of the timber companies, carried out by activists in the Mapuche movement. On these grounds the forestry companies supported by right-wing politicians have urged the Chilean government to take action in the fight against the 'Mapuche terrorists' in order to secure the economy and avoid an abyss of horror like the Mexican Chiapas or the guerrilla war in Colombia.

To a large degree the *Chilean press* has supported the timber companies' version of events by stressing the violent character of the activities of the so-called Mapuche 'terrorists'. Phrases such as 'spiral of violence', 'rural terrorism', 'brutal assault', 'racial conflict' have been an almost daily part of the newspapers' language, turning the 'conflict' into a scene of total chaos.⁵ In addition, various newspapers have propagated an idea of a guerrilla war organised by radical Marxists with foreign support and funding.⁶ Moreover, they depict a possible future, where the country is divided into two nations. In order to prevent a total disaster, many news reporters have called for the Chilean government to take measures against 'the terrorists' by, for example, applying the anti-terrorism law and convicting the guilty party. According to an

opinion poll published in *La Tercera*, however, this viewpoint has not gained much support in the Chilean capital Santiago. More than 80% of the respondents agreed that the territories legitimately belong to the Mapuche, and 68% considered the means used by the Mapuche movement to obtain their goal to be legitimate.⁷

During the last three years the arguments put forward by *Mapuche organisations*, primarily La Coordinadora de Comunidades en Conflicto Arauko-Malleko, La Asociación Comunal Nankucheu de Lumaco, El Consejo de Todas las Tierras and Identidad Mapuche Lafkenches de la Provincia de Arauco, have been gaining strength. On the 12th of October for the first time, more than 5000 Mapuche from various organisations (except la Coordinadora Arauko-Malleko) participated in a joint march in Concepción as a way of memorialising Columbus's 'discovery' of America.

The organisations saw the Chilean government's approval of the six power plants along the River Bio Bio, as an indication that it first and foremost serves the interests of strong economic groups. The victims of this policy have been the Mapuche who today, according to statistics, are the most marginalised group in Chile, with low levels of income and high levels of infant mortality, malnutrition, unemployment, alcoholism and illiteracy. The Mapuche organisations therefore claim that the Chilean government is tacitly participating in an ethnocide. In order to comply with its democratic obligations, the Chilean government ought instead to recognise the land rights of the Mapuche as well as their collective rights as a people. This would entail the creation of an independent political representative body for the Mapuche, as well having the Chilean state ratify those international conventions that deal with indigenous peoples.

However the violence appears from the outside, from within the Mapuche movement the situation looks quite different. Their spokespersons do not deny that some acts of violence have been committed, however, they justify them as a means of defending both their rights and the last remains of the Mapuche culture. The first act of violence was committed by the Chilean state, when it ceased to respect the rights of the Mapuche peoples. The violent acts committed by the Mapuche, are only a logical and just reply. Yet, the Mapuche movement has only admitted responsibility for some of the reported cases, indicating that other more severe crimes were presumably committed by provocateurs in order to show the movement in an unfavourable light. This suspicion has been supported by the confession of several timber company security guards who, in an interview with Radio Bio Bio in February 2000, said that

they had carried out acts of assault and vandalism with the intention of blaming the Mapuche movement for them. In addition, voices from within the Mapuche movement tell of the arrest of minors, the sexual harassment of women in detention, and other irregularities including torture suffered by those detained by the Chilean police force. These claims were published in a report on Human Rights by the State Department of the United States.⁸ This news, however, soon disappeared under the welter of reports describing new occupations of haciendas, acts of violence and the arrest of suspected parties, all of them identified as Mapuche.

The Chilean government's response has fluctuated between two poles, with it on the one hand wanting to secure economic interests and stability, and on the other seeking to comply with democratic principles and human rights. Repressive responses by the police force and the application of the antiterrorism law, as well as investigations aimed at revealing the degree to which the Mapuche movement is organised by foreign 'terrorists' can be said to represent the first pole.⁹ (Such claims were being made while government representatives, in the same breath, were guaranteeing that the situation was under control and that the 'violent' group was small and isolated).

The opposite pole is represented by the government having entered into various forms of dialogue with the movement, always with the proviso, however of playing down the demands for an independent Mapuche nation. By maintaining a politics of dialogue, CONADI has tried to act as a safeguard against calls for a more repressive policy. These talks, however, were staggered as a result of the Mapuche movement's declaration of mistrust of CONADI, primarily because its Chilean director, Rodrigo Gonzáles, was seen to represent the interests of the government, particularly in the case of the construction of the Ralco dam.

The Role of CONADI

Autumn 1999 was marked by two elections, firstly the presidential election, secondly the election of indigenous advisors to CONADI. In the presidential election, the socialist Ricardo Lagos won by a narrow majority. In March, Lagos invited the newly elected advisors to start afresh in discussions on the 'Mapuche problem'. The advisors tried to solve the problem of the lack of confidence in CONADI, by calling for 10 demands to be fulfilled. Among these demands were the dismissal of Gonzáles and the reconsideration of the construction of the Ralco dam. The first demand was fulfilled immediately with Rodrigo Gonzáles being replaced by the Mapuche Edgardo Lienlaf. The

case of the Ralco dam seems more complicated due to the fact that the new government has appointed several persons who participated in the original approval of the construction of the Ralco dam, to important posts.¹⁰ By April 2000, no agreements had yet been reached.

The lack of confidence in CONADI was also expressed by groups of Aymara Indians and indigenous people from Easter Island. The Aymara criticised the fact that while the Mapuche have eight representatives apart from the urban representative around the 'table of dialogue', the Aymara have only one representative. Likewise, a group of 'Rapanui' from Easter Island criticised the system by which advisors are elected to CONADI, and they expressed their discontent by occupying the local government office.

Notes

- 1 El Mercurio 24-03-1999.
- 2 Forster 1999: 4.
- 3 La Tercera 21-02-2000.
- 4 Diario del Sur 14-03-2000.
- 5 Diario del Sur 14-03-2000.
- 6 El Sur 20-04-2000.
- 7 La Tercera 18-04-99.
- 8 La Tercera 28-02-2000.
- 9 El Mercurio, 16-5-1999.
- 10 El Metropolitano 06-04-2000.

Sources

Newspapers:

El Diario Austral; El Mercurio; El Metropolitano; El Sur; La tercera.

Others:

- Forster, Rolf & Lavanchy, J, 1999: '*La Problemática Mapuche*' <http://www.xs4all.nl/~rehue/art/lava3.html>
- Naguil, Victor 1999: '*Conflictos en el territorio mapuche. Intereses, derechos y soluciones políticas en juego*', in: Liwen, N°5, 1999, Temuco, pp.11-41.
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ARGENTINA

Regrettably, 1999 has been a year of backsliding. The task of creating legislation that will guarantee the effective enjoyment of the indigenous rights established in the revised 1994 National Constitution has yet to be dealt with in Argentina. However, signs of social and legal change beneficial to indigenous peoples have recently begun to appear. This is no mean feat for a country that has systematically denied their existence. The media, both oral and written and above all regional, is opening its doors to indigenous demands and to issues in which they are involved in one way or another. State employees can no longer avoid taking indigenous people into account when discussing social policies. The Secretary for Social and Environmental Development, a department that houses all national level plans devoted to social welfare, has a number of programmes in which indigenous people are the beneficiaries. In all cases they are seeking to be "politically correct", recognising that indigenous participation in the design and implementation of programmes and plans is indispensable. Unfortunately, in practice, of course, such good intentions are not always achieved. In the legal sphere, reforms and criteria are also being discussed in order to adapt to the new reality of indigenous rights. There now exists virtually no judge or legal technician who can avoid these rights by arguing lack of jurisprudence.

In spite of the above, the situation of indigenous communities continues to be serious. The protests and demands at the lack of recognition of their territorial rights continued throughout the period in question. The National Institute for Indigenous Affairs, the State agency that applies policy regarding indigenous peoples, suffered two severe cuts in budget, leaving several programmes paralysed, including that of territorial regularisation. The Advisory Council of Indigenous Peoples, established a few months earlier, was also affected, as it was no longer possible to continue paying for indigenous representatives' trips to the capital to attend meetings in which the Institute's policy and priorities are discussed.

To these imbalances must be added the fact that general elections for the governors and the president were held in the country during 1999, which meant that a good part of the year was marred by political campaigns and clientelist relationships.

And so ongoing land claims continued in an ambiguous state of lack of definition and irresolution.

The Lhaka Honhat Association of Indigenous Communities.

In January, the Inter-American Commission on Human Rights gave notification to the Argentinian State of the complaint submitted. In July, in its response to the Commission, the Argentinian government recognised that "*the construction of the International Bridge over the river Pilcomayo between Misión La Paz (Argentina) – Pozo Hondo (Paraguay), along with other different roads and buildings, significantly changes the way of life of the indigenous communities and that it would have been appropriate to hold consultations as well as to undertake a Report on the environmental impact of these works. For this reason, the National Institute for Indigenous Affairs has offered its willingness to use the available mechanisms with which to fulfil the constitutional requirement of recognising the community possession and ownership of the lands occupied by indigenous peoples (Art. 75, Para.17 NC) and to develop processes of mediation between the parties*".

This response was received with satisfaction on the part of the Association. However, this was not in line with the plans of local government, plans which it continued to implement, namely the provision of land titles to Creole settlers and individual indigenous families. For this purpose, it invents communities and fabricates agreements of doubtful legitimacy in order to justify the biased titling. On the other hand, and in complete disregard of the case before the Inter-American Commission on Human Rights and the national government's response, the regional authorities are continuing to make progress with the construction of the border post in Misión La Paz, where a few years ago the work of building the international bridge was concluded. Consequently, the surrounding woodland has been felled for the purpose of providing firewood for the manufacture of bricks for the construction work, and no consideration has been given to the environmental consequences of this action. In October, the first audience was held in Washington between the Inter-American Commission on Human Rights, the Lhaka Honhat coordinator and the Argentinian government. The offer of mediation was accepted on condition of the immediate suspension of the works in Misión La Paz. The Argentinian State requested 15 days in which to issue its response. Once this time had lapsed, it responded that it was unable to reach any conclusions, being a transitional government.

Whilst these negotiations were taking place, the regional government was resolving the award of ownership of 9 areas of land in State Plot 55, 5 of which were for supposed indigenous communities and 4 for Creole farmers. The Association could keep quiet about this no longer, and has submitted a legal appeal, protesting that they were not duly notified of these plans. In this

context, the future of Lhaka Honhat is still uncertain. It has put its hopes in the international arena and in the pressure the Inter-American Commission can exercise over the national government. But while the appropriate steps are being taken, the social conflict within the communities and the destruction of the environment of the Chaco is continues to increase unabated.

The ongoing demand of the *Asociación Meguesoxochi* for 150,000 hectares in Chaco province reserved for the "Toba of the North" by means of a 1924 presidential decree seems to have come to a conclusion, for at the end of last year the organisation was awarded the land title. However, this title is only a photocopy of the real title and the lands can be sold after a period of 20 years. Throughout the country, indigenous peoples are under threat from the progression of farming, forestry and mining interests.

The Mapuche community of *Futa Huau*, in the province of Chubut, had to occupy a State school that had been seized by a non-indigenous individual from the area in order to make known their claims to it and to denounce the theft of 1,000 hectares of land appropriated by the same person. Several members of this community are now facing trial for misappropriation, damage to property and banditry.

In the same province, the Mapuche community of *Vuelta del Río* is facing similar problems. This community is settled on lands reserved by presidential decree of 1899, following laborious demands made at the time by the then *cacique* or chief of the community. Twenty five families currently live there on 15 plots of 625 hectares each, which means that they do not have one plot per family. The families continually find themselves harassed by individual title holders who try to take possession of their lands. Towards the end of the year, one individual tried to bring a trial against the community, although there were already members of this community on trial for misappropriation. Given the extent of this pressure, which the community's lawyer has termed "judicial harassment", the community has requested that a community title to the lands traditionally occupied be granted which ensures they have one plot per family, along with the cancelling of all land titles granted to non-indigenous individuals on the reserved lands.

To the north of the country, in the Misiones forests, is the *Mbyá Guaraní* community of *Tekoá Yma* in *Pepirí Guazú*, considered a sacred place by the Mbyá, a sanctuary to which people make pilgrimage in an attempt to recover the spiritual balance destroyed by contact with non-indigenous society. It is a

place where the Mbyá feel they can be fully Mbyá. *Tekoá* is inhabited by more than thirty families over a territory of 3,964 hectares which, according to the land registry information of the Misiones Province, belongs to a non-indigenous individual who purchased the land in 1986. In mid-1999, a forestry company called "El Moconá S.A." began large-scale exploitation of the forest in the area, destroying precious species of wood and affecting the whole environment of *Tekoá Yma*. The serious situation determined the head of the village to submit a resolution, calling upon the constitutional right of the communities to participate in the management of natural resources. The judge of the Court of the First Instance was open to the request of the indigenous community but, faced with a presentation by the company in which it noted its ownership of the lands, the same judge rejected the measure. An appeal is currently being lodged and a decision is awaited from the judges of *Cámara*. In revenge, the forestry company has closed the access road to the community, prohibiting the entry of any person, and preventing the community's access to medical attention and legal assistance. The only means of entering is by express authorisation of the company's representatives, more than 100 kms away.

The *India Quilmes Community*, made up of fourteen communities of the *Diaguita Calchaquí* people, has denounced the outrages and violations of their territorial rights on the part of mining companies and tourist undertakings, which ride roughshod over their sacred places and assault and send death threats to community members who dare to denounce these events.

Abuse on the part of non-indigenous people who claim to be the owners of the land has reached the point of demanding the handing over of two thirds of their crops from 20 families of the *Anchillos* community, along with payment per head for pasturing of their animals. To this must be added payment demands for use of water, the environmental contamination that is occurring due to the location of rubbish dumps, and the explosions being carried out by the mining companies. This is occurring without any respect whatsoever for the royal warranty of 1716, which recognises the *Quilmes* Indians as the natural and age-old owners and possessors of these lands.

The *Wichí Hoktek T'oi* community in the province of Salta is virtually surrounded by the senseless devastation of the woodland being undertaken by one individual who bought the lands with the community within them. The community is committed to defending a strip of forest of approximately eight hectares located on a neighbouring plot. In November, the company tried to

enter this strip to clear it and put up a fence that would prevent access to a well used by the community. The community members decisively confronted the bulldozers, which had to retreat, not without threatening the participants in this act of resistance with death. Faced with these events, the community submitted a complaint to the Ombudsman, whilst a draft law is being processed in the Congress of the Nation that will expropriate 3,000 hectares (only 4% of the ancestral territory).

The *Leufuché* Mapuche community in the Province of Río Negro is settled on lands declared a protected area in 1997. In spite of this, in 1999 a municipal resolution was pronounced granting lands to an individual in order to commence an economic undertaking which, undoubtedly, will result in environmental damage and the consequent forced displacement of the community. This conflict is currently going through the courts.

Conflict is also still occurring with the army in *Boquete de Nahuelpán*, in the province of Chubut, where a Mapuche community lives. Here, military manoeuvres are regularly carried out, putting the lives of people and areas of pasture at risk. These lands have been claimed by the community since 1937 and their ownership has still not been recognised by the Argentinian State. The army exploits this irregular legal situation by bring the claimant families into conflict, creating internal confrontation with which to discredit the claim.

Other Reforms and Adaptations to Regulations Planned or in Progress during the Year

General Census of People and Housing for the Year 2001. National Law 24956 provides for the fact that a future census will include the 'indigenous variable' as a special theme. This means that, on the basis of self-recognition, indigenous peoples may state their identity as members of one of the 18 indigenous peoples currently living in Argentina. In November, in the town of Clorinda (Formosa) an experimental census was carried out to test the waters for a question aimed at detecting households with at least an indigenous component. The authorities of the National Institute of Statistics and Censuses hopes to obtain meaningful data in the 2001 Census on which to base the design for a General Indigenous Census in 2002.

Reform of the Criminal Procedural Code in the Province of Neuquén. The judicial authorities in the province of Neuquén are considering reforming the procedural code. This includes article 40, which states, "Indigenous commu-

nities: when dealing with crimes that affect the legal property of an indigenous community or personal belongings of one of its members, and when both the accused and the victim or, where relevant, their relatives, accept the method by which the community has resolved the conflict in accordance with their own customary law, the extinction of the criminal action will be declared. In such cases, any member of the indigenous community may request that this be testified before a criminal Judge or Justice of the Peace, in those cases in which these latter may intervene. Cases of criminal murder and crimes aggravated by death are excluded". Indigenous organisations from the province have initially agreed to these proposals.

Project for the Creation of a New Category in the Area of Natural Resource Management: Indigenous Protected Territory. With the involvement of the National Institute for Indigenous Affairs, some indigenous organisations from the provinces of Neuquén, Salta and Tucumán are formulating a new category for the use of natural resources in areas where it is necessary to maintain clear directives with regard to the conservation and management of the biodiversity. The project, which has the financial backing of the World Bank, seems to be an innovative alternative for communities settled on protected areas and in this respect a workshop has already been planned for 2000 in the town of San Martín de los Andes, with the participation of the National Parks Administration, the Neuquina Mapuche Confederation and the National Institute for Indigenous Affairs.

ILO Convention No. 169. A number of different indigenous organisations and NGOs are demanding that the Argentinian State urgently deposit ratification of the Convention at the ILO head offices in Geneva. The new government that took office on 10th December has promised that this will be done during the coming year (2000).

THE PACIFIC & AUSTRALIA

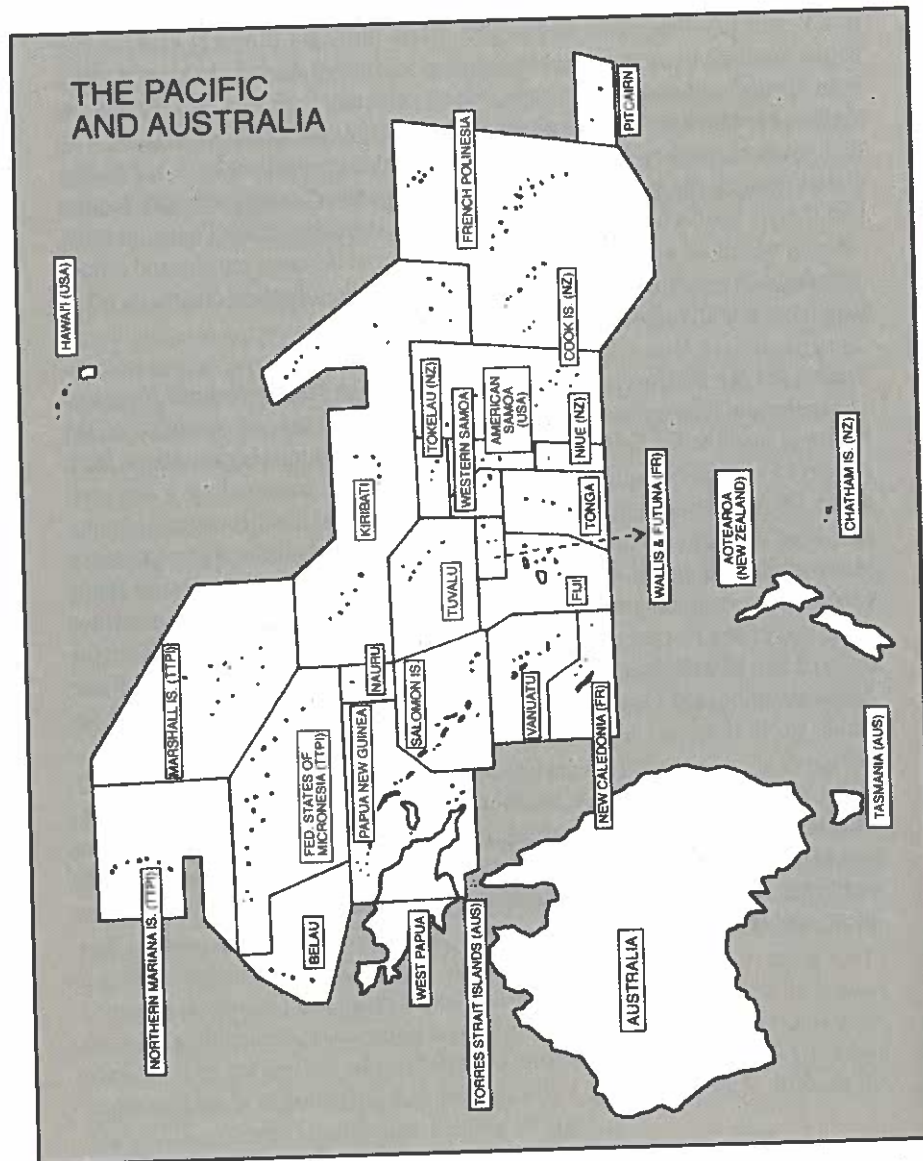
AUSTRALIA

Unfinished Nationhood

When in February 2000 an unhappy Aboriginal teenager hanged himself in jail in Darwin, the Northern Territory (NT) capital, it focused the attention of a continent and its peoples on issues of constitutional legitimacy, disputed history, incomplete nationhood, contested identity, and social and racial injustice. Why were children being jailed for trivial offences, in this case stealing cheap Texta pens? Why were NT laws locking up so many Aborigines whose real crime was being poor and dispossessed? Why were governments, federal and NT, so casual about the plight of peoples who had established the oldest continuing cultures on earth? Why were a few white enclaves made up largely of short-term workers or curiosity seekers, dictating archaic notions of the White Man's justice and culture and reminding Australians of past official racism? It seemed that Britain's brutal 18th and early 19th century policy of jailing and mistreating the English and Irish poor - hardships and injustice which are the creation story of white Australia - was being re-enacted by those white survivors against new victims.

A furious debate erupted across the country between two sharply contrasting and conflicting countries. One is a modern, open, inclusive society which wants to heal its history and the wounds of indigenous peoples through genuine reconciliation as a precondition for life as a unified nation in a busy, multi-racial world. The other associates its own comfort with a hazy past in which 'blacks knew their place' and women, intellectuals, people with foreign accents, and new-fangled technology were not forever challenging the adequacy of old prejudices and limited education. This latter Australia has no future but feeds fringe groups and eccentric little political parties that lash out at foreigners, minorities, and worldliness in general, while major parties mute their ideals in the hope that they will harvest or hold onto such voters.

Australia has been arguing about its identity and symbols for years. Until recently Australia was ahead of most European peopled countries in having positive permanent relations with Asian countries and it had largely succeeded in overcoming memories of the White Australia policy. But Howard has been accused of encouraging populist suspicion of such foreigners, putting Australia's long-term interests at risk. Even the admirable aid of Australia and its



Countries/regions covered in this issue: Australia, Kanaky (New Caledonia), Te' Ao Maohi (French Polynesia), Bougainville, West Papua, Guam, Ka Pae'aina (Hawai'i)

armed forces in East Timor during the massacres and terror that were perpetrated by Indonesia, followed much Howard government dithering and obfuscation.

Surveys show clear public support for having an Australian head of state replace the British Queen or future monarchs. The latter are unelected members of a Protestant family on the other side of the world. In a November 1999 referendum Prime Minister John Howard and other monarchists defeated the movement for change by splitting the republican vote between those favouring a head of state chosen by Parliament and those favouring a head of state elected directly by the public. On the same day the Prime Minister's personally drafted statement of Australian values that was to be placed at the beginning of the Constitution was defeated. (See *The Indigenous World*, 1998-99). Despite his public gesture of negotiating the final version with one sole Aborigine who had been newly elected to the Senate, Howard did little to support the final version and it was rejected by voters.¹



The Australian, March 2, 2000

And so, while on January the 1st 2001 Australia will celebrate its centenary as a prosperous and egalitarian country under a federal Constitution - with the 2000 Olympics acting as a housewarming party - there is deep division, confusion, anger, and remorse. The press and community leaders are politely but insistently calling for moral and political leadership on national issues, usually concluding such commentaries by saying such leadership cannot come from Howard. One of the Prime Minister's favoured projects for national celebration is itself a focus and cause of division - statehood for the Northern Territory (NT).²

The Northern Territory

The Northern Territory is the heart of the continent, one large slice of a huge region where Aboriginal and Torres Strait Islander peoples still live in or near their traditional territories of sparsely settled desert and semi-desert land with a green coastal fringe sustained by seasonal monsoon rains. Even when the frontier of brutal grazing moved across their lands, many indigenous people succeeded in finding a *modus vivendi* that allowed them to maintain much of their culture.³ The map shows entirely arbitrary boundaries carving up the heart of Australia with no regard to ecological, topographical, or indigenous social and cultural boundaries. 'The White Man' ran a telegraph line up the middle to connect the continent with the world, i.e., London, and a road came later. On many maps this thin red line is the Stuart Highway. For decades the NT government has wanted a railway built from Alice Springs to Darwin in the belief that this will make the region, or at least its non-Aboriginal inhabitants, wealthy.

The conventional history of the Northern Territory is already written.⁴ As in many shallow-rooted colonies there are some who make a fetish of local antiquities, as if the veranda of a hundred year old home somehow fills the space we must not see - the enormous landscapes and countless rock art galleries measuring time and managed with seasonal burning, story, and clear law 'since time immemorial'. Such *unconventional* history is more interesting and useful. The facts are that most non-Aboriginal people working in the White Man's north do so only discontinuously, and that the few white population centres have little contact with Aboriginal realities. Aborigines use land extensively and a true picture of the region's history emerges from Aboriginal cultures and patterns of social and political relations with scattered white settlements, not to mention the story and imperatives of the lands and seas themselves. The classic novel *Capricornia* by Xavier Herbert (1938) provides a semi-documentary of tragic 20th century collisions of indigenous

and non-indigenous histories in the Darwin area. A new book by anthropologist David Lawrence brilliantly documents and unravels the great issue of recent decades, the Kakadu national park and its uranium mines east of Darwin. It is a battle that still rages, even though in its earlier stages it shaped Australia's national indigenous policy, in the same way that the Alta case has done in Scandinavia.⁵

The Aboriginal occupation of Northern Australia is proven to date back 50,000 years. On New Year's Eve as the year 2000 dawned, we saw Inuit celebrating in the snow and ice of Iqaluit, the new capital of the new Nunavut, on TV. The Inuit gracefully handed the show over to NT Aborigines who had prepared a ceremony at Uluru, the huge monolithic red rock in the heart of Australia known to generations of Australians as Ayer's Rock - the newest and oldest cultures on earth, said the TV presenter. But while the Inuit of Northern Canada, Greenland, and Alaska have fought with considerable success to establish political structures and control of their lands and seas, in Australia the NT government and its friends have prevented indigenous reforms and many urgent indigenous initiatives on the grounds that such moves would constitute separatism, *apartheid*, or reverse racism. While the large cities of southeast Australia celebrate their cosmopolitan character, a sharp distinction is made towards Aborigines and Torres Strait Islanders on a national level. Political leaders from national and state capitals have too often deferred to NT 'experience' in handling indigenous matters. That experience is more appropriate to General Stroessner's old Paraguay than to a 'first world' country.

'Talking English'

Three 'hot' NT issues illustrate the problems at hand. One is the abandoning of indigenous language teaching in schools. The NT government believes that if children are taught only English, they will be assimilated into the economy and the White Man's world more effectively. Other 'first world' countries learned several decades ago that such indigenous education policies are disastrous, but NT ministers apparently care little.

'Mandatory sentencing' has been the big recent controversy. This involves locking up anyone who is convicted of even very minor offences, such as the boy who hanged himself. Non-Aborigines who go to the NT do so as tourists or for work, and return south or go on travelling in Asia or Europe when their wallets or snapshot albums are full. The NT laws are aimed at locking up blacks, in effect. There is strong support for such 'law and order' policies across the north, west, and centre of Australia among non-indigenous people.

In the 19th and early part of the 20th centuries, Aborigines were enslaved and abused, or simply shot - men, women, and children included. A man who gave his name to one of the central streets of Alice Springs, NT, Constable Willshire, wrote lyrically of one such massacre at dawn:

*"They scattered in all directions... It's no use mincing matters - the Martini-Henry carbines at this critical moment were talking English in the silent majesty of those great eternal rocks. The mountain was swathed in a regal robe of fiery grandeur, and its ominous roar was close upon us. The weird, awful beauty of the scene held us spellbound for a few seconds."*⁶

"Talking English", indeed! Genocide, ethnocide, old language abolition, new language learning, or locking up the local inhabitants - there is a certain continuity and consistency to Australia's northern policies. The new premier says:

*"I think Australians should stand proud on their human rights record and I think Australians should stand proud on the way we deal with indigenous issues and their complexity...I don't believe we should have our head bowed to anyone whether it's the UN or anyone just because someone writes a report and decides to criticise us."*⁷

The third issue is the NT government's demand for constitutional 'equality' with the six states which formed Australia in 1901. In August 1998 the Prime Minister promised the NT that it would be granted statehood status by January the 1st 2001, but the proposed model was rejected by NT voters in a referendum soon afterwards. The premier who had proposed the failed plan was dumped by his party caucus, but the Prime Minister welcomed him as a Liberal and he became the new party President! This set alarm bells ringing in the minds of many Liberals who deplored the image that their party was projecting, which seemed to tolerate or encourage anti-Aboriginal policies. Earlier reports had claimed NT help was important in Howard's 1996 election victory and this move seemed to confirm it. Presumably the Prime Minister wishes NT statehood to be his gift to Australia for the constitutional centenary year 2001. Recent comments hint as much. "I don't think they are necessarily a long way [from statehood]" was his response to one interviewer's scepticism.⁸

The proposed NT statehood models have no indigenous component or input. At the beginning of March 2000 the Prime Minister explicitly rejected

indigenous autonomy, what he called 'separate development', legislated or negotiated reconciliation, and the accommodation of indigenous customary law in Australia as a whole. He noted recent opinion polls, saying the 'average Australian' (whoever that may be!) supported his views. The media responded with a chorus of editorials and commentaries demanding moral and intellectual leadership on reconciliation. However, Howard has given himself further opportunities to avoid progress by dismissing both the much anticipated May the 27th 2000 deadline for a Reconciliation document⁹ and the January the 1st 2001 deadline for a successful conclusion to the Reconciliation process.

Unresolved constitutional issues are not confined to the NT. A landmark 1999 court case like those which launched Canada's modern indigenous policy reforms saw northwest Queensland Aboriginal leader Murrandoo Yanner supported by the High Court by a majority of five to two in his battle to be allowed his traditional rights to hunt crocodiles in spite of Queensland law.¹⁰ Many whites claimed to be outraged and see this as a threat to national unity.

International Echoes

Before United Nations' Secretary-General Kofi Annan visited Darwin and other cities to thank Australia for help in East Timor in February 2000, Howard used the media to warn him not to comment on mandatory sentencing, the NT's treatment of Aborigines, or Australia's indigenous policies in general. Howard explicitly and publicly denied, with some annoyance, that UN or other international agreements signed by Australia had to be respected, or that outsiders like UN human rights head Mary Robinson had a right to comment on Australia. Australia was already being censured by the UN on indigenous rights grounds in several different areas including diminishing native title and environmental protection.¹¹ The mandatory sentencing issue, for instance, has attracted wide criticism within Australia from lawyers, judges, and human rights groups for breaching UN standards. One example of Howard's 'argument', taken from the national radio show which starts the day along with morning coffee for informed Australians, gives the flavour of his views:

"And the suggestion that in some way we are accountable to the rest of the world for something like this given the human rights record of this country. I mean I'm not going to have a situation where people are denigrating the human rights reputation of Australia. Australia's human rights reputation compared with the rest of the world is quite

*magnificent. We've had our blemishes and we've made our errors and I'm not saying we're perfect. But I'm not going to cop ['accept'] this country's human rights name being tarnished in the context of a domestic political argument."*¹²

With the Prime Minister so determined not to acknowledge, respect, accommodate, or be 'reconciled' with indigenous society, culture, or political aspirations in their surviving heartland, i.e., the traditional lands comprising the NT, there seems no hope of progress for Australia's Aborigines or Torres Strait Islanders under his leadership.

Constituting and Re-Constituting Australia

In a stunning new book of her work in film and still photo images, Tracey Moffatt, the Brisbane born Aboriginal artist who lives and works in New York, says matter of factly, "Australia is a very multi-cultural nation and this has certainly influenced my work."¹³ To her as she looks out of the window at Brisbane, a provincial city which is now becoming something more, this is obvious. To John Howard who has spent his life in Australia's most dazzling cosmopolitan city, Sydney, none of this is apparent. When invited to join an all-party code of ethics or standards on racial issues in late 1996, a positive step after some of the remarkable Senate speeches in previous years on Aboriginal issues, Prime Minister Howard's office issued a statement dismissing the project, saying 'He [Howard] learnt all he needed to know about ethics from his deceased parents' (*Courier-Mail*, Brisbane, 10-12-96). Despite the undoubted worthiness of Howard's parents, they grew up and lived under the White Australia Policy, a time where dark skins at home or from abroad were deemed deplorable and avoidable. Ms Moffatt's work is now showing with other Aboriginal masterworks old and new in the Great Hall of the Hermitage in St. Petersburg. And when the US President toured Australia in 1996, the Clintons' interest in and awareness of Aboriginal art surprised Howard on his home ground in Sydney.

Tracey Moffatt and many other Aboriginal and Islander graphic, performing, and literary artists are contributing extensively to the world at large. (Within Australia a fine large travelling exhibition of Torres Strait art is giving Islander people their highest visibility ever).¹⁴ Powerful and disturbing images of real life, 'Oz-style', depicted in work like Moffatt's or the documentary fact and fiction of an Alexis Wright are far removed from the safe kangaroo motifs or hearty white 'mateship' images comfortably enjoyed by Australia's conservative business, sporting, and political élites.¹⁵

Aboriginal runner Cathy Freeman has stirred up controversy amongst die-hards who resent her wrapping herself spontaneously and rapturously in both the Aboriginal and Australian flags after winning races abroad in years past. Yet she is far more popular nationally than, say, John Howard and as, along with other indigenous athletes, she prepares for the Olympic Games in Sydney later in 2000, she does so with much national goodwill. Of course, major league sports were racially integrated in America long before the hard issues of civil rights were faced.

The Aboriginal intellectual, Larissa Behrendt, of the Australian National University, who has just returned with her doctorate from Harvard Law School after a detour through the Cree hinterlands of Western Canada, writes with clarity, fluency, and accessibility in a range of formats and with a breadth of view that promise a significant 'next generation' of Aboriginal political and civic presence. She also writes movingly about the small mundane complexities and bruises of being Aboriginal in a largely white world, from the point of view of indigenous life in the margins.¹⁶ In a short piece on Australia and North America, Behrendt finds 'Australia a human-rights wasteland'.¹⁷ Few knowledgeable Australians would disagree. Meanwhile the Howard policy of wishing away indigenous issues, only serves to prepare a new abler and stronger indigenous generation who will tear assimilationist illusions to tatters, leaving everything to be negotiated once more. Howard has even begun to denounce political 'negotiation' when it comes to indigenous affairs. This is either a case of wishful thinking or else he is unaware that the word is a metaphor for social processes already long begun, and not simply a description of sitting across the table from an Aboriginal grand chief.

Distinguished Aboriginal and Islander leaders are readily available to take part in negotiations. When the Howard government appointed Gatjil Djerrkura to succeed Lowitja O'Donoghue as chairperson of ATSIC (Aboriginal and Torres Strait Islander Commission), the federal indigenous administration leavened by elected regional councils and by a national Commission of members elected by the regional councils, he was thought to be a politically 'safe' choice. Soon he was taking firm positions on rights issues alongside other indigenous leaders against the Howard government. Even this failed to show the government that indigenous ethno-politics was a field requiring more understanding than mere populist one-liners. In late 1999 Geoff Clark became the first elected chairperson of ATSIC, beating Gatjil Djerrkura whom many had expected to win. Clark, a former boxer, comes from the settled heartland of Australia, the state of Victoria. He challenges facile assumptions about aboriginality because he is fair-skinned. He has 'come up the hard way',

and may be an ideal leader. Not only that, he is as quick of wit and tongue as ever he was in the boxing ring. No indigenous leader is better versed in rights politics and the international indigenous rights scene, and none has a better grasp of constitutional politics. In his early months in office he has shown flair and ease in bridging the great divides in Australian indigenous politics - between the southeast on the one hand and the rural and remote north, west and centre, between moderates and hardliners, between those who want a head-on sovereignty claim and those who see that 'negotiating' the indigenous agenda can take many forms and use many words without surrendering substance.

Lingiari Lecture

Perhaps the foremost figure in the Australian political landscape, and the one most trusted and respected by both the indigenous and the non-indigenous public, is Patrick Dodson. With his big presence, big voice, big beard, hat, and clear drawling ironic Australian voice, he is a striking figure who always has something to say. Pat Dodson has personally endured some of the more resounding slaps in the face that the Howard government has dealt to Aborigines, but his commitment to Reconciliation remains undimmed. In his travels and meetings around the country he finds many people moving in a more positive direction, as the national non-indigenous support movement for indigenous peoples, ANTaR, has also found.¹⁸ (Dodson's younger brother Mick, hat wearing but clean-shaven, is more familiar to international audiences from his articulate presence in recent years at Geneva and elsewhere).

In late August 1999 in honour of Vincent Lingiari, a man who was an inspirational figure behind the indigenous modern rights movement, Pat Dodson summed up the current situation in a public lecture.¹⁹ He noted that contrary to the fantasies of its opponents, the Aboriginal movement has evolved responsibly and steadily for years, with a national consensus emerging on issues that need to be resolved. He called for a process of discussion and working through to bring about the renewal of white-black relations the country is seeking. (Recent opinion polls confirm that this reflects the country's mood). He provided an agenda with a sentence or two of explanation for each item. It was a defining moment in contemporary indigenous politics. Somebody had a plan - a workable and understandable plan - which was built on what had already been achieved, whilst also making room and time for information, reassurance and acceptance which the non-indigenous community, or at least their more resistant politicians, need in order to be able to face reality. After all, the trouble with the sentimental Australia of populist politicians is that it

is unrelated to the actual world - the daily Australia of pain, difference, and reprimand.²⁰

Dodson offered a package that contained substance and process, as well as direction and space for compromise. A special issue of the Melbourne based *Arena Magazine*, which included articles by people who had been briefed by Dodson before his lecture and had discussed its import with him, provides further background for non-indigenous Australians.²¹ Sarah Pritchard, the Aboriginal movement's indispensable international expert, explained what was happening in the field of international rights as well as explaining Australia's recent wanderings in limbo.²² There was an article on the power and possibility of process in healing indigenous politics,²³ one on domestic rights régimes,²⁴ as well as a fresh piece by the editor focusing on the big issues of the crisis in the Northern Territory and its 'talking' of English.²⁵

The agenda was moderate by international standards, e.g., in New Zealand, Alaska, Northern Canada, or Greenland where stronger rhetoric has been used and where public administrations function happily today. Beginning with point 1, 'Equality', the official dogma of Australia, point 2, 'Distinct... identities', and point 3, 'Self-determination', the agenda ended with items such as point 12, 'Lands and resources', point 13, 'Self-government', point 15, 'Constitutional recognition', point 16, 'Treaties and agreements', and point 17, 'Ongoing processes'. This last point included "a discussion, research, information, and negotiation forum to promote public awareness and to draft national legislation enacting principles of recognition, guidelines for public policy, and the framework for negotiation of the agreement referred to above."²⁶

Serious Problems, Un-serious Government

A low point had been reached a month earlier when Senator Herron, as minister assisting the Prime Minister with indigenous affairs, delivered a policy statement to the United Nations in Geneva.²⁷ This remarkable document (which is highly recommended reading if only on account of its absurdity) wallows in the degradation of Aboriginal and Islander communities - a sort of pornography of deprivation - and then pretends that the social ills of Aboriginal Australia were caused by (a) 'self-determination' and (b) the former Labor governments of Australia. Although 'self-determination' was the ideal or goal of - or even the public relations term used for - former policy, it would be wrong to imagine that in recent times it had ever happened in Australia. Yet 'self-determination', that hopeful term of yesteryear's policy, was now being used by a government that was merely trifling with indigenous affairs.

Still a very serious project concerned with the same issues was however underway. A task force of indigenous women toured Queensland in order to produce a unique report on the violence experienced by indigenous women and children.²⁸ As its executive summary begins:

"Violence at its most blatant has become a part of everyday life. Horrifying crimes are occurring regularly and have instilled in the minds of the elderly, the young and others a level of fear previously unknown to the Australian population. Murder and other violent crimes are destroying what has traditionally been the Australian way of life."

"However, for most people, their contact with violence is second-hand, through the daily newspaper or the nightly news or a movie. In many cases, people have a choice about whether they allow themselves to become exposed to the violence or whether they avoid it. However, Aboriginal and Torres Strait Islander Communities do not have the luxury of being able to disassociate themselves from violence. The high incidence of violent crime in some Indigenous Communities, particularly in remote and rural regions, is exacerbated by factors not present in the broader Australian Community."

The problem solving stance and commitment of Queensland and other Aboriginal women all around Australia, is the backbone of their people's survival. This has always been the case in other poor and benighted regions, whether they be the Ireland and Norway of times past or in Canada's mid-north today. Sometimes they receive recognition either as a result of the memoirs of a younger generation, or in dramatic form such as in the great plays - *No Sugar* and *Barungin* - of Jack Davis (who died in the same week that this article was written). As a new report reminds us there is a great need for more international networking of indigenous Australian women along the lines of the Circumpolar movement.²⁹ Meanwhile it is heartening to see one of the most articulate community spokespersons and pioneer indigenous educators, Peg Havnen, being followed by her daughter, Olga Havnen, who is one of the most able political operatives at home or abroad.

However, the serious problems of black Australia have been a political resource to an unserious national government. By pretending that talk of rights and politics and identity and culture is silly 'self-determination' that has brought about the genuinely awful social ills which ministers are eager to recite to the world, the government tries to play the two sides of indigenous

activism against each other. Undoubtedly the government considers this a very clever move. A strong statement by North Queensland Aboriginal leader Noel Pearson about the ills of welfare-dependent communities has been much used as if it were a guilty or brave admission, despite the fact that it has been well known to anyone involved in indigenous issues for years. Instead of addressing issues morally and seriously, the government's real policy has been to partake in a childish media game, which the incessant floundering of both the Prime Minister and Senator Herron has made necessary. Needless to say the government's populist stance has destroyed its credibility and moral authority with the informed public.³⁰ Its desperate feints and new Goods and Services Tax (GST) on most items may bring it down in the same way that the similar Mulroney government was brought down in Canada in 1993. A recent moment of light relief saw Tanya Tampon, a woman dressed as a tampon, chase the Prime Minister out of town while he was on his 'tour of the bush' to win back conservative rural voters. Her protest was against his GST tax on women's health products like tampons.

A dangerous new argument arising from well-meaning people is that Australians should not *need* to rely on overseas standards to do the right thing. Yes, 'first world' countries should normally lead and set standards by their own actions, but in the present climate that seems impossible in Australia. The Howard government may seize on this argument to justify ignoring international standards to an even greater extent! Meanwhile, it may make some symbolic gesture on mandatory sentencing in the hope of hoodwinking the public's attention while it suffers from 'compassion fatigue' and, like Molotov negotiating for Stalin of old, pretend to do a great thing at last in order to do little but confuse the other side.

Finale

The federal government is worried about protests 'marring' the Olympics while the world is watching, and many people mutter about the propriety, value, or effect of protest against Australia's national religion, sport. But for the time being it is a dead boy, jailed for stealing cheap colouring pens, that has highlighted the ugly face of the government. Howard humiliated Kofi Annan in front of a country already well informed by the media about the government's machinations. The press published as many damning and urgent editorials on indigenous affairs in February and March 2000 as it did during Howard's attack on native title in past years. Then, on March the 17th, St Patrick's Day, when Australians with the faintest trace of an Irish connec-

tion or affection for Ireland head to the pub for a Guinness, the *Sydney Morning Herald* began its big news story of the day with the following disclosure:

"Politically explosive findings that placed Australia in direct violation of international human rights conventions were dumped from a United Nations report on mandatory sentencing this week amid diplomatic pressure from the Howard Government."

*"The discarded conclusions said the laws breached the UN Convention on the Rights of the Child and numerous human rights instruments on racial discrimination and independence of the judiciary."*³¹

The newspaper also helpfully published the undiluted report as it was written before Australian interference. And then the next day both it and its fellow newspaper *The Age* in Melbourne, published lengthy comments and exposés on how Australian diplomats had done their dirty work. To paraphrase what the diplomats told the UN, since the country had undergone six weeks of angst and anger over the dead child, did anything more have to be said? The head of the national Human Rights Commission said that only countries like Burma engaged in abusing the UN in this sort of way, while the former Chief Justices of Australia - Stephen, Gibbs, Mason, and Brennan - who usually agree on very little, condemned the 'justice' policies of the federal, Northern Territory, and Western Australia governments.

The clearest summing up came from four revered high court judges from New South Wales. One of them, Fitzgerald, had cleaned up the political and police corruption which nearly destroyed Queensland in the late 1980s, while another, Wood, had caught the rot at an earlier stage recently in New South Wales. The four of them wrote a public letter that was published in the *Sydney Morning Herald* on March the 17th and 18th:

"The inability of the national political process to achieve reconciliation with indigenous Australians and to terminate mandatory sentencing provides a disturbing insight into the practical operation of the simplistic notion that democracy is merely the majority will."

"Racism and injustice are evil, particularly when they have popular support."

"It is unjust to imprison offenders without regard to their personal circumstances, life experience, prospects of rehabilitation or other, more suitable, sentences.

"It is racist (and cowardly) to enact and implement laws which apply most harshly to a disempowered minority. It may be thought to be clever politics but it is not leadership to pander to ignorance and prejudice."

Judge Wood, when asked if he should criticise policy, replied that if judges did not speak out but meekly resigned, they might as well be replaced by people with no principles whatsoever. Meanwhile, Aborigines and Torres Strait Islanders and many decent non-indigenous Australians need friendship and support from friends overseas as well as from all moral resources available at home.

Notes

- 1 The final indigenous section said that the Australian people were "honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country". Howard then added a clause to the proposal forbidding judges to use the words when interpreting law, thereby taking away with one hand what he had 'given' with the other in the eyes of indigenous leaders who, in any case, had wanted stronger language including the word 'custodianship'.
- 2 P. Jull. 'The trouble with the Northern Territories', *Arena Magazine*, April-May 2000.
- 3 N. Peterson. 'Capitalism, culture and land rights', *Social Analysis*, 18, December 1985, pp.85-101.
- 4 A. Powell. *Far Country: A Short History of the Northern Territory*, 3rd edition, Melbourne University Press, 1996.
- 5 Kakadu: The Making of a National Park, Melbourne University Press, Melbourne. For information about the Alta case in English see 'The Alta-Kautokeino Conflict: Saami Reindeer Herding and Ethnopolitics', by O.T. Brantenberg, *Native Power: The Quest for Autonomy and Nationhood of Indigenous Peoples*, ed. J. Brøsted et al., Universitetsforlaget, Oslo, pp.23-48.
- 6 J. Downing. *Ngurra Walytia: Country of My Spirit*, Australian National University North Australia Research Unit, Darwin, 1988 p.5.
- 7 'Burke says law and order...', ABC Online News, March the 14th 2000.
- 8 Transcript from ABC-TV's *Lateline*, Prime Minister's Media Centre, March the 6th 2000.

- 9 The controversy, of course, is between those willing to accept a meaningless statement of indigenous and non-indigenous goodwill, of which countless such already exist, and those who want something with substance that promises real change.
- 10 Sean Brennan. 'High Court Upholds Bush Tucker Rights', Research Note 11 1999-2000, Parliamentary Library, Canberra. Online: <http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn11.htm>
- 11 E.g., 'Howard's Wik bill is racist, United Nations group finds', by Margo Kingston, *Sydney Morning Herald*, main story page one, March the 20th 1999.
- 12 Transcript from ABC's *AM Programme*, Prime Minister's Media Centre, February the 18th 2000.
- 13 With G. Matt, in Tracey Moffatt, ed. M Snelling, *Colour & b/w images*, Institute of Modern Art, Brisbane & Asialink, Melbourne, 1999, p.67. Online: www.ima.org.au
- 14 The exhibition catalogue, *Ilan Pasin (this is our way): Torres Strait Art*, ed. T. Mosby & B. Robinson, Cairns Regional Gallery, Cairns, Queensland, 1998, may be seen and bought online: <http://www.cairnsregionalgallery.com.au/ilanpasin/>
- 15 E.g., Alexis Wright's account of Tennant Creek, Grog War, Magabala, Broome, WA, 1997, and the novel about northwest Queensland, *Plains of Promise*, University of Queensland Press, Brisbane, 1997.
- 16 E.g., 'At the Back of the Class. At the Front of the Class: Experiences as Aboriginal Student and Aboriginal Teacher', *Feminist Review*, No. 52, Spring 1996, pp.27-35.
- 17 'Righting Australia', *Arena Magazine*, No. 45, February-March 2000, pp.24-26.
- 18 Australians for Native Title and Reconciliation
- 19 *Until the Chains Are Broken*, 4th Annual Vincent Lingiari Memorial Lectures, Northern Territory University, Darwin, August the 27th 1999. Online: <http://www.acfoa.asn.au/Indigenous/Lingiari.PDF> or <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/car/lingiari/4dodson.html>
- 20 While the 1940s may look good in our childhood memories, they were not much fun for our parents or grandparents in Arctic convoys, Guadalcanal, the bombed cities of Europe, enemy-occupied territory, or Auschwitz.
- 21 'Living Indigenous Nations', *Arena Magazine*, No 45, February-March 2000.
- 22 'From Welfare to Rights', *Arena Magazine*, No. 45, February-March 2000, pp.31-33.
- 23 H Kajlich. 'According Respect', *Arena Magazine*, No. 45, February-March 2000, pp.26-28.
- 24 L Behrendt. 'Righting Australia', *Arena Magazine*, No. 45, February-March 2000, pp.24-26.
- 25 Leanne Reinke. 'The Languages of Reconciliation', *Arena Magazine*, No 45, February-March 2000, pp.2-3.
- 26 Another promising initiative led by former Senator Margaret Reynolds who long championed indigenous rights in Australia's national Parliament, was a July 1999 meeting in London of British Commonwealth peoples and experts. See *A Dia-*

- logue on *Indigenous Rights in the Commonwealth*, ed. R. Bourne, M. Reynolds & H. Whall, Summary (London, July the 23rd 1999) and Appendices, Institute of Commonwealth Studies, University of London, 1999.
- 27 Speech to the United Nations, by Senator John Herron, Minister of Aboriginal and Torres Strait Islander Affairs, Geneva, July the 29th 1999.
Online: http://www.atsia.gov.au/fr_press.html
- 28 Boni Robertson et al. *Aboriginal and Torres Strait Islander Women's Task Force on Violence*, Office of Women's Policy, Government of Queensland, Brisbane.
On-line: <http://www.qldwoman.qld.gov.au/>
- 29 Kathryn Bennett. *Different Lives, Common Threads: A Report From the Circumpolar Women's Conference*, Dept of Government, University of Queensland, Brisbane, March 2000.
- 30 Jodhi Rutherford. *Quod Omnes Tangit - What Touches All Must Be Approved By All: John Howard's Populist Democracy and the Misconstruction of Citizenship, Rights and Justice for Indigenous People*, Unpublished paper, Dept. of Government, University of Queensland, Brisbane, February 20, 2000.
- 31 Revealed: human rights whitewash'(!), by Mark Riley.

THE PACIFIC ISLANDS

For indigenous and colonised peoples in the South Pacific, 1999 was a year of significant developments. The referendum on the 30th of August in East Timor riveted international attention, but had many spill over effects in the South Pacific region. The indigenous peoples of West Papua's struggle for human rights and self-determination has enjoyed a new upsurge. In 1999 Elections in many Pacific countries sharply posed the question of indigenous peoples' rights. In Kanaky (New Caledonia) there was the election of a new Government in which the Kanak independence movement participated. In the aftermath of a decade of conflict there was the creation of the Bougainville People's Congress. And the May 1999 elections in Fiji saw a Labour Party coalition victory bring in a new Constitution that attempts to balance the interests of the indigenous Fijian community and Indo-Fijian and general electors.

Independent Pacific island states are currently discussing new regional trade arrangements, including a free trade area, under the influence of the WTO and the new EU-ACP Suva Convention (to be signed in the Fiji Islands in June 2000). There are many concerns over protecting indigenous knowledge and intellectual property rights, as transnational corporations seek to exploit the rich biodiversity of the scattered islands and atolls.

But even as they work to develop new regional structures to cope with the effects of globalisation in the 21st century, the Pacific Islands are still struggling with the legacies of 19th and 20th century colonialism. At the end of the United Nations Decade for the Eradication of Colonialism, there are still many non-self governing territories in the Pacific and the struggle of indigenous people often manifests itself as a struggle for self-determination and political independence.

Kanaky (New Caledonia)

For the indigenous Kanak people of Kanaky (New Caledonia), political and economic life is governed by the introduction of the 1998 Noumea Accord (see *The Indigenous World 1998-9* for details of the Accord). The signing and ratification of the Noumea Accord is often presented as a sign of rapprochement between the Kanak independence coalition FLNKS, the conservative settler party RPCR and the French State. But the May 1999 elections have shown that historic tensions between pro and anti-independence forces remain strong. While the FLNKS dominates in the rural north and in the Loyalty Islands, the elections to the new Government have reinforced control by the RPCR over the Southern Province, including the capital Noumea. In spite of advances made by the FLNKS over the last decade, it is clear that the transition to independence will be hard fought.

The Noumea Accord for New Caledonia was signed on the 5th of May 1998 by the government of France, the FLNKS and RPCR. Following the signing, the French National Assembly and Senate passed amendments to the French Constitution, which were approved at a joint sitting of Parliament at Versailles on the 6th of July 1998. The agreement was then ratified by nearly 72% of the population of New Caledonia in a referendum on the 8th of November 1998.

On the 12th of March 1999, the French Parliament passed legislation to implement the referendum decision. This opened the way for May 1999 elections to the new political institutions for the country which will comprise the following:

- Three Provincial Assemblies, for the Southern Province (40 seats), the Northern Province (22 seats) and the Loyalty Islands Province (14 seats).
- A new 54 seat Congress made up of 32 Assembly members from the south, 15 from the north and seven from the Loyalty Islands, elected for five-year terms.

- A Government executive of 11 members, which replaces the French High Commissioner as the country's executive body, and can propose laws for adoption by the Congress.
- A 16 member Senate for customary chiefs, which must be consulted on issues that affect Kanak identity.

The majority of the indigenous Kanak population continues to maintain support for the independence movement. The FLNKS is a coalition of political forces, including the largest party *Union Calédonienne* (UC) and the *Parti de Libération Kanak* (Palika). The FLNKS remains the largest pro-independence formation, but key figures from the early FLNKS leadership have broken away to form a new political grouping - the *Fédération des Comités de Co-ordination des Indépendantistes* (FCCI).

By mid-1999, there are few signs that the settler party RPCR is engaging in a decolonisation process or working in partnership with the leaders of the independence movement. RPCR leader Jacques Lafleur has stated, "New Caledonia will never be independent". The RPCR has moved to deny the FLNKS positions in the Congress, taking control of all the parliamentary commissions. As the RPCR failed to get a majority in the new Congress in the elections (winning only 24 out of 54 seats), Jacques Lafleur openly allied his party with the breakaway FCCI to deny the FLNKS influence in local politics.

On the 28th of May 1999, Jean Leques of the RPCR was elected as President. The RPCR / FCCI has seven members in the new government while the FLNKS has four - Roch Wamytan (UC), Déwé Gorodé (Palika), Gerald Cortot (UC) and Aukusitino Manuohalolo (RDO). The FLNKS expected that the Vice-Presidency would go to its leader Roch Wamytan, but instead the RPCR used its numbers to appoint FCCI leader Leopold Joredie to the position. The FLNKS has protested against these manoeuvres as a breach of the spirit and letter of the Noumea Accord.

The 1999 Assembly elections were also notable for the number of women elected from all parties. This includes independence activists such as Nicole Waia, former director of the Kanak radio station *Radio Djiido*, one of nine women to enter the Congress. Kanak poet, teacher and writer Déwé Gorodé joins the new Government as one of four pro-independence representatives.

The new category of 'New Caledonian citizens' under French law has important implications for indigenous people, affecting voting, immigration and employment rights.

The reversal of immigration was a crucial element of the Noumea Accord negotiations, with vital implications for political rights, cultural values and local employment. The creation of New Caledonian 'citizenship' (as distinct from French 'nationality') was a legal mechanism to allow discrimination between French public servants and soldiers (who traditionally vote against independence) and people with a long-term commitment to the Pacific nation.

Only New Caledonian citizens can vote for Provincial Assemblies and the new Congress. This effectively freezes the electoral body in 1998, as only those people resident for ten years after 1988 and their descendants of voting age can participate in future electoral contests. (However, New Caledonian citizens retain their French nationality, and can join all other French nationals to vote for the French National Assembly and European Parliament). Independence leaders argue that demographic change and limits on immigration from France will create a basis for a solid vote in favour of independence at the end of the 15-year transition period.

But on the 15th of March 1999, the *Conseil Constitutionnel* (Constitutional Court) in Paris ruled that all French citizens residing in New Caledonia for at least 10 years - whatever their date of arrival - will be able to participate in provincial elections. (The Court evaluates whether laws passed by the French Parliament are in accordance with the French Constitution). Angered by the removal of a key plank of the Accord, the FLNKS leadership threatened a boycott of the May 1999 elections. The boycott call was only reversed when the French government agreed to amend the Constitution again. The failure of the French Congress to address this issue with the cancellation of its scheduled meeting on the 24th of January 2000, has left the question of citizenship rights in limbo.

Some Kanak union leaders are concerned that the transfer of powers from Paris to Noumea after 2000 will create new pressures for expatriate employment, due to the limited numbers of Kanaks with professional and technical skills. The 1996 census shows that in the 'liberal professions' there are 551 Europeans, seven Wallisians, three Tahitians but only two Kanaks! The imbalance will continue, as the RPCR has taken control of key responsibilities in the government relating to economic affairs, finance, budget, employment, public service, training and education - leaving the FLNKS with youth and sports, culture, health and relations with the Congress and Senate.

The Matignon and Noumea Accords process has brought significant inflows of government grants and foreign investment to New Caledonia without necessarily benefiting the local population. As with most Pacific capitals, there is now an influx of people from the rural hinterland to Noumea. The Southern province was once seen as a European enclave, but 25% of the province's population is now Kanak and 18% of it is islander. Some 8000 squatters, mostly Kanak and Wallisian, live in *bidonvilles* on the outskirts of Noumea.

The post-Matignon period has seen a cultural renaissance. This includes an upsurge in *kaneka* bands, fusing political messages with their rock/reggae beat, the inauguration of publications like *Mwà Vée*, which document Kanak art, dance, languages and oral history, many exhibitions of painting and sculpture by Kanak artists, and the production of much poetry and theatre by young writers. Many Kanaks have welcomed proposals such as the introduction of indigenous languages into the school curriculum, further land reform, the return of Kanak cultural objects and artefacts held in museums and galleries in France and other countries and negotiations over the name, symbols, anthem and flag of the country.

Non-government and community organisations are also active, with initiatives to address issues of education, health and violence against women. Concerns over decent housing are growing, as more Kanaks move to Noumea. NGOs try to develop culturally appropriate health programmes for the indigenous community on Maternal Child Health and HIV / AIDS. Per capita, New Caledonia has the second highest reported rate of HIV infection in the Pacific islands, at 69 cases per 100,000 people. The highest rate is found in French Polynesia.

In the face of RPCR intransigence, FLNKS President Rock Wamytan has called for "vigilance" from the international community during lobbying at the UN Decolonisation Committee, the Melanesian Spearhead Group and the South Pacific Forum. The United Nations Decolonisation Committee and the South Pacific Forum both sent special missions to Kanaky (New Caledonia) in August 1999, to study progress on decolonisation since the signing of the Noumea Accords. The United Nations delegation included ambassadors from Papua New Guinea, Chile and Vanuatu. At the same time, the South Pacific Forum Ministerial Committee on New Caledonia travelled to Noumea, for a five day visit to study developments.

New Caledonia's application requesting observer status at the South Pacific Forum was formally approved at the Forum leaders' retreat in Palau in Octo-

ber 1999, and the country has become an official observer at all Forum meetings. Observer status is being granted to the country as a whole rather than the FLNKS liberation movement - even though an anti-independence politician leads the government.

Te Ao Maohi (French Polynesia)

The French government will amend its Constitution later in 2000 to create a new statute of autonomy for Te Ao Maohi (French Polynesia). French Polynesia first had an autonomy statute in 1977. The statute was amended in 1984, then amended again in the legislation of the 12th of April 1996.

The new constitutional reform process went through a number of steps in 1999. A bill was framed and sent to the Territorial Council of Ministers on the 26th of May 1999. It was then adopted by the French National Assembly and the Senate. Once passed by a joint sitting of both houses, it will be incorporated into the French Constitution as Article 78 'Provisions for French Polynesia'. (A scheduled sitting of the French Congress was cancelled in January 2000, and the reform process is currently in limbo).

Under the new bill, French Polynesia will be an 'overseas country' rather than an 'overseas territory' of France, with increased jurisdiction over marine resources, communication and transport. At international level, French Polynesia will be able to join regional and even international organisations. French authorities can grant President Flosse the authority to negotiate and sign treaties. A 'Polynesian citizenship' will be created (in contrast to 'French nationality').

However, unlike the 'New Caledonian citizenship' envisaged by the Noumea Accord in New Caledonia, Polynesian citizenship does not place limits on the right to vote in Territorial elections. It only creates rights in regards to employment, setting up businesses and the protection of land ownership. The new bill reserves key sovereign powers for France: nationality; the guarantee of public liberty; civil rights; electoral law; justice; penal law; overseas relations; defence; maintaining order; finance; credit and; currency exchange.

The fundamental difference between New Caledonia and French Polynesia is that, under the Noumea Accords, New Caledonia has a clear path towards a vote on self-determination and independence, even though that vote has been delayed for 15 to 20 years. The current statute for French Polynesia however, has no provisions for a referendum on self-determination based on UN decolonisation principles. In spite of the trappings of sovereignty, the indigenous Maohi people are still under French colonial rule.

In the 1980s and 1990s, France opposed French Polynesia's wish to join the South Pacific Forum. But recently, the French government has strongly pushed for greater involvement for its Pacific colonies in the regional intergovernmental body of independent island nations. At its October 1999 meeting in Palau, the Forum Officials Committee held an extensive debate about French Polynesia's interest in being granted observer status. The Forum set up a committee to investigate the political status of French Polynesia following the proposed constitutional changes in Paris. A Special Forum Mission to Tahiti in mid-2000 will seek dialogue with all parties in the colony.

Local indigenous activists are campaigning on the issue of corruption in government, fuelled by France's strategic interest in maintaining a pro-French administration in Papeete. On the 24th of November 1999, a French court in Paris confirmed a conviction for corruption against Gaston Flosse, President of French Polynesia and leader of the conservative party *Tahoeraa Huiraatira*. Flosse was found guilty of offences relating to the 'Hombo affair', including the receipt of US\$450,000 from the owner of an illegal casino in Papeete. The penalties imposed include a 100,000 franc fine, a two year suspended prison sentence, and one year's loss of civic rights. This last penalty is the most significant, as Flosse hopes to lead his party into the 2001 elections for the Territorial Assembly, and the loss of civic rights would mean that he is ineligible to hold public office for a year. (Flosse currently serves as President of French Polynesia and Senator for French Polynesia). A month later, Flosse was convicted again for corruption, receiving another fine and a suspended sentence for the 'Air Oceanie affair' (in which Flosse and *Tahoeraa* officials illegally used free flights to campaign in the outer islands in the early 1990s). Flosse is currently appealing the court's ruling. Opposition leaders have called for Flosse's resignation, and in December 1999, the pro-independence party *Tavini Huiraatira* organised a protest march against Flosse.

With the end of the nuclear testing programme in 1996, France is beginning to dismantle its military infrastructure at Moruroa, Fangataufa and Hao atolls. The Commander of French Forces in French Polynesia, Admiral Jean Moulin, announced in January 2000 that the Foreign Legion will be withdrawn from French Polynesia, and the military base at Hao Atoll will be closed in August 2000. The Nuclear Testing Centre (CEP) and French military started to dismantle the bases at Moruroa and Fangataufa in 1996. Only the port facilities, airstrip and three concrete bunkers are left, while the testing monitoring stations, communications towers and seismological instruments were returned to France in 1997. The end of nuclear testing has not

ended concern over the nuclear legacies left for the indigenous population. The Maohi people are still campaigning against the radioactive legacies of thirty years of testing at Moruroa and Fangataufa atolls, and the consequent impact on health and the environment.

Low-level radioactive waste was buried in old test shafts on Moruroa, then covered in concrete. A 1998 report of the International Atomic Energy Agency (IAEA) also found that high-level radioactive waste, including plutonium, was dumped in two shafts on Moruroa. Eight kilograms of plutonium still linger in the sediments of Moruroa and Fangataufa lagoons. The ocean dumping of other radioactive concrete and rubble from the bunkers used for plutonium tests was a breach of the London Dumping Convention (The Convention, signed by France in 1993, forbids the dumping of radioactive materials in the oceans).

Maohi non-government groups and church leaders in French Polynesia are campaigning to make France open its archives on the thirty years of nuclear testing. They argue that opening the archives would allow access to important data, assisting detailed study of the health of thousands of Maohi workers and French military and civilians technicians who staffed the nuclear tests site at Moruroa and Fangataufa between 1966 and 1996. There is also an urgent need to provide care and compensation to those people already affected by diseases they attribute to radiation exposure. The French Defence Minister has closed the archives for 60 years. However in February 1999, a major seminar was held in the French National Assembly in Paris, to look at the aftermath of the tests. Following his retirement as Executive Secretary for the Pacific at the World Council of Churches, John Taroanui Doom will co-ordinate a three year project to seek greater transparency from the French authorities.

The Eighth Nuclear Free and Independent Pacific (NFIP) Conference was held between the 19th and 24th of September in Tahiti, Te Ao Maohi (French Polynesia). The conference involved over 100 international representatives of NFIP groups, together with resource people and keynote speakers, observers, and staff of the Pacific Concerns Resource Centre (PCRC) - the secretariat of the NFIP movement. It was the first time that an NFIP conference could ever be held in the French occupied territories in the Pacific.

Struggles to protect the environment and sacred sites through land occupations and opposition to new tourism hotels and golf courses has become a feature of Maohi society. In recent years, the Territorial government has been

trying to boost the tourism industry, to generate revenue to replace French military spending that was reduced after completion of French nuclear testing in 1996. Under the *Loi Pons* and the *Loi Flosse*, business interests have been given tax write-offs and incentives to build new tourist hotels, even though existing hotels are underused.

In early 2000 local residents and environmental activists on Moorea Island launched a campaign to stop the dredging of Moorea lagoon, to create a beach for a tourist hotel. In February 2000, Moorea residents surrounded the dredge with canoes, to halt any dredging operation in Moorea lagoon. The French authorities were asked to send in the *gardes mobiles* (riot police) to clear away the protestors, and introduce US\$10,000 fines. The government's *huissier* (official bailiff) came to Moorea to register the name of everyone who had a canoe in the lagoon. Protestors refused to give their names, and one stated he would "rather die than let this sand go cheap for a hotel beach!"

Bougainville

Between 1989 and 1998 the war in Bougainville led to more than 12,000 deaths, in fighting between the Papua New Guinea Government and rebel forces under the command of the Bougainville Revolutionary Army (BRA) and Bougainville Interim Government (BIG). The 1998 Lincoln Agreement started a peace process, calling for the gradual withdrawal of the Papua New Guinea Defence Force (PNGDF) troops from the island, and the disarming of the BRA and pro-Papua New Guinea resistance forces. People on Bougainville welcomed the end of the conflict under a Peace Monitoring Group involving Australia, New Zealand, Vanuatu and Fiji. Reconstruction efforts are in progress under the supervision of South Pacific peacekeeping forces and the United Nations.

However, the total withdrawal of PNG military forces from Bougainville, as scheduled in the Lincoln Agreement, has not happened. As a result, the BRA and Resistance forces have not laid down their arms, although the BRA has submitted its proposals for a disarmament process to the Peace Process Consultative Committee, which oversees the peace initiatives on the island. Above all, the fundamental issue of self-determination has not been resolved.

Elections were held in May 1999 for a new Bougainville Peoples Congress (BPC) which includes elected and appointed members. In the week long BPC elections, the Bougainville Interim Government (BIG) leader Joseph Kabui was elected unopposed on a platform for independence for Bougainville. Following the elections, Joseph Kabui won the position of BPC President in

late May 1999. As well as the elected members, different political forces nominated candidates to be appointed to the Congress - the Bougainville Resistance Force, the former Bougainville Transitional Government (BTG), the Bougainville Interim Government (BIG) and Women. BRA leader Francis Ona refused Kabui's offer to reserve seats at the BPC for his members, and decided not to take part in the process since his vice-president Kabui broke ranks in April 1997.

Negotiations over Bougainville's future political status were slowed in 1999 by the positions taken by those Bougainville MPs in the PNG Parliament. These leaders argued that Bougainville should be returned to being one of the provinces of Papua New Guinea (as it existed before the hostilities broke out). Another factor has been the position of the Leitana Council of Elders based in the northern island of Buka, who also sought to maintain Bougainville's position as a province of Papua New Guinea.

On the 30th of June, former PNG Prime Minister Bill Skate signed the Hutjema Commitment with BPC President Kabui. The Hutjema Accord called for highest level of autonomy and a referendum on self-determination. Skate's replacement as Prime Minister, Sir Mekere Morauta, subsequently made an offer of greater autonomy for Bougainville.

After a two day visit to Bougainville in October 1999, PNG's Foreign Affairs and Bougainville Affairs Minister Sir Michael Somare announced that the PNG Government was willing to offer greater autonomy to Bougainville, which would become self-governing except for defence, police and foreign affairs. Somare initially told BPC leaders that the PNG constitution had no provision for a referendum. He urged the leaders to agree to the idea of developing a new type of government with increased autonomy. In response, BPC President Kabui stated that an autonomous Bougainville still falls short of the expectations of the Bougainville independence hardliners.

On another front, after an almost two year long war of words, the Laitana Council of Elders and the Bougainville Peoples Congress have set aside their differences for the sake of working towards creating a legitimate government for the people of Bougainville. The two groupings officially held a reconciliation ceremony on the 18th of October 1999, which other factions and leaders were invited to witness. Bougainvillean leaders then entered a series of negotiations in February and March 2000, in which they called for:

1. the implementation of the "highest level of autonomy", guaranteed by a treaty;

2. amendments to that PNG Constitution that can only be changed by Bougainvillean people and;
3. an agreement to hold a referendum on independence.

On the 23rd of March 2000, Sir Michael Somare and Bougainvillean representatives (Joel Banam from the Leitana Council of Elders, the Bougainville Governor John Momis, and BPC President Kabui) signed the Loloata Understanding. The latest in a series of negotiations included a commitment from the PNG government to change PNG's Constitution to allow a high degree of autonomy. A referendum on self-determination will only be held after autonomy has been tested for an unspecified period. BPC international spokesperson Moses Havini expressed concern that "the process of self-government and referendum were not addressed in concrete and certain terms".

In spite of the new Loloata Agreement, many Bougainvillean leaders are concerned that Papua New Guinea, supported by Australia, is resisting a transitional process leading to independence. Papua New Guinea has not fulfilled its obligations to withdraw PNG Defence Force troops from the island, and the issue of peace and self-determination in Bougainville remains unresolved.

West Papua (Irian Jaya)

The vote on the 30th of August 1999 in East Timor has had a significant impact on developments in West Papua, the former Dutch colony that makes up the western half of the island of New Guinea. West Papua has been under Indonesian control since the 1963 New York Agreement and the 1969 Act of Free Choice. But rapid changes are underway following the collapse of the Suharto regime, the independence struggle in East Timor, conflict in Aceh and the Moluccas, and increasing mobilisation on the ground in West Papua.

There has long been strong nationalist sentiment amongst indigenous West Papuans. This has been shown in a number of ways such as the music and cultural performances of murdered intellectual Arnold Ap, the decades long guerrilla struggle of the *Organisasi Papua Merdeka* (OPM) and organising in Catholic and Protestant church networks or amongst community organisations like LEMASA of the Amungme people.

Calls for independence have been criminalised by the Indonesian regime, with people being jailed for raising the West Papuan flag. The Morning Star flag was first raised on the 1st of December 1961, when the country was still a colony of the Netherlands. Throughout the 1970s and 1980s, Indonesian authorities opposed any use of this symbol of Melanesian identity and desire for self-determination. During 1999, however, flag raisings and other expres-

sions of pro-independence sentiment became commonplace. The February 1999 meeting between former Indonesian President B.J. Habibie and one hundred West Papuan church, community and tribal leaders - the Team of One Hundred - saw an unprecedented public expression of pro-independence sentiment.

Open calls for self-determination and independence have appeared in many parts of the country during 1999:

- In July, five men in Jayapura faced being taken to court accused of subversion, after a flag-raising attended by 100 people on the 1st of July in Genyem (in the Nimboran sub-district near Jayapura).
- To protest against Indonesia's decision to split Irian Jaya into three separate provinces, thousands of people marched in the capital Jayapura on the 14th of October and occupied the governor's office. Another thousand people marched in Nabire, while 350 marched to the office of the district head in Biak. One hundred West Papuan students even protested in Jakarta, outside the hotel where delegates of Indonesia's Parliament were staying.
- Thousands rallied in Merauke on the 22nd of October, calling for independence and criticising the new provincial structure. (While the peaceful crowd gathered at the local Assembly, provocateurs attacked nearby government buildings, leading to Indonesian military intervention).
- On the 1st of November, nine activists were put on trial in Sorong, charged with rebellion under Indonesia's criminal code.
- On the 1st of December 1999, tens of thousands of people rallied around West Papua to watch the Morning Star flag being raised in towns and villages around the country. The ceremony marked the 38th anniversary of the declaration of West Papuan independence from the Netherlands.
- In Timika, thousands of people gathered at the Catholic Church and raised the Morning Star flag on the 10th of November. Timika is located near the Grasberg copper and gold mine operated by a subsidiary of the US corporation Freeport McMoRan. In spite of Indonesian calls for the flag to be lowered, cultural groups from different indigenous communities established tents and, as the small encampment grew, the walls of the church were plastered with posters, pro-independence slogans and the banned Morning Star flag.
- The Morning Star flag remained flying at Timika until the 1st of December, when Indonesian troops and police intervened. Fifty-five people were

injured when the Indonesian forces opened fire on the crowd of about 2000 demonstrators.

- The 30th anniversary of the UN vote on the Act of Free Choice on the 19th of November and the December flag-raising in West Papua were supported by solidarity actions in many countries around the world. In Jakarta, 200 West Papuans and their supporters marched to the MPR Parliament complex calling for self-determination.
- Protestors carried placards reading 'Autonomy, federalism, No! Independence, Yes!' and 'West Papuan women have no freedom'.



West Papuan students demonstrating in front of the Ministry of Interior, Jakarta, April 1999 (Foto: John Otto Ondawame)

These protests are slowly provoking a response. In December 1999 the Dutch Minister for Foreign Affairs informed Parliament that he had no objection to re-examining - from an historical perspective - the hand over of sovereignty of the Netherlands' former colony Dutch New Guinea (West Papua). In the same month Indonesia's new President Abdurrahman Wahid made a flying

visit to the province, which Indonesians know as Irian Jaya. As a sop to nationalist sentiment, Wahid announced that the province's name would be changed to Papua. While Papuan leaders have welcomed the fact that President Wahid is paying greater attention to West Papua, this has not lessened demands for independence. Wahid's offer of an autonomy package for Papua has been rejected, but leaders say the struggle for independence will be fought peacefully.

From the 23rd to the 26th of February 2000, participants at the first West Papua Congress to be held in the Indonesian occupied territory, demanded independence and rejected the outcome of the 1969 Act of Free Choice. The four-day congress attended by over 2000 supporters in Port Numbay (Jayapura) took place peacefully under the watchful eyes of a thousand local security personnel. Participants at the congress decided to set up a Papuan Presidium Council, which was tasked with preparations for a bigger congress, slated for April 2000. The Presidium comprises tribal, women, youth and student leaders as well as local scholars and foreign delegations. The congress elected Theys Eluay and Amungme leader Tom Beanal as chief executives of the Papuan Presidium Council. The Congress statement declared that, "It is our desire to choose freedom and to separate from the Republic of Indonesia, as was conveyed by the Papuan people to President Habibie and members of his reformation cabinet on the 26th of February 1999 at the presidential palace. We shall pursue dialogue and peaceful and democratic ways to realise the wishes of the West Papuan people in order to secure the agreement of the Indonesian government".

Guam

The Micronesian island of Guam was colonised by the United States of America after the 1898 Spanish-American War. In recent decades, the indigenous Chamorro people have campaigned for self-determination. Like New Caledonia and East Timor, the US territory of Guam was listed on the United Nations Decolonisation Committee list of non-self-governing territories in 1946. The Chamorro people of Guam have not received much support from other South Pacific nations in their quest for self-determination. However, the communiqué from the 30th South Pacific Forum, held in Palau in October 1999, states that, "*The Leaders received and noted the request by Guam for support from the Forum in its negotiations with the United States.*"

This single sentence is the first formal mention of Guam's political status in a Forum communiqué. It follows lobbying by Guam officials at the Palau

Forum, seeking Forum support to end Guam's status as a US territory and to redefine its colonial relationship with the United States. The Chamorro people of Guam will hold a vote to determine their political status before July the 4th 2000, after the creation of a Registry of Chamorro people who are eligible to vote.

After hundreds of years of Spanish occupation, the United States occupied Guam after the 1898 Spanish-American War. The island has been used as a strategic site for US global interventions with over one third of the island being occupied by US military bases. The US military uses neighbouring islands for bombing practice, and B-52 bomber crews that were trained in Guam in April 1999 were deployed in Europe to take part in NATO's war against Yugoslavia.

In 1982, Guamanians voted to push for Commonwealth Status within the United States as an interim step towards independence. The Organisation of People for Indigenous Rights (OPIR) was formed on the 5th of December 1981 by Chamorros who believed that the upcoming political status vote should not include all US citizens but should be limited to the indigenous people of Guam, who have become a minority in their own land. Since that time, members of OPIR and other Chamorro organisations have lobbied at local, national and international meetings to seek support for the right to self-determination for the Chamorro people.

While continuing to negotiate with the US government, the Guam Commission on Decolonisation is mandated to tie this process to the provisions of decolonisation in international law. In October 1999, Guam's Governor Carl Gutierrez and representatives of OPIR travelled to New York to testify to the UN Fourth (Special Political and Decolonisation) Committee. Governor Gutierrez asked the United Nations Fourth Committee to send a visiting mission to Guam on the occasion of the vote on self-determination. Rufo Lujan, of the Organisation of People for Indigenous Rights (OPIR), told the UN Fourth Committee about the Chamorro struggle for identity:

"We are talking about the catch phrase 'people of Guam' and for seventeen years have repeatedly attempted to clarify its meaning. We believe it is being used without thought by some, to avoid taking full responsibility for who has the right to decolonise the non-self-governing territory of Guam.

"On the basis of this original report to the UN in 1946, it is obvious that the terms 'natives of Guam', 'Chamorros', 'Guamanian', and

'inhabitants of Guam' are one and the same people and they are the people of Guam. We are the ones being discussed for the purpose of fulfilling the obligation under article 73 of the United Nations Charter. We are the ones affected by the language in the General Assembly resolutions, and we are the ones who may suffer as a result of misinterpretation. If there were no Chamorros, no native inhabitants, there would be no question of self-determination or decolonisation.

"The 1950 US Organic Act for Guam created by the US Congress is the document that governs us and clearly acknowledges our separate political existence as the Chamorro people. By virtue of the Organic Act, only certain portions of the US Constitution, treaties and laws of the United States are applicable to us. The US Congress can legislatively remove citizenship from the descendants of present Guamanians resident on the island (something it cannot do for the 50 US States or even US citizens residing in foreign nations). We cannot vote for the US President and do not have voting representation in the Congress that has plenary power over us.

"We formally ask that Guam not be removed from the list of non-self-governing territories with the UN Special Political and Decolonisation Committee, pending the attainment of the political status chosen to decolonise the territory through the self-determination of the Chamorro people. Guam has only one people who are colonised and under the protective eye of the United Nations. We, the Chamorro people, 'I taoto tano' - the people of the land."

At home, Chamorro organisations are actively campaigning for the return of land to its original owners. Chamorro landowners are calling for the return of land taken for military bases during the Cold War. During the 1990s, the US military began to hand back some land through the Base Closure and Realignment Commission (BRAC). However, much of the land has been given to other US agencies or to the Territorial government, rather than to the original Chamorro landowners. Large amounts of land, amounting to almost 20% of the island, have been given to the US Department of the Interior as "wildlife reserves". While welcoming the importance of nature reserves, Chamorro activists are fearful that the US military could reclaim these lands in times of future crisis.

Chamorro groups have formed the Colonized Chamorro Coalition (CCC), calling for the return of surplus military land to the original landowners. CCC members include the Organisation of People for Indigenous Rights (OPIR), Nasion Chamoru, the Ancestral Landowners Coalition, the Ritidian Family association, the Fuetsan I Famalao'an Chamoru, and the Familian Felisa Association. In a letter dated the 30th of September 1999 which was addressed to Guam authorities, the Coalition states:

"We, the Colonized Chamorro Coalition, are steadfast in our resolve that the lands of the colonised must be returned to their original land-owners, expeditiously and unconditionally."

The Colonized Chamorro Coalition has launched a series of protests in recent months to highlight their claims. In October 1999, Chamorro landowners entered a wildlife refuge at Ritidian Point on Guam, run by the US Fish and Wildlife Service. The land was taken by the US military after World War Two. In 1994, the US Department of Defence closed a naval communications facility at Ritidian Point, and transferred control of the land to the US Department of Interior's Fish and Wildlife Service. In defiance of bans on overnight camping, members of the Pangelinan, Castro, Aguero and Flores families camped by the beach from the 8th to the 11th of October, on their traditional lands. US Wildlife officers took down the numbers of protestors' cars, and issued US\$100 fines for breach of park regulations. On the 11th of October, over 100 members of the land-owning families and their supporters marched from their campsite to the office of the US Fish and Wildlife Service at Ritidian Point.

Landowner Juan Flores said the original owners have never been given the opportunity to use their 317 acre plot of land after it was taken by the US Government. Flores said, "We want our land back. Land is getting scarce and our families are growing. How are we going to accommodate the needs of our future generations, if we can't provide for them now? That is why we are protesting to show those in authority that it's time to return our land."

On the 14th of January 2000, the Coalition demonstrated during the visit of a US congressman on an inspection tour of US military bases on Guam. The Coalition called for: a) the return of excess lands under federal control; b) changes in political status; c) war reparations for damage during World War Two; and d) the environmental clean up of lands used by the US military and other federal agencies. The coalition held a second protest in January 2000 to object to the jailing of Angel Santos, a long time Chamorro activist

and former Senator in Guam. US authorities sentenced Santos to six months jail for continuing his protest over the theft of his grandfather's land.

Ka Pae'aina (Hawai'i)

From 1994 to 1998, the State of Hawai'i created a Hawaiian Sovereignty Elections Council (HSEC) to hold a Native Hawaiian Constitutional Convention. In 1998, HSEC became non-government *Ha Hawaii*. In January 1999, only 8867 *Ha Hawaii* voters - out of 101,951 registered by the Office of Hawaiian Affairs (OHA) - elected 78 delegates to an 85 seat Native Hawaiian Convention, leaving seven seats vacant.

Between the 5th and 11th of December 1999, the US government organised Reconciliation Hearings on five of the main islands of Ka Pae'aina (Hawai'i). The hearings came six years after the 1993 US Congress Apology Resolution (Public Law 103-150). Under this law, the US government apologised to the Kanaka Maoli people for the United States' role in the illegal overthrow of the Hawaiian Kingdom in 1893. The resolution called for undefined 'reconciliation' between the United States and the Kanaka Maoli people.

During the December hearings, more than 500 Kanaka Maoli testified before US Interior Assistant Secretary John Berry and US Tribal Justice Director Mark Van Norman. Kanaka Maoli witnesses asserted that the Kanaka Maoli nation exists separately from, and is foreign to, the United States. Therefore, the US President and/or his Secretary of State should be meeting with Kanaka Maoli nation representatives as equals, to define and negotiate the term 'reconciliation'. The Royal Order of Kamehameha refused to participate in the hearings and instead submitted a letter of protest. In Hilo, on the island of Hawai'i, Kihei Soli Niheu acquired notoriety by 'mooning' the two Washington officials, asking them to take his message back to President Clinton.

The hearings' format also drew criticism. Written testimonies were requested in advance and oral presentations were limited to two to three minutes. In Honolulu, when Office of Hawaiian Affairs (OHA) Trustee Mililani Trask was not permitted to exceed three minutes, she walked out. When Pomaika'iokalani Kinney spoke on Kanaka Maoli independence beyond three minutes and was threatened with removal by security officers, a dozen Kanaka Maoli from the audience stood around him until he completed his testimony.

Speakers repeatedly accused the US officials of violating Kanaka Maoli self-determination by limiting discussion of "the political relationship of Kanaka Maoli to the United States within the framework of Federal law". Witnesses pointed out that the only applicable domestic law was Federal In-

dian law, which provides for United States recognition of Indian tribes as "domestic dependent nations" and "wards" "subject to the plenary power of Congress". Witnesses charged the United States with violating its 'sacred trust' to the United Nations to promote Kanaka Maoli self-determination when the United States proceeded with its fraudulent Statehood process in 1959. However, when Kanaka Maoli speakers called for the United States to support reinscription of Ka Pae'aina on the UN List of Non-Self-Governing Territories eligible for decolonisation, Berry replied that he was not empowered to pursue international law and processes for these were outside the purview of the Department of Interior.

A month later, on the 14th of January 2000, the deadline for the submission of 'Reconciliation' Hearings testimonies, the newly reorganised OHA Trustees Board approved a 29 page OHA testimony. In spite of vigorous protests from the Kanaka Maoli community at the OHA board meeting, the OHA trustees asked that:

- The US President and Federal agencies formalise and implement the political trust relationship between Native Hawaiians and the United States in a manner that would make it equivalent to the legal and political status granted to Native Americans.
- The US government establish a Tribunal for Native Hawaiian claims similar to the Waitangi Tribunal in Aotearoa (New Zealand).
- The United States support and facilitate self-determination and the convening of a Native Hawaiian Convention.
- A separate Office of Hawaiian Affairs be established in the US Department of Interior.
- The United States and OHA determine the lands that should be returned to the Native Hawaiian people and assess back rent payment for the United States' use of 'ceded' lands, while the Interior Department imposes a freeze on 'ceded' lands sale, exchange and transfer until Native Hawaiian claims are resolved.

Economic Change in the Pacific Islands

As with other regions, indigenous peoples in the Pacific Islands have struggled under the impact of a series of structural adjustment programmes, sponsored by the Asian Development Bank (ADB) and the IMF. The ADB 'reform' programmes have been geared towards trade liberalisation, the reduction of the size of the public service, and increased governmental efficiency. This has led to severe impacts in countries where public sector institutions

are major employers. Under ADB sponsored reform programmes, there have been large reductions in the size of the public sector. In the Cook Islands, 57% of government staff were sacked between 1996 and 1998. There were significant reductions in the numbers of government employees in other Forum countries. The Federated States of Micronesia suffered a 37% cut in numbers between 1996 and January 1999. The Marshall Islands a 33% cut between October 1995 and March 1999. The Solomon Islands a six per cent cut between 1996 and March 1999. And Vanuatu a 10% cut between January 1998 and February 1999.

Another significant change is the negotiation of a new 'partnership arrangement' between the European Union (EU) and the 71 member ACP grouping of African, Caribbean and Pacific countries. In February 2000 EU and ACP governments finalised a new agreement governing relations between European nations and their former colonies in the developing world. The new agreement, to be signed in Suva (capital of the Fiji Islands) in June 2000, covers human rights, trade, aid and investment. It replaces the Lomé Convention, which has governed EU-ACP relations for the last 25 years.

Currently, there are 11 South Pacific countries and territories in the ACP group - the three French Pacific colonies (New Caledonia, French Polynesia and Wallis and Futuna) and eight South Pacific Forum members (Fiji Islands, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu). Forum policy has been to seek the involvement of the other six Forum island members in the post-Lomé process (the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Niue, Nauru, and the Cook Islands). The Pacific region has received very little compared to Africa and the Caribbean under the Lomé Convention. In Lomé II (1980-1985), the Pacific received 6.2 % of the total funds available to the ACP countries. From 1985-90 (Lomé III), it went down to 5.8%, and from 1990-1995 (Lomé IV) this amount decreased to three per cent.

The EU-ACP partners agreed on new trading arrangements based on the following initiatives:

- To conclude new WTO compatible trading arrangements, removing progressive barriers to trade between them and enhancing co-operation in all forms of trade.
- The preparatory period for the new trading arrangements shall end by the 31st of December 2007.

- The commodity protocols where the EU offers limited duty free market access for certain ACP products (beef, veal, rum, bananas, etc.) are to be reviewed at this time.
- Economic Partnership Agreements shall be negotiated during the preparatory period. The negotiations for these will start in the year 2002.

The growing pressure for trade, banking and investment policies to be WTO compatible is also having an impact of Pacific Island countries. Three Pacific Island countries are full members of the World Trade Organisation (WTO) - the Fiji Islands, Papua New Guinea and the Solomon Islands - with another three countries currently applying for membership. The Forum Secretariat is developing a dialogue between Forum member governments over the creation of a Free Trade Area (FTA) for Forum Island Countries. Australia and New Zealand are lobbying for their inclusion in an FTA, designed to assist the small island states deal with their vulnerability to rapid economic, social and environmental changes.

Pacific governments are also lobbying the United Nations to revise the UN criteria for defining poverty, so that they might take account of the special situation on small island states which are vulnerable to economic, social and environmental change. This was a feature of the April 1999 debate on the sustainable development of Small Island Developing States at the UN Commission on Sustainable Development, and the September 1999 Special Session on Small Island Developing States.

Pacific Women

Here in the Pacific, as elsewhere in the world, indigenous women have been evaluating the results of the 1995 Fourth World Conference on Women in Beijing, and preparing for Women 2000, the 'Beijing Plus 5' conference which will evaluate the implementation of the Platform for Action from the vantage point of a global summit. In July 1999, 30 women from the Pacific joined 20 Aboriginal and Islander women, together with other sisters from Australia and Aotearoa (New Zealand), to prepare a Pacific response to the 'Beijing plus 5' meeting. Focal areas for change include:

1. *Women and the Economy* - addressing the negative effects of globalisation, World Trade Organisation (WTO) policy, and the burden of debt on many women in the region, which has led to the increasing feminisation of poverty, particularly in the case of indigenous and migrant women.

2. *The Continuing Human Rights Abuses of Women* - addressing violence against women, rape, trafficking, forced prostitution, the marginalisation of minority groups and denial of land rights and reproductive rights.
3. *Women in Armed Conflict* - addressing the increase of militarisation and involvement of women in situations of conflict across the region.
4. *Institutional Mechanisms to Promote Equality for Women* - addressing the need for a much stronger focus on strategies such as gender mainstreaming, educational reform and curricula to ensure access and equity for women to enable their participation in mainstream institutions.
5. *Political Participation and Decision Making* - addressing the continued low level of participation by women in politics and decision making roles. This participation is crucial to the empowerment of women and to their ability to achieve equal status in all aspects of life.

Women from the Pacific especially highlighted the issue of *women and the environment*, including: greenhouse emissions; genetically engineered and modified food resources; intellectual property rights; land and water degradation; neocolonialism; and corporate possession of traditional land resulting in the erosion of spiritual connections to the land. As the report of the July 1999 meeting stressed, "The persistence of militarism and the nuclear industry has perpetuated environmental degradation. Women of the Pacific insist upon:

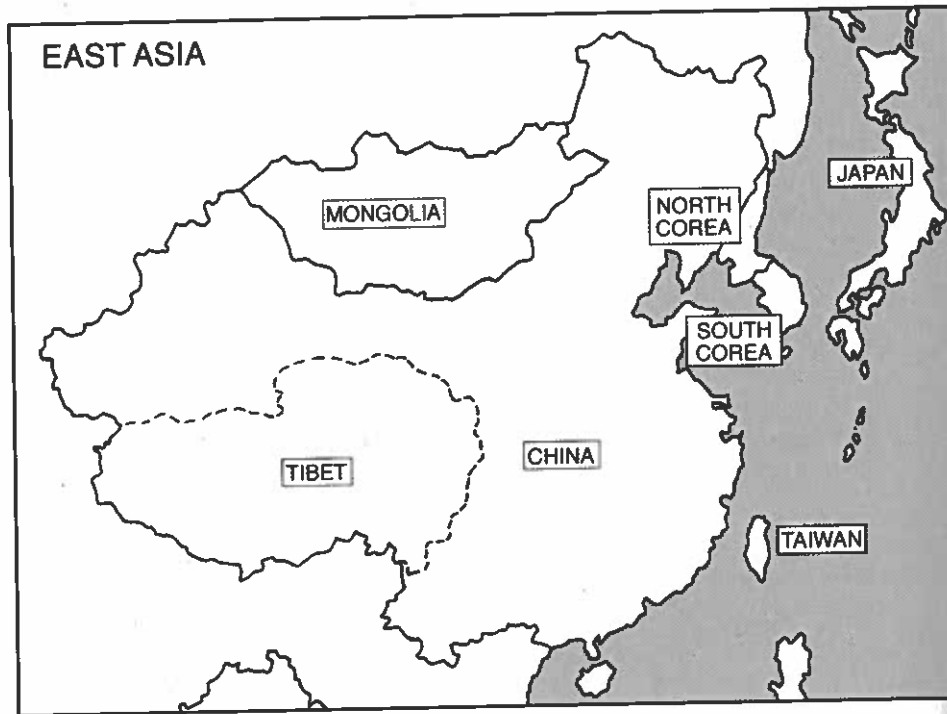
- an end to uranium mining in Australia;
- a total ban on nuclear and radioactive waste dumping in the Pacific region and;
- health programmes for women and children affected by nuclear testing".

Pacific women are greatly affected by the radioactive legacies of 50 years of nuclear testing in the Pacific by the nuclear powers (France conducted 46 atmospheric tests at Moruroa and Fangataufa atolls between 1966 and 1974, before moving their tests underground. The USA conducted 67 atmospheric tests at Bikini and Enewetak atolls in the Marshall Islands between 1946 and 1958, while Britain conducted 22 atmospheric tests in Australia and Christmas Island). Scientists are slowly beginning to analyse the impact of nuclear testing on the indigenous population of the islands. Medical studies are showing that women in the Marshall Islands and French Polynesia face a higher rate of thyroid problems than men.

In 1999, a joint Japanese, US and British team published preliminary results of medical studies on thyroid cancers in the Marshall Islands. The report, published in the *Tohoku Journal of Medicine*, shows that nearly four in 10 women alive at the time of the 1954 Bravo test on Bikini atoll have developed thyroid tumours. Overall 5825 Marshallese were studied between 1993 and 1997 as part of a nation-wide study. 25.17% of those studied had thyroid nodules, with 1.17% of them being cancerous. The Japanese study shows that women have a much higher rate of thyroid problems than men. Women alive in 1954 had a 37.7% rate of thyroid nodules, while the rate for Marshallese men was 21.2%.

A study by the French research institute *Institut National de la Santé et de Recherche Médicale* (INSERM) found 155 reported cases of thyroid cancer in French Polynesia between 1985 and 1995 - 120 were in women and 35 in men. The study reports that the number of cases has been increasing in the period 1985 to 1995 (six reported cases of women with thyroid cancer in 1985-6, 15 in 1989-90 and 36 in 1993-4).

This report draws on material published in Pacific News Bulletin, the monthly magazine of the Nuclear Free and Independent Pacific (NFIP) movement. For subscriptions, contact Stanley Simpson, Pacific Concerns Resource Centre (PCRC), Private Mail Bag, Suva, Fiji. E-mail: pcrc@is.com.fj Fax: (679) 304755.



Countries covered in this issue: Japan, Taiwan

EAST ASIA

JAPAN

Ainu: The Domestic Debate Over the Terms 'Indigenous Peoples' and 'Indigenous People' in Japan

As the discussion of the UN Declaration on the Rights of Indigenous Peoples proceeds, the debate over the terms 'indigenous peoples' and 'indigenous people' has emerged as the main point about which the indigenous side and states cannot reach a consensus. A number of governments have said that they do not have any difficulty in accepting the term 'indigenous peoples', while some governments still keep on insisting that they do not like it for some reason. It is unfortunate that the Government of Japan is one of the latter. Still, the Ainu people hope that the Government of Japan will recognise the Ainu people as an indigenous people in Japan and approve the Declaration as it is. In fact changes have occurred. The Government of Japan has changed its view with respect to ethnic, religious and linguistic minorities. It will therefore be helpful in deepening the analysis of the attitude of the Government of Japan, to look at the changes in terminology in the periodic reports to the Human Rights Committee supervising the implementation of the International Bill of Human Rights Covenant on Civil and Political Rights.

Article 27 of the International Bill of Human Rights Covenant on Civil and Political Right states:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The first report submitted by the Government of Japan is interesting because there is no provision regarding ethnic groups in the Japanese Constitution or laws.

The 'Initial Report of States parties due in 1980', states with regard to Article 27 that:

"The right of any person to enjoy his own culture, to profess and practice his own religion or to use his own language is ensured under Japanese law. However, minorities of the kind mentioned in the Covenant do not exist in Japan."

In the final sentence of the initial report, the Government of Japan denied the existence of ethnic, religious or linguistic minorities in Japan. This follows the logic introduced from the Western world according to which all individuals should be equal under the law. It seems that the Government of Japan insists that, "As far as the right of the individual is guaranteed, there is no problem." This is the basic attitude of the Government of Japan.

In the second report we find no changes in the attitude of the Government of Japan, and only minor and insignificant changes to some terms (for example 'his' was replaced by 'one's'). But readers will find that the Government of Japan did in fact mention the Ainu people for the first time in this report. However, they were very careful to avoid the term 'the Ainu people' ('Ainu minzoku'). Even today, they are still calling the Ainu the 'people of Ainu descent' ('Ainu no hitobito'). For example, in the Ainu Culture Promotion Law enacted in 1997, there is no usage of the term 'the Ainu people' but instead the term 'people of Ainu descent' is used. On this point the Government of Japan is very consistent.

The 'Second Periodic Report of States parties due in 1986' states with regard to Article 27 that:

"In Japan, no person is denied the right to enjoy one's own culture, to practice one's own religion, or to use one's own language."

"As for the question of the people of Ainu descent raised in relation to Article 27, while it is recognised that these people preserve their own religion and language and maintain their own culture, they are not denied enjoyment of the right mentioned above, as Japanese nationals who are guaranteed equality under the Japanese Constitution."

The Great Change

A great change occurred between the third report and earlier reports. For the first time, the Ainu are referred to as "the people of Ainu".

The 'Third Periodic Report of Japan', dated December the 16th 1991, states that:

"In Japan, no person is denied the right to enjoy one's own culture, to practice one's own religion, or to use one's own language."

"As for the question of the people of Ainu raised in relation to Article 27 of the Covenant, they may be called the minorities of that Article, because it is recognised that these people preserve their own religion and language and maintain their own culture. The people of Ainu are not denied the enjoyment of the rights mentioned above, as Japanese nationals whose equality is guaranteed under the Japanese Constitution."

Readers may be surprised to see that the Government of Japan recognised the existence of minorities mentioned in the Covenant, despite the fact that they did not do so four years earlier. How could this have been possible? It was possible only because of the immediate criticism that arose from the international community after Prime Minister Nakasone made discriminatory comments against African-Americans and Hispanic people in the US.

The Hokkaido Utari Measures in the Report

In order to improve the life of Ainu people, the government of Hokkaido has been taking comprehensive measures to promote their education, culture, industry and to improve their living environment, by formulating the 'Hokkaido Utari Welfare Measures' three times since 1974. ('Ainu' means 'human being' and 'Utari' means 'compatriot' in the Ainu language).

In 1974, the Government of Japan established the 'Liaison Conference of the Ministries and Agencies concerned with Hokkaido Utari Welfare Measures'. They did this in order to co-operate with the government of Hokkaido in the matter of Utari welfare measures and in order to help promote them smoothly. The Government is also making efforts to increase the budget related to the Utari welfare measures, with the close co-operation of the administrative organs concerned.

According to the 'Survey on the Hokkaido Utari Living Conditions' conducted by the Hokkaido government in 1986, the living standard of the Ainu has improved steadily. But the gap between the living standards of the general populace in Hokkaido and those of the Ainu has not been narrowed as expected. We have to pay attention to the fact that the government mentioned the gap in living standards between the Ainu people and Japanese nationals in general, because this fact shows that the Ainu people have suffered from racism.

The 'Fourth Periodic Report by the Government of Japan' dated June the 16th 1997 reports with reference to Article 27 on policies related to the Ainu people on the Hokkaido Utari Measures:

"The living standard of the Ainu people has improved steadily, but the gap between the living standard of the Ainu people and that of the general public of Hokkaido has not narrowed according to the 'Survey on the Hokkaido Utari Living Conditions' conducted by the Prefectural Government of Hokkaido in 1993. The Prefectural Government of Hokkaido therefore endeavours to improve further the living standard of the Ainu people and to eliminate the difference in living standards between the Ainu and the general populace by promoting the 'Fourth Hokkaido Utari Welfare Measures (1995-2001)' as a continuation of the 'Third Hokkaido Utari Welfare Measures', which were described in the Third Periodic Report.

"The Government of Japan, as was described in the Third Periodic Report, continues to offer its co-operation in the above measures, which are being promoted by the Prefectural Government of Hokkaido, and it is working to complete the related budgets so that these measures may come into effect smoothly."

The report continues by referring to the 'Round Table on the Policy for the Ainu People'.

"Following a request by the Chief Cabinet Secretary, 'The Round Table on the Policy for the Ainu people' started considering policy for the Ainu people in March 1995. A report was submitted to the Chief Cabinet Secretary in April 1996. This report concludes that it is desirable for the Government of Japan to take appropriate measures, including legislation, in order to preserve and promote the Ainu language, tradition and abolish the former 'Hokkaido Natives Reservation Dispensation Law' and other laws.

"The report is based on the characteristics and circumstance of the Ainu people, who have lived in Hokkaido, Japan's inherent territory, since the end of the Middle Ages even before the Wajin people's arrival. The Government of Japan then expressed its commitment to take

appropriate measures, respecting this report and studying details of its content.

('Ainu' means 'human being' in the Ainu language; 'Utari' means 'compatriot' in the Ainu language; 'Wajin' means all other Japanese, except the Ainu themselves.)"

It is surprising to find that the term 'the Ainu people' is used in this English translation of the fourth report, because politicians and bureaucrats of the Government of Japan had always been so careful to avoid the term 'the Ainu people' in any documents including the Ainu Culture Promotion Law mentioned above. It was almost unbelievable that this was the official report submitted to the UN by the Government of Japan. And indeed, in the Japanese version the term 'Ainu no hitobito' ('people of Ainu descent') is still retained. Ainu representatives consider it important that the deceptive attitude of the Government of Japan is made known.

It is also important to pay attention to the fact that the report was dated June the 16th 1997. This is because on March the 27th 1997 the Sapporo District Court stated in its decision on the Nibutani Dam that the Ainu people are an indigenous people of Japan. This was the very first official recognition of the Ainu as an indigenous people. As a result both the decision in which the Court ruled it was illegal to take land away from the plaintiffs (the Ainu people) without respect for Ainu tradition and culture, and the recognition of the Ainu people as an indigenous people of Japan, were circulated round the world - especially to fellow indigenous peoples - being seen as a mark of great progress for Japan's indigenous movement. It appears that the Government of Japan is giving up the use of the term 'people of Ainu descent' due to pressure from the international community.

In the footnote of the report an explanation is given of some of the terms used. One of them is 'Wajin' which, according to the report, "means all other Japanese, except the Ainu themselves". This definition of 'Wajin' is not correct. 'Wajin' refers to the majority of Japanese nationals. And we have to point out that the definition given in the report neglects the historical fact that the Government of Japan integrated Ryukyu (Okinawa), which used to be an independent kingdom, into Japanese territory in 1872. The authors are sure that the brothers and sisters of Ryukyu will never agree to that definition.

The Ainu Culture Promotion Law and the Debate

The Government of Japan has said that it would not accept the term 'indigenous peoples' without a clear definition of it first. But they should not forget the fact that the aim of the Ainu Culture Promotion Law should be "to realise a society in which the ethnic pride of the Ainu people should be respected". This is the first appearance of the term 'ethnic' in Japanese legislation. Even though no clear definition of the term 'ethnic' has yet been announced, in reality it has appeared at last. The usage of the term in the legislation can be interpreted as a sign that the Government has a potentially promising concept of the term. And it will be the key to starting a domestic debate about the terms 'indigenous peoples' and 'indigenous people', as the Government of Japan has, in the third report to the Human Rights Committee, already recognised the existence of a minority which maintains its own culture, religion, and language.

As a result of the Ainu Culture Promotion Law enacted in 1997, local activities to preserve the Ainu language, Ainu traditional dances and songs, traditional wood carving skills, etc. have been revitalised. This is not only because of financial support from the foundation that was established according to the law, but also because of the positive psychological effect of replacing the former Aborigines Protection Law with the new law.

However, it has to be pointed out that application for financial support from the foundation can be submitted not only by members of the Ainu people but by all nationals interested in Ainu culture. The establishment of the fund for self-reliance, which has been one of the Ainu people's main demands, was not included in the law, despite the establishment of the foundation for 'everyone', through which financial support is provided for cultural and academic activities. And the procedure itself can be quite tiresome. Therefore, some people have doubted whether the programmes based on the new system will turn out to be very useful for the Ainu people. Moreover the basic fund was only provided by the Prefectural Government and 62 cities, towns and villages of Hokkaido. This implies that local administrations outside of Hokkaido have no responsibility towards those issues affecting the Ainu people, and that the foundation's activities cannot therefore be nationwide.

It does not have to be emphasised that equality under the law must be guaranteed. However, in spite of the significance of there being equal opportunities, as long as people suffer from racism and poor living conditions, efforts have to be taken to guarantee equality. Such issues are ultimately the result of the Government of Japan's policy not to recognise the existence of indigenous peoples in Japan.

Meetings are planned with the Bureau of Hokkaido Development and the Ministry of Foreign Affairs responsible for the Ainu Culture Promotion Law, which, in addition to making periodical reports to the United Nations, will hopefully help clarify what kind of legislative concept underlies the terms 'ethnic' and 'the Ainu people'. It will also seek to clarify whether the changes in the reports will affect the position taken by the Government of Japan with regards to the terms 'indigenous peoples' and 'indigenous people'.

TAIWAN

The biggest disaster for the indigenous peoples of Taiwan in 1999 was the earthquake. In the early morning of September the 21st 1999, a strong earthquake (7.3 on the Richter Scale) hit the country, endangering many indigenous people living in the central highlands, the backbone of Taiwan. Fortunately, the earthquake itself did not kill many indigenous people. However, the earthquake revealed long-term problems (such as environmental destruction, neglect by local governments in the indigenous peoples' areas and a lack of grassroots organisations) that are increasingly undermining the livelihoods of indigenous people.

Prejudice and Discrimination

The indigenous peoples of Taiwan have experienced prejudice and discrimination for a long time, a fact which was sadly apparent during the earthquake disaster. For instance, during the early stages of the earthquake disaster, most of the victims of the collapsed buildings were desperately looking for shelter and food. A lot of aid and services were provided, and schools and other institutions offered shelter to the victims. At several places where indigenous and non-indigenous people were mixed together, indigenous people reported that they were refused access to food, being told to "go back to your villages to get food".

Environmental Destruction

In 1998, according to official statistics, the indigenous peoples of Taiwan number over 110,000 households with a population of 410,000, most of whom live in the highlands. However, as a result of long-term development projects, most of the highlands, the homeland of the indigenous peoples, has been destroyed. Landslides have been the worst nightmare for indigenous people living in the mountains. During the rainy and typhoon seasons, indigenous

people suffer the effects of mudslides and, more often than not, the roads are blocked by fallen rocks. The earthquake has only worsened the already serious problems. Moreover several indigenous villages are surrounded by dams. The villagers, especially those living downstream are worried that the dams will collapse. Even if the dams are safe, their lands along the riverbanks have been washed away because of floods.

Unemployment

One official national survey of indigenous peoples shows that 7.39% of the heads of indigenous peoples' households are unemployed. The primary reasons for their being unemployed are as follows: age (39%); retired (28.75%); disabled and sick (18.84%) and unable to find jobs (4.84%). When classified by region, the major reasons (70.7%) for unemployment amongst heads of households in highland areas are age and being retired. In lowland areas being unable to find a job accounts for 17.86% of the heads of indigenous households who are unemployed. In 8.27% of cases their job prospects are also affected by the presence of migrant workers.

In order to increase the profits of private business, the government has a policy of inviting migrant workers from southeast Asia. These migrant workers are paid the minimum wage and their work is often dangerous, difficult and demeaning. The jobs that the migrant workers take are those that indigenous peoples used to occupy, such as construction work. Therefore, indigenous people - especially those living in cities - commonly feel antagonistic towards the migrant workers for taking their jobs away from them. To help with reconstruction after the earthquake, many construction projects were proposed. However, there is no guarantee that indigenous people will be employed on those reconstruction projects since most companies prefer to import migrant workers to reduce their expenses.

According to the same official statistics, most young indigenous people live in the cities for the sake of better education and employment opportunities. However, as the above-mentioned figures show, their dreams of finding a better livelihood in the cities are indeed often shattered. During the earthquake, numerous apartments in the cities collapsed, leaving many urban indigenous people homeless. Since many of them are unemployed or underemployed, they can hardly afford to buy or rent new apartments. Consequently, many have returned to their villages.

Nevertheless, the situation in the villages is not much better. The primary sources of income for indigenous people in the villages are growing cash crops, such as fruits, vegetables and tea, doing odd jobs on farms, or cleaning

and construction work in nearby towns. The damage caused by the earthquake to the road and irrigation systems has resulted in great losses. Those relying on odd jobs on farms immediately lost their major source of income. Furthermore, many odd jobs come from the hotels and restaurants at nearby tourist sites. The earthquake has significantly decreased the number of tourists coming to the areas, which leads to unemployment among indigenous people, especially women, who used to work as janitors at the hotels and restaurants.

The Land Issues and the Development of Villages

The above problems are indeed related to the land issue, which is of critical importance to the indigenous peoples of Taiwan. It is conspicuously problematic as a result of the nationalisation, privatisation and commodification of ancestral land, and the consequent weakening of indigenous villages. Since the Kuomintang (KMT) government took over Taiwan in 1949, it has continued the land policy implemented by the Japanese in 1948, which designated ancestral lands as 'reserved' by simply brandishing a sheet of paper entitled 'Management Regulations of the Reserved Highlands in Counties of Taiwan Province'. Essentially, the state 'reserves' land for the use of the indigenous peoples, on the premise that the state owns it and therefore has the right to confiscate indigenous people's lands for the sake of the 'public interest'. And indeed the state has done just that. It has ordered the establishment of Yu-Shan, Tairugu, Shueiba and Kenting National Parks, afforestation projects by the Bureau of Forestry, and the construction of dams along the Taan and Chrousui rivers, to name only a few projects that have led to indigenous people's activities being restricted by strict laws and regulations. The lives and livelihood of indigenous peoples are thus seriously affected.

As a result of Taiwan's developmentalist policy, almost all of the remote areas have been drawn into a cycle of rapid economic development. However, since the indigenous peoples are economically and politically disadvantaged, once they became involved in the market economy, the communal and sustainable use of land ceases and instead it is used to grow cash crops for profit. As a result their domestic economies have been marginalised, they have been made dependent and have been left open to exploitation by capitalists. Consequently, even reserved land is owned by non-indigenous people, because sheer poverty has forced many indigenous owners to sell their lands. And still others are deceived, seduced or forced into doing so. Statistics, which have not been officially admitted but which are widely accepted, illustrate the aforementioned fact. Under the Japanese government reserved indigenous

people's lands amounted to 170,000 hectares. At present, while the land owned by indigenous peoples is said to amount to some 240,000 hectares, the area actually used by indigenous people, that is which has not ended up in the hands of non-indigenous people, is only 80,000 hectares.

The cultures, social institutions and relations of the indigenous peoples are deeply rooted in land, a fact which distinguishes them from the majority of society. However, under the developmentalist Taiwanese state, the policy towards the indigenous peoples is that of 'modernisation'. Due to the aforementioned fact that they are dependent on development, the indigenous peoples of Taiwan have been increasingly assimilated into mainstream, 'modern' society. As a result of the rapid economic changes among indigenous communities, indigenous social systems have been profoundly altered, often to the point of disintegration. Many communities have now lost their distinctive cultures. With the state ordering intrusive development projects, natural resources are exploited and indigenous people can no longer maintain their traditional village livelihoods. This has resulted in the outflow of young people to higher education and employment. Those left in the villages can hardly continue the traditions of their ancestors due to economic hardship and the disintegration of their communities, factors which have also led to widespread alcoholism.

Difficulties in Reconstruction

Since the earthquake, indigenous people have been inundated with governmental promises of reconstruction, but very few of these have been implemented. The indigenous peoples are very confused and do not have proper access to information, especially with regard to the policies in question. Moreover, many of the reconstruction plans are made without sufficient understanding of the realities that indigenous peoples face. Therefore most of the plans are futile. For instance many indigenous people are registered in the villages but live in the cities, hoping to find better job opportunities and education. The government decided to compensate victims of the collapsed apartments. Since it is very difficult for those without household registration in the cities to prove that they actually are urban residents, many of them were ineligible for government compensation.

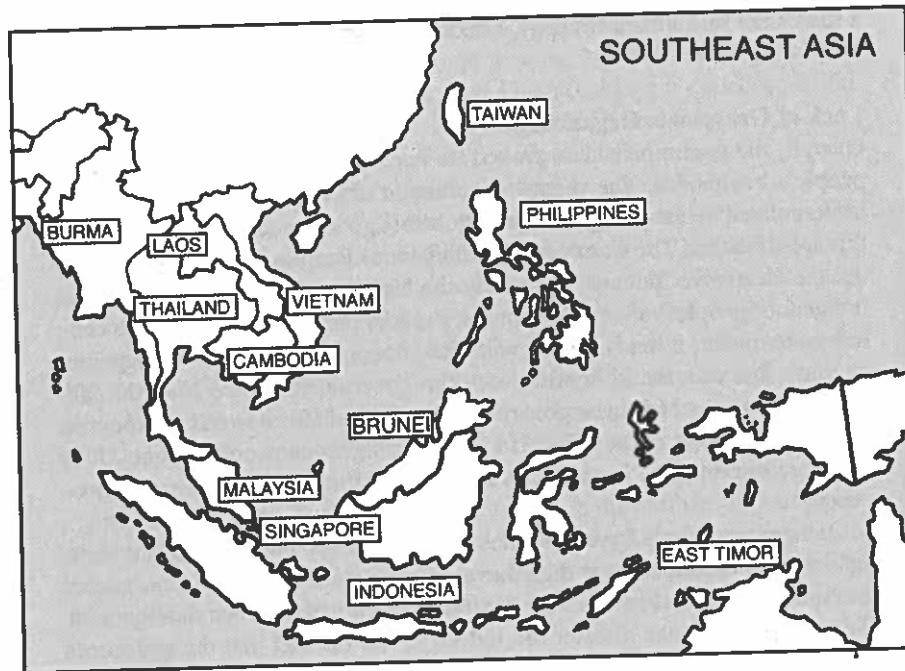
Even if they are fortunate enough to receive compensation, it is not a large enough sum to enable them to rebuild a house in their village or to buy a new apartment in the city. Due to the lack of properties, it is very difficult for indigenous people to get bank loans. Most banks do not consider the indigenous peoples' reserved lands eligible for a mortgage. Even if they are granted

a loan, they find it hard to repay it because of unemployment and underemployment.

Lack of Grassroots Organising

Overall, the government has proved its inability to reconstruct indigenous people's livelihoods. The central government has been more occupied with issues related to non-indigenous people, although it has not achieved much in this sphere either. The Committee of Indigenous Peoples' Affairs (CIPA) under the Executive Yuan is supposedly the highest governmental agency for indigenous peoples' affairs. Yet since it is under the direct control of the central government, it tends to side with the government whenever indigenous people's interests are in conflict with the government. Since May the 20th 2000, Taiwan has had a new government. But it is difficult to tell whether the CIPA will now be more willing to defend indigenous people's rights. It is therefore important to keep a keen eye on how the new administration proceeds.

Indigenous people have their most direct dealings with local government agencies. However, most of these have the reputation of being unconcerned, and most indigenous people feel frustrated and hopeless when dealing with them. The earthquake disaster did indeed reveal the fact that the grassroots had been undermined on a long-term basis. With central and local government malfunctioning, it is crucial that indigenous people be organised at the grassroots level in order to carry out long-term reconstruction work. Although the indigenous peoples' movement had in the past contributed to improving the status of the indigenous peoples in Taiwan, it has been noted that at the grassroots level indigenous peoples have not been well organised. In most areas, reconstruction has not yet even started. Most indigenous peoples are now gradually beginning to realise that they can no longer rely on the government. But many of them do not know how to organise themselves. There are only a few cases where indigenous peoples have begun to organise themselves at the grassroots level. Hopefully, these cases will further encourage the indigenous movement in Taiwan.



Countries/Regions covered in this issue: Philippines, East Timor, Indonesia, Malaysia, Thailand, Cambodia, Burma, Nagalim

SOUTHEAST ASIA

PHILIPPINES

Major National Developments

On February the 10th 2000, President Joseph Estrada issued Administrative Order 108 (AO 108) creating a Presidential Task Force on Indigenous Peoples (PTFIP). This new body is composed of seven individuals appointed by the President. Their task is to ensure the complete implementation of the Indigenous Peoples Rights Act (IPRA). One of the reasons cited for the creation of this body is the pending case questioning the constitutionality of the IPRA that is still to be resolved by the Supreme Court. The case, Estrada claims, has led to the delay in the delivery of basic services, especially those concerning the rights of indigenous peoples.

AO 108 directs members of the PTFIP to meet and submit its monthly report to the President, through the Office of the Presidential Assistant for Poverty Eradication (OPAPE), and to non-governmental organisations and peoples' organisations. The administrative order also directs the National Commission on Indigenous Peoples (NCIP) to provide the necessary secretariat services as well as technical assistance that the PTFIP may require. The PTFIP shall cease to exist as soon as the Supreme Court delivers its verdict on the constitutionality of the IPRA or whenever the president so orders.

Attorney David Dao-as, the Chairperson of the NCIP said that the PTFIP is actually a duplication of the NCIP. According to Dao-as, "what is very revealing is that there is no political will to implement IPRA on the part of the Palace Leadership". The implementation of the IPRA by the NCIP has been bogged down firstly by the squabble over its leadership and, secondly, by the non-release of funds for implementing its programme. Erap's creation of the PTFIP came as a big surprise to most indigenous peoples' organisations. The process surrounding the formation of this body was not in the least transparent. Additionally, its foundation is creating confusion between its role and the role of the NCIP.

Meanwhile, the violation of indigenous peoples' rights continues, with the further dispossession of indigenous peoples of their lands and resources which are being offered to multinational companies and business groups. Indigenous organisations like the Cordillera Peoples Alliance (CPA) are of the opinion that unless the Estrada administration change its policy guideline on

economic liberalisation, and unless this administration repeals existing laws which violate or fail to recognise indigenous peoples rights, then neither the PTFIP nor the NCIP can provide substantial solutions to the plight of indigenous peoples in the Philippines.

The Asian Indigenous Women's Network

1999 was a challenging year for the Asian Indigenous Women's Network (AIWN). The task it undertook to revitalise the network has been accomplished to a certain degree. Although no new organisations affiliated themselves to the AIWN, it focused its efforts on linking up with indigenous women's networks in other regions. This agenda was dictated by the fact that 1999 was the last year to prepare for Beijing+5 which will take place from the 5th to the 9th of June 2000 in New York. The experience of indigenous women who attended the first Preparatory Commission (PrepCom1) for the Beijing+5 Review in March 1999 showed the need for greater unity among indigenous women vis-à-vis both matters covered by the Review and those that it did not cover. This entails the recognition of collective rights as part of the human rights regime embodied in UN conventions and specifically the right of indigenous peoples to self-determination. This arises from the many problems being faced by indigenous peoples today, because nation states do not recognise their right to ancestral territory and to self-determination.

Building greater unity among indigenous women means more interactive forums for them at all levels - local, national, regional, and international. Following the March 1999 PrepCom1, the Indigenous Women's Caucus decided to keep in touch and plan for more of these encounters, using cyberspace, "snail mail", face-to-face meetings, or communications by fax. More concrete plans were made in Lima, Peru in December 1999 when CHIRAPAQ hosted the International Workshop of Indigenous Women Facing the New Millennium (see the chapter on Chile in this volume). A Steering Committee for the Beijing+5 Review was formed. It is composed of representatives from the networks in the different geographical regions. It made plans to raise funds to enable some representatives to attend Beijing+5, to exchange information, to compile a directory of indigenous women's organisations worldwide (an ongoing project), to contribute to the national and regional processes and to plan beyond Beijing+5. In order to achieve these aims, the participants endorsed Lea Nicholas-Mackenzie from the Assembly of First Nations of Canada to do the co-ordination work. This first co-ordinated effort is showing fruits with the planned Indigenous Women's Forum in New York intended to be a continuation of the efforts started in Lima. Several indigenous women's rep-

resentatives from the different geographical regions will be coming together for this. Indigenous women are seizing this opportunity to be able to interact further, build unity, and plan further actions. The Beijing+5 Review will not be the entire focus of the indigenous women's presence in New York. They are there mainly to demonstrate to both governments and intergovernmental bodies, as well as to NGOs and women's organisations, that indigenous women have a lot to say and do.

The continuing challenge for the AIWN is how to come up with a substantive picture of the situation of Asian indigenous women so that the public can appreciate the issues being raised. A lot has to be done to sensitise activist groups and NGOs to take on the cause of indigenous peoples in general, and indigenous women in particular. It is heart-warming to know that we also have advocates in some of the women's formations and activist groups in Asia. This entails the necessary documentation of the situation at the village level. An attempt had been made to use the scant data available to make an alternative report to the Conference of NGOs in Consultative Relationship with the United Nations (CONGO). The real need at the moment is in the areas of research and documentation. Unfortunately for us, language barriers to some extent limit our capacity to exchange information. This is where we need to network, so as to facilitate translation and data gathering. There is much information in local hands but because of a lack of translation, it is neither passed on nor is it processed to help with a regional analysis. There is also the recognition that some information is in the hands of academic and professional organisations in northern countries. In addition, governmental, inter-governmental and financial institutions also hold much information. I hope that this article reaches those people who are willing to share such information with or return it to the region. For more information about AIWN, our address is as follows:

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The Cordillera Region

Pending Abolition in the Cordillera Regional Bodies

The Cordillera Regional Assembly (CRA), the Cordillera Executive Board (CEB) and the Cordillera Bodong Administration (CBA), regional bodies

created by Executive Order 220, are now facing possible abolition. This is as a result of the non-allocation of funds by Congress to these bodies in the proposed national budget that is due to be approved in March 2000. In the proposal filed, only the CEB was provided with a budget for winding up. Such drastic action by Congress was the result of these bodies being publicly perceived to be not performing, a charge that was compounded by accusations of corruption and internal bickering. These government bodies were also blamed for the resounding rejection of all Organic Acts for the creation of a Cordillera Autonomous Region in three different referenda held in the past years. Officials from these bodies are set to raise their side of the issue in the Supreme Court.

These regional bodies were created in 1987 by the then president Cory Aquino in order to facilitate the setting up of the Cordillera Autonomous Region. Upon its formation, the Cordillera Peoples Alliance campaigned for its abolition on the grounds of political misrepresentation. The indigenous Cordillera Peoples Alliance (CPA) also considered those appointed to these political structures to be self-serving leaders.

Political Killings

On June the 4th 1999, Rey Pedronio, a member of the Baguio Media and Public Relations Office of the Cordillera Regional Assembly (CRA) was shot in front of his wife. Reports alleged that it was a calculated move by the Cordillera Peoples' Liberation Army (CPLA) to silence him. Pedronio was at that time intervening in a land dispute involving CPLA elements. The arrest of a CPLA leader confirmed the public's belief that they were involved in this cold-blooded murder.

On December the 31st, at the dawn of the new millennium, Fr. Conrado Balweg, the infamous leader and founder of the Cordillera Peoples Liberation Army (CPLA), was killed by members of the New Peoples Army (NPA) in his hometown of Bangilo, Malibcong Abra. According to the NPA's press releases, Conrado Balweg deserved capital punishment because of a series of crimes he committed as head of the CPLA. The list of crimes they claimed Conrado Balweg committed include the abduction and subsequent murder of Ama Daniel Ngayaan, a respected Kalinga leader, and of Romy Gardo, a CPA organiser in Abra. Fr. Conrado Balweg was a former spokesperson of the New People's Army but broke away from them to form the CPLA. He then entered into a peace pact with 1987 President Cory Aquino.

The wife and children of Conrado Balweg and a few government officials immediately condemned this incident. The military filed a case in court nam-

ing nine NPA members as the perpetrators of the crime. Meanwhile, the families of the victims of Conrado Balweg said that they believed that this revolutionary act had delivered long awaited justice for their dead kinfolk. Daniel Ngayaan's daughter openly echoed this sentiment when she was interviewed by members of the media.

Mining

Last year, on the 26th of July 1999, at the height of heavy rains, 14 hectares of Barangay Colalo, in the gold-rich town of Mankayan, Benguet province, collapsed. The entire Colalo Elementary School along with four residential houses, mango trees and a few swidden farms were swallowed up by the ground. A resident named Pablo Gomez, who volunteered to assist the teachers evacuate their things from the school building, was also swallowed up. His body was never found.

Residents of Colalo attributed this disaster to the construction of the mine tailings dam of the Lepanto Consolidated Mining Company (LCMCo), located just below the area which collapsed. Elders claimed that the tailings dam which was constructed in 1990 had since been blocking the flow of a nearby creek and this had caused the underground accumulation of water. Over time, elders went on to explain, the accumulated water had softened the land weakening the soil underneath until it collapsed. They also believed that the construction of a road at the foot of the collapsed area and the continuing quarrying activities within the area itself, had resulted in the weakening of the base support of the mountain. This analysis was validated by geologists from the National Institute of Geology of the University of the Philippines. This group of experts conducted an independent investigation upon the request of Congressman Cosalan who filed a House Resolution No. 1057 directing an investigation into the disaster. LCMCo described the incident as an "act of God", declaring it to be a purely natural disaster. The demand of the Kankanaey people of Colalo for just compensation has been consistently denied by the mining giant.

In a separate incident, three leaders of Barangay Bulalacao, also in Mankayan, were slapped with criminal and civil charges for opposing the mining company's Victoria Gold Project. The company's lawyers filed a suit for the obstruction of LCMCo's operation after the residents barricaded the latest exploration site, in an attempt to prevent the ingress of drilling equipment into their community in October 1999. The Kankanaey farmers opposing the project believe that the exploration and drilling activities of LCMCo will drain their water source. The drilling site is located beside a creek which

supplies irrigation to their vegetable farms. People claim that since the 1970s drilling activities in their community have drained their water supply. LCMCo has already created more than a hundred holes in the Barangay since the 70s. Meanwhile, Environmental Management Bureau of the Department of Environment and Natural Resources' records shows that the company had failed to secure an Environmental Compliance Certificate for its Victoria Gold Project in Bulalacao.

The three Bulalacao leaders have posted bail and together with hundreds of residents of Bulalaco, they have vowed to continue opposing the drilling and mining activities of LCMCo. The drilling has been temporarily stopped pending a court decision. This is the second time Lepanto has filed a suit against protesting residents. The first suit, for obstructing the company's operations, was filed against eight residents in November 1998.

The outcome of these cases has far reaching implications for the ongoing protest activities against mining not only in the Cordillera but also in the country as a whole. In both cases LCMCo invoked provisions in the Mining Act of 1995 claiming the act had been violated by protesting residents. This law provides for the unhampered operation of approved mining applications. With the ongoing implementation of this law, more protest actions by the people will certainly be met with legal suits. This will put the people on a legally defensive footing when they try to assert their prior and collective right over their land and resources.

As of November 1999, more than 591,901 hectares of the Cordillera region's total of 1.8 million hectares have been covered by different mining applications that are already in the various stages of the approval process. Meanwhile, most of the affected communities have declared their opposition to large-scale mining.

The San Roque Multi-Purpose Dam

In spite of stiff opposition from affected Ibaloi communities in Itogon, Benguet, the construction of the San Roque Multi-Purpose Dam is still ongoing. John Lockwood, the San Roque Power Corporation's Resident Manager, said that 38% of the project has already been completed. He made it clear that this percentage refers to the amount of budget spent and to the building of support facilities and infrastructure required by the dam project.

As of February 2000, only four per cent of the dam construction itself has been completed. In spite of the persistence of the project's proponents, the people's protest has been gaining ground even within government circles. The Provincial Board of Benguet announced a resolution supporting the po-

sition of the Shalupirip Santahnay Indigenous Peoples Movement (SSIPM), opposing the dam project because of its negative socio-cultural impacts on affected Ibaloi communities. Congressman Ronaldo Cosalan of Benguet is also lobbying against the release of loans pending the implementation of certain conditions designed to address the socio-cultural and environmental impacts of the project. Likewise, Senator Gregorio Honasan has filed a bill for an independent review on the structural design of the dam because of the possible environmental disaster it may cause.

Honasan's Bill was based on the findings of a technical review of the environmental impact of the SRDP. This study was jointly commissioned by the International Rivers Network, the Cordillera Peoples Alliance and the SSIPM and was undertaken by technical experts based in the United States in July 1999. The study found serious deficiencies in the Environmental Impact Study of the National Power Corporation (NPC). It also confirmed that such an enormous water reservoir might cause environmental disasters, such as massive siltation, water pollution, flooding and potentially dangerous seismic reactions.

The San Roque Dam Project is expected to be finished by 2002 and shall be operational by 2004. The dam component will cost US\$1.1 billion and will generate 375 megawatts of hydropower. The 17 kilometre long, 1.2 kilometre wide and 290 metre tall dam will be the second largest in Asia and the ninth largest in the world. The money needed to build the dam has been loaned by the Japanese Bank for International Co-operation (the former Japanese Export-Import Bank). This dam will inundate ancestral lands in Itogon, Benguet which will affect around 20,000 Ibaloi people.

The Indigenous Women's Movement in the Cordillera

Throughout 1999 and 2000, the indigenous women's movement in the Cordillera has been gaining momentum, with an increasing number of women actively participating in the campaign for the defence of land, life and resources. In February 1999, in Mainit, Bontoc, women were at the forefront of the struggle to drive away a team of surveyors from Mainit Resources International Incorporated who were planning to mine their village. The women's organisation in Mainit also hosted the celebration of Cordillera Day in 1999. Their ability to do so is indicative of their growing strength.

In a nearby community, the women of Guinaang, Bontoc, together with other residents, marched to the military detachment in their community and presented a petition demanding the withdrawal of the Armed Forces of the Philippines from their village. They cited the abusive behaviour of troopers,

the sexual harassment of women and frequent drunkenness as reasons for their request. This has prompted the military to leave the area. In September 1999, in Tinglayan, Kalinga, the women of Tulgao submitted a petition against the plan to build a geothermal plant in their area. The women gathered together and confronted the project's proponents with their protest action. This prompted the project's proponents to temporarily abandon the plan.

In the provinces of Abra, Kalinga and Mountain Province, as well as in the Metro Baguio area of Benguet, women had been able to launch their provincial women's federations. All have allied themselves with Innabuyog, the regional alliance of indigenous women in the Cordillera. They plan to hold a Regional Assembly from March the 6th to March the 8th 2000, whose slogan will be, "Strengthen and Consolidate the Women's Movement in the Cordillera. Defend Land, Life and Resources!"

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Palawan Island

In the year 1999-2000 Palawan, the Philippines' "last frontier", finds itself facing a crucial watershed. While CADC (Certificates for Ancestral Domain Claims) applications under the IPRA (Indigenous Peoples Right Act) are now frozen, local NGOs have yet to agree on a common strategy to secure indigenous lands.

The completion of the "circumferential" road that will encircle and cross the entire province of Palawan before the end of the year 2000, is a central government aim. The main stretch of road was opened in 1992 and it is now being enlarged and completed. Rather than protect the existing roadside forest, the local government of Rizal Municipality has encouraged the unregulated settlement of migrants. Portions of forestland crossed by the national road were also released to the Federation of Land Reform Farmers during the previous administration of Mayor Nicola Montaña. According to some informants, more than 40 hectares of good forest in Punta Baja were released to one of the politicians running for Mayor in the 1998 elections.

A recent field survey carried out by the local indigenous organisation Bangsa Palawan, Philippines (BPP), in collaboration with the UK based Forest Peoples Programme, revealed that the road also passes through steep and broken terrain often across or alongside streams and channels. It therefore

causes a substantial amount of soil deposition and sedimentation in rivers and mangrove swamps during the construction phase. This is mainly due to the limited budget available for road construction, which leads to economies being made at the expense of the environment. Many of the indigenous communities the BPP investigation met were very concerned about the future impact of the road. Some households are even planning to sell their agricultural improvements and vacate the area before the road reaches them. The situation encountered suggests that up until now, the road contractors have had no Environmental Compliance Certificate (ECC) as required by the DENR Administrative Order no. 96-37. Employees of the Narra district office of the Department of Public Works and Highways (DPWH), and the public affairs information officer of the Province, told the BPP members that existing environmental regulations are often ignored because it takes too long to obtain an Environmental Compliance Certificate from the DENR. The same can be said for gravel quarrying within the Puerto Princesa and Roax municipalities. Gravel for the expansion and paving of the northern stretch of the national road is presently being extracted in commercial quantities. Within the traditional territory of Batak communities, the heavy machinery of the Weing and Hanjin companies is seriously damaging the riverbeds of Tanabag and Mauyon Rivers.

The road is also threatening valuable mangrove sites which are an important source of livelihood for the local Palawan communities, especially in Barangay Panalingaan.

La Niña ravaged Palawan Island between January and April 1999. According to indigenous people, it caused even more severe consequences than El Niño. Because of excessive rain, indigenous swiddeners were able to burn only small portions of their cleared land. It would appear that the reduction of agricultural activities (which are mainly managed by women) is having a negative impact on indigenous gender roles. In fact, to compensate for the loss of agriculture, the people sought to engage in activities normally controlled and organised by men only. As a result, the position of indigenous women as bearers of food sources tends to decline. The transition from El Niño to La Niña was also characterised by the outbreak of intestinal diseases and influenza, which exacted a heavy toll on the indigenous infant population.

After the DENR suspension of all pending applications for ancestral land claims, indigenous land security is now under serious threat. In Barangay Bulalacao (in the Municipality of Bataraza), the Palawan community is being

intimidated in an attempt to make them vacate their land, which was granted to them through a municipal resolution in 1967. Their land is now being claimed by the locally influential Narrazid family, which has strong connections to the government authorities of Bataraza. The community is being threatened to pay 30,000 pesos per family if they want to continue to live on their plot of land. Otherwise they are being told they must vacate the area. At present the land of the Palawan communities of Maasin, Mambalot and Iplan (in the Municipality of Brookes point) is also being threatened by the Celestial Mining Exploration Corporation's operations.

The government's package for tenurial security and sustainable forest management is far from being acceptable. There is, in fact, a resurgence of repressive forest policies reintroduced under apparently benevolent rubrics and acronyms such as CBFM (Community Based Forest Management) agreements. In reality such policies are not culturally acceptable and cannot provide an adequate amount of staple food. CBFM policy violates indigenous peoples' rights to their ancestral land, and it perpetrates government control over indigenous peoples' livelihoods. In fact with CBFM, indigenous peoples' role in their own territory is rather reduced to that of stewards of public land. For instance, the agreement between the Provincial Environment and Natural Resources Office (PENRO) and the Association of Batak of Tina, specifies that the indigenous beneficiaries should "immediately assume responsibility for the protection of the entire forestland within the CBFM area against illegal logging and other unauthorised extraction of forest products, slash and burn agriculture (*kaingin*), forest and grassland fires, and other forms of forest destruction, and assist DENR in the prosecution of violators of forestry and environmental laws". Clearly, the contract requires that the Batak themselves guard their area from their own practices, such as swidden cultivation.

In 1999, as a result of the overall uncertainty over land tenure, an increasing number of indigenous peoples have 'sold' their land to Filipino migrants. According to several Barangay officials, land is not actually being sold to migrants in a straightforward commercial way. Instead, they argue that indigenous occupants who first developed the land (e.g., through clearing forest, planting of perennial crops, etc.) are simply transferring the right to continue agricultural development on the land to migrants. This "transfer of rights" is acknowledged by the Barangay chief in the presence of both parties (the indigenous sellers and the migrant buyers). This is later certified by the Municipal Mayor. Much exploitation occurs during the selling of "land rights".

The asking price for one hectare of land is ridiculously low, averaging between 2000 to 3000 pesos (c.US\$53 to \$79).

At present, even the legal recognition of indigenous claims to their ancestral domain would be insufficient to prevent the exhaustion of resources in Palawan Island. This is because the causal agents of forest exploitation, coral reefs destruction and other forms of environmental degradation in Palawan can no longer be attributed to one single source. Thus stopping 'outsiders' from exploiting local resources would not necessarily stop the locals from overexploiting their own resource base. Because of increasing food deprivation, even indigenous people are encouraged to adopt destructive technologies (e.g., illegal fishing devices).

On the one hand, the new social and economic transformation taking place in Palawan requires a switch from the conventional top down treatment of environmental problems to the adoption of a 'micro level' approach, and thus to the diversity and creativity of indigenous approaches to the use of resources. On the other hand, local NGOs should come up with a more unitary policy as soon as possible, and define where they stand on questions of power, political alliances, and indigenous rights.

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Mindanao

They had hardly recovered from the long drought and subsequent rat and locust invasions caused by El Niño in 1998, when the Menuvû indigenous people of Central Mindanao were drawn into the violent conflict between the Philippine Army and the Moro Islamic Liberation Front (MILF).

The conflict began on the 27th of October 1999 when the combined elements of the Philippine Army Eighth Infantry Battalion, the Civilian Armed Forces Geographical Unit (CAFGU) and the Menuvû Civilian Volunteer Organisation (CVO) attacked the MILF fortified camps in Mekebimban. The intense gun battle lasted three days and cost three Menuvû lives. In what was an apparent reprisal, the MILF desecrated the dead bodies by inserting sweet potatoes in their mouths, plucking their eyes out and filling them with ground corn. A week later the fanatical group called the Christian Liberation Army (CLA) fired at Muslim farmers in Keyumangen, a village adjacent to Kilavew. And a couple of days after the CLA attack, a hundred MILF guerrillas armed with rocket-propelled grenades and high power firearms took Tehimtim without any resistance from the resident CVOs. "We were told at gunpoint to dig foxholes and tear down our houses to use as covering materials for their trenches", recounted Timuëy Ngawil Limpid, the Menuvû leader who was taken hostage but who later managed to escape.

Since fighting broke out between government troops and the MILF in Central Mindanao, about 500 Menuvû families have lost their homes and farms. Most of the evacuees sheltered temporarily at evacuation centres in Liliungan, Kimaadsil, Kibudtungan, Aroman and Carmen Poblacion. Scarcity of food has been adding to the difficulty of the Menuvû evacuees. "We are already happy if the DSWD (Department of Social Welfare and Development) will distribute five kilos of rice per family once every two weeks", said Eminta Detuwata, a widow with five children and an evacuee from another

affected village called Pinementangan. "But now it seems we are already forgotten," she continued. To make ends meet Eminta and other women look for paid labour in the Bisayan (Christian settlers') neighbourhood to earn enough for a day's meal.

The lack of food forced the evacuees to visit their abandoned villages to pick some cassava and bananas or to hunt wild animals. Two Menuvû hunters, Puyat Lipetuwan, 37, and Bebot Empalid, 35, were tortured and killed by suspected Moro rebels. Gun battles, bombings, evacuations, and bizarre killings were not new to the people of Cotabato, especially those in Carmen. In the late 1960s, the Moro communities experienced massacres and other killings mostly at the hands of the Philippine Constabulary. In the early part of 1968, the infamous Menili massacre in Carmen, Cotabato occurred, killing 70 Moro women, children and old people inside their mosque. The massacre was carried out by a military backed anti-Moro death squad called Ilaga and it stirred up the Moros' deep-rooted hatred of the Christians.



Evacuation center for Menuvû evacuees in Makataktak, Aroman
(Foto: Christian Erni).

In September 1996 the Organisation of Islamic Conference (OIC) brokered a peace accord between the Moro National Liberation Front (MNLF) and the Government of the Republic of the Philippines (GRP). The MILF was then a faction of the MNLF, and its leader and former Vice-Chairman of the MNLF, Salamat Hashim, fumed in the sidelines while government representatives negotiated with MNLF leader Misuari. Paid too little attention by the authorities, the MILF amassed arms, recruited men, and fortified its camps in the hinterlands of the Maguindanao, Lanao, Sarangani and Cotabato provinces.

Less than a year after the signing of the GRP-MNLF peace agreement, the MILF is no longer content with sitting on the sidelines. It demanded a central role in resolving the so-called Moro problem in Mindanao. In February 1997 the government began talks with the rebel group. But in the ensuing months, the MILF fought bloody battles with government troops in different parts of Mindanao. The MILF expanded its claim to territory and exacts revolutionary taxes, including some from indigenous people's villages (generally referred to as Lumad in Mindanao). Farmland abandoned by the Lumad and by Christians has been taken over by Moro farmers. This has happened in Vekbaken, Kilavew and Pegelungan in Carmen, Cotabato and Fenangkiet along the boundaries of the Provinces of Sultan Kudarat and Maguindanao of the Dulangan Manobo and Lambangian tribes.

At dawn on April the 27th 2000, the MILF and the GRP peace panel representatives signed a preliminary peace agreement. But less than seven hours later, government troops attacked guerrilla installations along the Narciso Ramos Highway near Camp Abubakre As Siddique, the MILF's main nerve centre. Three days after the attack, the MILF central committee issued a unilateral suspension of the peace talks. At the height of the military offensive aimed at clearing the highway of Moro rebels, some 500 of the MILF's forces stationed themselves along the road. In less than three weeks of intense fighting, 101 military personnel were killed in action with 21 others missing. The rebel side incurred undisclosed casualties, and 41,000 civilians were displaced from their homes with millions of pesos worth of property being damaged.

NGOs, POs and church leaders urged the contending parties to cease hostilities and to return to the negotiating table. On the 30th of May, the MILF agreed to resume peace talks with the government. While both sides were starting talks at a hotel in Cotabato City, a contingent of government troopers stormed and overran Camp Bushra in Lanao del Sur. The military offensive against MILF camps will not affect the talks according to Cotabato congressman, Anthony Dequina. "We are only doing our job in accordance with the

mandate of the constitution, protecting civilians from lawless elements", said the congressman.

The Mindanao problem is further complicated by the Abu Sayyaf Group, an extremist Islamic faction that is sowing terror in Basilan and Jolo by killing or kidnapping hapless civilians in the name of Islam. (Like the 19 tourists and two Filipinos vacationing in a diving resort in Sipada Island off Sabah, Malaysia on April the 23rd this year). Among its other demands, the Abu Sayyaf has called for the creation of a separate Islamic state in Mindanao, the creation of a Sabah Commission to look into the situation of Moro refugees in Sabah, Malaysia and the setting up of livelihood projects in Southern Mindanao especially in Basilan and Jolo. So far the government is sticking to its policy of 'finishing off' the MILF and the terrorist group using military means. However mounting international pressure on the Philippine government to enter into negotiations, has made it reconsider its militaristic position.

EAST TIMOR

East Timor was a Portuguese colony for more than 400 years. In 1975 it was invaded by Indonesia, which proclaimed East Timor Indonesia's 27th province the following year. The Indonesian occupation was brutal. At least 200,000 people - almost one-third of the population before the invasion - lost their lives as a result of war, starvation or disease. It was also illegal, never being recognised by the United Nations.

In 1999 Indonesia finally accepted a referendum about the future status of East Timor, but at the same time it sponsored more violence in the territory. Following the referendum, in which the East Timorese voted overwhelmingly in favour of independence, an international military force arrived, and Indonesia had to end its occupation.

During February 2000 this force was gradually replaced by a regular UN peacekeeping force consisting of 9000 troops, military observers and civilians from 23 countries. At the moment the former Portuguese colony is under UN administration while the foundations for a free East Timor are being laid. Formal independence is expected by 2001 or 2002.

Autonomy or Independence?

On the 27th of January 1999 the Indonesian government announced that it was prepared to give the people of East Timor two choices, autonomy within the Indonesian state or independence. It was the first time that the Jakarta gov-

ernment mentioned the possibility of letting East Timor go. Therefore it was an important step forward. But it was still unclear just how the East Timorese were supposed to express their opinion, because Indonesia still refused to consider a referendum on the issue.

About the same time a new form of violence appeared in East Timor when pro-Indonesian militias began to terrorise the population, especially those who were in favour of independence. The militias were armed, funded, organised and trained by the Indonesian army (TNI).

Indonesian authorities were following a two-track policy. One group around President Habibie was prepared to let East Timor go because it was an international embarrassment to Indonesia, while another group around Defence Minister Wiranto wanted to hold on to East Timor for several reasons. Firstly many generals had economic interests in East Timor. Secondly it would be humiliating for Indonesia to withdraw from East Timor. Thirdly a free East Timor might encourage other areas ruled by Indonesia to struggle for independence (e.g., Aceh or West Papua).

The New York Agreement

On the 5th of May 1999 Indonesia and Portugal concluded an agreement in New York. Under UN auspices the two states had been talking about East Timor for many years, but negotiations had never produced any substantial results. Now Indonesia and Portugal agreed that the people of East Timor should be consulted about their future status.

It was the first time that Indonesia accepted a referendum on the issue. Therefore it was an important step forward. But there was also a negative side to the New York agreement - Indonesia was to be responsible for security before and after the referendum. Human rights organisations warned against this since, they argued, the Indonesian army had caused death and destruction in East Timor for more than 20 years. When the agreement was signed, there had already been many cases of violence - the massacre at the Liquica Church complex, the attack on the home of Manuel Carrascalao, etc. - and no indication that the army would protect law and order. How could anyone believe that this army would respect the result of the referendum if the East Timorese were going to vote against Indonesia?

Clearly this was not an ideal arrangement, but Indonesia insisted, and at that time no Western government was prepared to pressure Indonesia any further on this point. So Portugal and the UN accepted it, because it seemed impossible to get a better deal. At first, the ballot was scheduled to take place in early August. Later it was postponed until the 30th of August.

The UN established the United Nations Assistance Mission in East Timor (UNAMET) to organise the referendum. UNAMET staff were unarmed civilians, who were unable to stop the growing violence. They were not even able to defend themselves, something which turned out to be fatal when the situation exploded in early September.

The Referendum

In spite of the growing violence UNAMET was able to register voters, conduct the consultation, collect the ballot papers and count all the votes. But it was unable to stay in East Timor after the vote. The referendum took place on the 30th of August 1999. It was a relatively peaceful day, at least according to the standards then prevailing in the territory, and the result was announced five days later. It was impressive - 98.6% of the registered voters cast their ballots, and 78.5% of them voted for independence. Given the fact that this took place in an atmosphere of violence, with pro-Indonesian militias trying to intimidate people to vote for Indonesia, the result was even more impressive.

Just one day after the ballot, the militias recommenced their actions, presumably fearing that the result would go against them. They had good reason to be afraid, and when the result was announced on the 4th of September, things got even worse, with the militias terrorising the population and destroying property on an unprecedented scale. The Indonesian army could not - or would not - do anything to stop them. Most foreigners began to leave the territory for fear of their lives, including reporters, aid workers and even UNAMET, which had promised to remain in East Timor after the vote no matter what the outcome would be.

In many ways the situation was similar to the time just before the Indonesian invasion in 1975. It seemed as if the Indonesian authorities did not want to have any foreign witnesses present when they were going to settle their score with the East Timorese who had not voted as they wished. Most buildings were destroyed, especially in the capital Dili. Some 200,000 people fled to the mountains in order to escape the terror, while some 250,000 people were forcibly driven across the border to Indonesian West Timor and other islands where they ended up in camps controlled by militias or the TNI. According to UN figures, the TNI-militia campaign drove an estimated 750,000 of East Timor's 880,000 people from their homes. A huge displacement in such a short period of time.¹

The logic of the militias and the Indonesian military seemed to be that if they could not have East Timor, then nobody else would. Perhaps it was also

meant as a warning to other Indonesian ruled areas that wanted to secede from Indonesia, even though East Timor had never been a part of the Dutch colonial system, instead being under Portugal's rule. The East Timorese resistance movement therefore was not a secessionist movement.

The End of the Indonesian Occupation

These events finally attracted the attention of the international community. For a brief moment in history, during August and September 1999, East Timor was in the headlines of the global media - after having been largely ignored for decades. US President Bill Clinton urged Indonesia to end the violence in East Timor, and Australia offered to send in troops to do the job. But Indonesia refused to allow foreign troops into the territory. On the 11th of September 1999 the US and the European Union announced that they were suspending all civilian and military assistance to Indonesia. Just one day later President Habibie agreed to accept an international military force in East Timor.

On the 15th of September 1999 the UN Security Council adopted a resolution that authorised an international military force (INTERFET) to take charge of security in East Timor. The force was led by Australia and was composed of troops from 16 mainly Asian countries. The force, which grew to 11,000 troops, began arriving in Dili five days after the Security Council vote. As INTERFET moved in, the Indonesian military began pulling out of the territory.

On the 20th of October 1999 the Indonesian National Assembly ratified the referendum, thus clearing the way for East Timor's freedom. Eleven days later the last Indonesian troops left the territory, thus ending almost 24 years of illegal occupation. During February 2000 INTERFET was gradually replaced by a regular UN peacekeeping force led by Lieutenant General Jaime de los Santos of the Philippines.

On the 25th of October 1999 the UN Security Council adopted a resolution setting up the United Nations Transitional Administration in East Timor (UNTAET) to prepare the former Portuguese colony for independence. UNTAET formed a National Consultative Council consisting of 15 members which is consulted on all major decisions. The composition of the council is supposed to reflect the result of the referendum. Therefore the pro-independence movement (CNRT) has seven seats, the pro-autonomy movement three, the influential Catholic Church one and UNTAET four.

The Problems of the Future

After a long and costly struggle East Timor is free. But even though Indonesia has withdrawn from the territory, the problems are far from over. In a letter dated December 1999, the US solidarity organisation East Timor Action Network pointed out four areas where the new nation faced serious problems:

- "More than 100,000 East Timorese are still detained in West Timor and other parts of Indonesia, where they were taken at gunpoint after the vote. Hundreds of children have died in the militia-controlled camps. The militia must be disarmed and disbanded and people allowed to return home.
- "September's vengeance destroyed most necessities - food, water, shelter, medical care - in East Timor. Nearly every town and the great majority of homes must be rebuilt. People will require international aid for many months. Humanitarian agencies are now providing assistance, but need to work more closely with local leaders.
- "The East Timorese must design their new nation - its government, agriculture, education, laws, economy, infrastructure - overcoming the legacy of five centuries of occupation and critically evaluating models proposed from outside.
- "The East Timorese must cope with the UN transitional administration and international aid agencies and ensure that they emerge from the current well-intended occupation with their society, culture and independence intact."

Law and Order

Members of the East Timor independence movement (CNRT) have always appealed to the international system of law and order, even though this system has not done much for them. In fact the United Nations let them down twice, the first time when Indonesia invaded the territory in 1975, the second time in connection with the referendum in August 1999.

The CNRT fought an armed struggle against Indonesia in East Timor which was legal because it was a clear case of self-defence. But it never took the armed struggle to Indonesia or other parts of the world. It never bombed supermarkets in Jakarta, nor did it hijack Indonesian aeroplanes. This legalistic approach is highly commendable, but also one reason why for many years few people paid attention to their cause.

The UN intervention in September 1999 was welcomed by many people from all over the world, including the CNRT. It was also praised in the media. But most media reports were quite misleading, because they pretended that the conflict was new, when in fact it was almost 25 years old. Most media reports failed to point out three important historical facts.

- The UN had done virtually nothing to stop the aggression back in 1975.
- The Western powers had been actively supporting the aggressor since 1975.
- The Western media had ignored the conflict until recently.

The West's Responsibility

It was understandable that the UN intervention was welcomed. But there were also some critical and sceptical voices raised, voices that drew attention to the fact that Western governments bear part of the responsibility for what happened in East Timor, since they had supported the Suharto regime for years and had only recently begun to distance themselves from Indonesia.

A case in point is raised by the US scholar Noam Chomsky who has written and talked about East Timor for many years. In a comment dated the 12th of October 1999 he emphasised the fact that the US has a grave responsibility for what has happened in East Timor:

"There was no need to threaten bombing or even sanctions. It would have sufficed for the US and its allies to withdraw active participation and inform their associates in the Indonesian military command that the atrocities must be terminated and the territory granted the right of self-determination, as upheld by the United Nations and the international court of justice. We cannot undo the past, but should at least be willing to recognise what we have done, and face the moral responsibility of saving the remnants and providing reparations - a small gesture of compensation for terrible crimes."

Chomsky noted that the US tried to undermine the government of Indonesia's first president (Sukarno) but supported that of the second president (Suharto) who came to power in 1965:

"The rich resources of the archipelago, and its critical strategic location, guaranteed it a central role in US global planning. These factors lie behind US efforts 40 years ago to dismantle Indonesia, perceived

as too independent and too democratic - even permitting participation of the poor peasants. These factors account for western support for the regime of killers and torturers who emerged from the 1965 coup."

During the period 1992 to 1998, the US pursued an ambiguous policy with regard to Indonesia and East Timor. While Congress made cutbacks in weapons shipments and military aid, the Pentagon repeatedly told the TNI that they would like to resume normal relations.

And Grant and Duval gave a vivid example of the opportunistic attitude of some Western governments:

"Britain suspended the sale of Hawk jet fighters which were already to be sent to Indonesia, as the sending of these weapons of war at this moment in time would provoke a tremendous scandal. This was an empty gesture and does not alter the fact that for decades Britain, the United States and Australia have been arming the bloody dictatorship of Suharto with weapons that have been used against the people of East Timor. However, on the 20th of September news filtered out from the British Ministry of Defence that the Hawk jet fighters would be delivered anyway."

Let Down by the United Nations

In a document written by Ted Grant and Jean Duval and posted on the internet on the 20th of September 1999 they criticised the CNRT for putting too much faith in the UN:

"But the United Nations, which is in reality completely subordinated to the United States, has already shown a cynical indifference to the fate of East Timor for a period of almost 24 years. To imagine that this imperialist forum can now change its spots is naive in the extreme."

Presumably, the phrase "imperialist forum" is a reference to Great Britain, France and other (former) colonial powers. But even socialist countries have been supporting Indonesia. In fact, during Security Council discussions in 1999, China was Indonesia's best friend, and it played a key role in limiting UN activity.

Grant and Duval were not at all impressed by the UN's role:

"The conduct of the so-called United Nations since the referendum has been revolting in the extreme. The presence of unarmed observers was a farce which merely played the role of fooling the East Timorese people into a false sense of security and disarming them in the face of armed reaction."

"All along the UN has been acting out a disgusting farce, pretending to intervene on behalf of the East Timorese, shedding crocodile tears and making hypocritical appeals to the Indonesian army to restore order, when everyone knew that this same army was behind the militias. And now this self-same UN wants to pose before the world as the saviours of East Timor! What disgusting hypocrisy!"³

Human Rights

One issue which has generated much discussion is the question of the violation of human rights in East Timor. What happened? Who was responsible? How can those responsible be brought to account? Who will deal with this issue? East Timor itself, Indonesia or an international tribunal set up by the UN? In some respects, the discussion of these issues is fundamentally flawed because it only covers what happened during 1999. What happened between 1975 and 1998 seems to be completely forgotten, even though the number of crimes was much greater in that period.

A case in point is the report by Indonesia's Human Rights Commission (KOMNASHAM) which covers events in East Timor from January 1999 until the Parliament ruling of October 1999 that ratified the results of the popular consultation. An executive summary of the full report was published in Jakarta on the 31st of January 2000.

Part II of the summary states:

"First, there was a strong relationship and linkage between the TNI, Polri, government bureaucracy and the militias. Second, the violence that occurred in East Timor beginning after the announcement of the offer of two options until the period after the results of the popular consultation were announced was not caused by a civil war but was the result of a systematic campaign of violence."

Part III presents six types of crimes committed by the militias: systematic and mass murders; torture and ill treatment; enforced disappearances; gender-

based violence; forced displacement of civilians; and a scorched-earth campaign.

Part IV documents 10 primary cases committed during the period from January 1999 to October 1999: the massacre at the Liquica Church complex; the murder of Kailaco villagers; the attack on the home of Manuel Carrascalao; the attack on the Dili Diocese; the attack on the home of Bishop Belo; the massive destruction and murders in Maliana; the massacre in the Suai Church complex; the murder of a Dutch journalist; the killing of religious figures in Los Palos; and violence against women.⁴

KOMNASHAM was established by the Indonesian government in 1993, following a resolution adopted by the UN Human Rights Commission in Geneva. During the Suharto period it was severely constrained, but has been growing more independent since then. It can investigate and make recommendations, but has no powers to prosecute. KOMNASHAM has produced an important report, although it omits all events between April and August. But will the Indonesian authorities act on its recommendations?

During February 2000 discussions on this issue centred around General Wiranto who was Minister of Defence under Habibie and who became Minister of Security under his successor Abdurrahman Wahid (Gus Dur). The president told the general to resign, but he refused, saying he was innocent. Finally, after many days of statements and counter-statements, the general resigned. President Wahid said Wiranto should be tried in a court of law, adding that he should be pardoned if found guilty. Is this really justice?

On the 1st of March 2000 Wahid made an official visit to East Timor where he apologised for 24 years of Indonesian occupation. He laid a floral wreath at the Santa Cruz cemetery where in November 1991 Indonesian troops killed more than 200 unarmed demonstrators. He also sprinkled flower petals at a nearby cemetery for Indonesian troops who lost their lives during and after the 1975 invasion of the territory. David Ximenes of the CNRT said the resistance movement accepted his apology, but he added that the international community had the right to say that those responsible must be censured for their actions.

How Did the Conflict Come to an End?

Indonesia's withdrawal from East Timor and its ratification of the referendum marked the end of the East Timor conflict, *de facto* and *de jure*. But before we close the book on this conflict, it is worth asking how this was possible.

One interpretation would be that it is because Western governments are serious when they talk about freedom and democracy, human rights and respect for international law. When things got out of hand in East Timor they acted swiftly, sending off an international military force which arrived just three weeks after the referendum. According to this explanation, the Western powers came to the rescue, and the Western media reported the whole thing in great detail.

Western governments and the media promote this interpretation, presumably because it presents them in a positive light. Yet it is contradicted by historical facts. If the Western governments really wanted to help East Timor, they could and should have done so back in 1975. They did not. The UN adopted many resolutions on East Timor - the Security Council, the General Assembly and the Human Rights Commission all did so - but until 1999 the organisation did virtually nothing to enforce these resolutions. The US blocked any serious action by the UN. Indonesia was considered more important than East Timor. Economic and strategic interests came before lofty ideals such as freedom and democracy, human rights and respect for international law.

If the media really wanted to help East Timor, they could and should have covered the issue from the beginning instead of remaining silent for many years. East Timor was isolated from the outside world by Indonesia. But there was always information available to those who wanted to know what was happening, especially since 1990. Activists all over the world tried to get the media to cover the case, but they were nearly always turned away. East Timor was not important, had no news value, and anyway it was a lost cause, so why bother?

A second and more realistic interpretation begins with the economic crisis in Southeast Asia which hit Indonesia particularly hard. The crisis began in mid-1997, weakened Suharto's position and led to his downfall in May 1998. When Suharto lost control of the situation, he lost the international protection he had enjoyed since coming to power in 1965. He had been a friend of the West because he had protected Western interests. Now no longer useful he became an enemy. The West turned against him, calling him a corrupt dictator.

Suharto was succeeded by his protégé Vice-president Habibie - a transition figure - who wanted to solve the East Timor problem because it was an international embarrassment to Indonesia. It was a pebble in Indonesia's shoe, and Habibie wanted to get rid of it. In other words the economic crisis in Southeast Asia briefly opened a window of opportunity for East Timor, and it

managed to slip through, although only after enduring another ordeal of death and destruction.

A Quick Response?

Another question worth asking is why the international community did not react until September 1999. Again there are at least two different interpretations.

One interpretation says that the UN could not intervene until Indonesia had agreed to accept a foreign force in the territory, and that did not happen until the 12th of September. As soon as permission was given, the international community acted swiftly. The Security Council adopted a resolution just three days later and the first troops began arriving on the 20th of September. Accordingly, the international response was not late but extremely quick. This interpretation is promoted by Western governments and Western media, presumably because it presents them as defenders of human rights and international law.

A second and more realistic interpretation begins with the fact that Indonesia had no legal standing in East Timor. Its presence there was always a violation of international law. It was not necessary to ask Indonesia for permission to enter the territory. The fact that Indonesia was asked shows that the international community was in fact legitimising the Indonesian occupation of East Timor, at least to some degree.

From January to September 1999 militia violence was escalating week by week, but the international community did not react until September. Events in East Timor were reported in the media with increasing intensity, which created international public pressure for action. When the international military force was authorised by the UN Security Council it was supported by the public, a crucial factor in enabling Western politicians to act.

Indonesia finally gave in and accepted a foreign force in East Timor because the US and the EU decided to suspend all military and civilian assistance to Indonesia. This powerful instrument could and should have been used long before the 11th of September 1999. Perhaps it should have been used after the 16th of October 1975 when Indonesia killed five foreign reporters in Balibo. If it had been used back then, there never would have been any Indonesian invasion. The UN acted 24 years after the Balibo killings. Is this really a quick response?

Courage and Consistency

Today the people of East Timor are in a difficult situation. Looking back they see a traumatic past. Looking ahead they see a demanding future. Few people have suffered as much since World War Two. But even though the odds were stacked against them, the East Timorese never gave up. The resistance movement (CNRT) was organised as an armed struggle from the mountains, a non-violent underground civilian resistance in the occupied areas and a diplomatic struggle in exile. When the chance finally came, they were ready to take it.

During the long years of death and destruction the people of East Timor were represented by leaders who showed courage and consistency as well as dedication and determination. The most important and well-known figures are Xanana Gusmão, Carlos Felipe Ximenes Belo and José Ramos-Horta.

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INDONESIA

Indonesia under Suharto was, as the anthropologist John Pemberton once put it, a place where nothing happened. Indonesia was routine political stillness. It was the absence of politics as we know it. It was a spectacle of forces and actors battling each other, with movers and shakers seeking the limelight. Every five years, popular passions were allowed to express themselves during two noisy, tumultuous, carnevalesque months of campaigning by any of the three parties contending the elections - elections which the government party routinely won by always the same margin. After these "excesses" - one of the regime's standard expressions for the occasional riots, attacks on police stations or supporters of a rival party that took place during the campaign season - the country would sink back into its slumber for another five years almost overnight. Normality and order prevailed once more. Democracy was theatre, ritual, the affirmation and celebration of order and stability, with the government making sure that it was "never to turn into something which makes us tense", as Suharto once defined his understanding of the concept. The rare episodes of open opposition to the regime in the Javanese heartland and acts of resistance in East Timor, West Papua and Aceh went down in the annals of the 'New Order' as *peristiwa*, isolated, unfortunate 'incidents' that served to underline the need for a constant vigil against the forces bent on dismembering and destabilising the nation.

Today, two years after Suharto was forced to resign, it seems to many Indonesians and foreign observers alike as though the country has been condemned to a future consisting only of *peristiwa* and of no order at all. History is accelerating with a speed that makes people dizzy. Presidential portraits of yesterday have to be replaced at ever shorter intervals. Schoolchildren have to learn the names of new provinces - there is an administrative restructuring going on, with consequences for example, for the Moluccas and parts of Sumatra - and unlearn those of others (such as East Timor). The country where nothing ever seemed to happen, has become a busy construction site, a bustling social and political laboratory.

Today the country is standing at a crossroads. One way points to religious and ethnic strife, to a morass of sectarian communal politics, civil war and mass impoverishment, with possibly dreadful consequences for the whole region. The other way points to the birth of a polity with which for the first time many people can actively identify, where the interests of civil society are recognised and represented, and where democratic institutions can prove that

they function better than autocratic ones. Events can tip the situation either way and at present nobody in his or her right mind would risk predicting exactly where all this is going to end.

There are those that feel that Indonesia is a Balkans in the making, that its disintegration is inevitable and that it will go the way of other vanquished empires of the 20th century. Like Austria-Hungary after its defeat in the First World War, like the Soviet Empire after it lost the Cold War, Indonesia, they say, has lost a war and will suffer the consequences. It has been debilitated by the Asian economic crisis and will be 'liquidated' as an empire by a world that is tired of humanitarian catastrophes and that is too full of political powderkegs, which Indonesia will certainly become if it is allowed to persist as it is. Others quietly count on the soothing effects of the economic upswing that the southeast Asian region has taken in 1999, hoping that the recovery of the economy will give the Indonesian people a stake in the democratic experiment that the country is embarking upon.

There are certainly signs that point in both these directions. Among the indicators for ill is the fact that parties and politicians have discovered religion as a rallying theme (a great many of the 70 parties contending the 1999 general elections appealed to the voters on the basis of religious affiliation). Many Christian and Hindu-Buddhist Indonesians (and therefore many indigenous people) have mixed feelings about the defeat of Golkar, the once omnipotent presidential party, at the ballot. Although Golkar was corrupt to the bone, to them it represented a secular strand in politics and with it the repression of religious extremism. Majorities of indigenous people in places like West, Central and East Kalimantan and Sulawesi voted for Golkar and lost along with the party. In these areas there are real fears that the accession to the presidency of the head of the Islamic brotherhood Nadhlatul Ulama, Abdurrahman Wahid, will mean that Muslim groups might now openly pursue an Islamicist agenda.

It may be paradoxical, but to some political observers, the fact that Jakarta was willing to negotiate on the fate of East Timor and allow a referendum before it was finally forced to give up sovereignty over the territory, is also of grave concern. They argue that this act of grace - even though it redressed a grave violation of international law - raised what are, after all, unrealistic hopes in other restive provinces (mainly Aceh and Irian Jaya, i.e., West Papua). Considering that further calls for secession by regions and peoples who feel oppressed by the centre are falling on deaf ears - and this does not only mean the military but also the broad domestic public to whom President Wahid,

unlike Suharto, is accountable - the new government appears to have little room for compromise. After years and years of brutal repression under martial law conditions, few people in Aceh and even fewer in Irian - at least during the first months of Abdurrahman Wahid's presidency - were willing to give Jakarta's offers on autonomy even so much as a close look, and much less a chance. Throughout much of 1999 it seemed as though the battle that the new government sought to wage for the hearts and minds of the disaffected citizens in these two regions, was lost before it even started. Faith in state institutions and particularly in the unreformed military, is very low. With the secessionists in New Guinea and Northern Sumatra pressing for independence - a campaign not only waged by symbolic means like the raising of the flags of the independence movements, but also involving guerrilla warfare and assaults against police and military targets - the Indonesian army will continue to resort to using terror tactics against the civilian population, no matter how well-meaning the incumbent president or government might be. Since the state has too much at stake in Aceh and Irian Jaya, and because there will be much less international support for the cause of independence there than in East Timor, there looms the prospect of bloodshed and suffering on a still larger scale than the local populations have experienced so far. This will have potentially disastrous results for the Indonesia's economy and the country's image abroad.

To stem the tide of criticism against the unequal distribution of powers between the centre and the periphery, and to help stave off the disaffection of virtually all Indonesian regions about the one-way flow of revenues from the provinces to Jakarta, on April the 23rd 1999 the Indonesian parliament (still under Habibie), signed into law a bill promising to grant more decision-making powers to provincial and district governments. This law, aimed at administrative decentralisation, gives provinces the authority to elect provincial parliaments and local officials without interference from central government for the first time. A second law was passed which gives the same bodies a limited amount of fiscal and legislative autonomy. Under that law which professes both to bring about the fair sharing of natural resources and to shift taxation powers to the regions, 80% of forestry revenues and 15% of net oil revenues, for example, are to remain in the provinces where they have been generated. While these new pieces of legislation certainly do represent a clear break with the centralist past, it is more than doubtful that they will succeed in defusing unrest in those outlying regions where secessionist sentiments run deepest. The law on 'regional autonomy', as the parliament called it, and

the one on the division of revenues, are laws addressed to the regional elites already *in power* who want to broker a new deal for themselves. They are not laws designed to please either the long persecuted leaders of dissident independence movements, or their politically and economically marginalised peoples as a whole.

Indeed, the pressure that resulted in the drafting and the final passing of the laws came mainly from established politicians - including governors and local party bosses of Golkar- and well-to-do businessmen in resource-rich, but not normally troublesome provinces like Riau, parts of Sulawesi and East Kalimantan. These 'white-collar protest movements' pressured the Habibie government with threats of unrest if their demands were not met, and the province of Riau even went so far as to declare itself an independent republic in mid-March, 1999. Whereas such theatrical rebellions can easily be quelled by the promise of a 10 or 15% share in oil revenues, the broad-based movements for independence in Aceh and West Papua which thrive on decades of brutal military repression and virtual occupation by the army, are not likely to compromise their cause for the promise of a few billion rupiahs.

Yet Indonesia would not be the only country in the world which could live with one or two locally contained insurgencies. With the pebble in its shoe (this is how the ex-foreign minister, Ali Alatas, used to refer to the East Timor problem) removed - we must not forget that West Papua and Aceh are considered, under international law, historically parts of the territory of Indonesia, and not an occupied nation like East Timor - Indonesia could, if everything else develops along the most positive of lines, theoretically regain a measure of the political stability and relative economic prosperity it once enjoyed, and steer clear of mass unrest in its heartland, Java. Yet that is exactly what one must doubt when one consults the data on the impact of the economic crisis that hit Indonesia in mid-1997.

Urban areas have borne the brunt of the crisis. Indeed, the whole of Java has been severely affected, since the economy of Java's cities and that of the hinterlands are closely linked. Throughout 1997 and 1998, the inflation rate oscillated between 70 and 80%. Unemployment officially stood at 22% (18 million people), although unofficial estimates put it at over 50%. By the end of 1998, it was estimated that 90 million Indonesians - mainly in Java - were living below the poverty line and at least 17 million families were suffering from acute malnutrition. As a consequence 'bread revolts' erupted, with mass looting following in the wake of demonstrations in the cities, the occupation

of plantation land and the storming and looting of government warehouses in the Javanese countryside and fish trawlers along Java's coasts. The concern that the centre does not hold anymore, the fear that the empire may unravel along its edges, is less terrifying than the prospect of the centre itself exploding in revolt and bloodshed and descending into chronic violence. If the government does not succeed in reverting the current economic trends, such a development is not unlikely. With Java in turmoil, the whole of Indonesia will face a bleak and bloody future.

Yet on the other hand, there are some recent developments which give cause for cautious optimism. Seen in this light Indonesia has the potential to be an ethnically diverse nation in which local and indigenous rights are better protected. To begin with the new president who was elected on October the 17th 1999, may turn out to have been the best of all possible choices at this moment in time. Abdurrahman Wahid is a widely respected Muslim scholar with a long record of religious moderatism, with an intellectual and even cosmopolitan background. As such he is ideally positioned to defend the separation of mosque and state, and to curb the rising influence of a militant, Islamist Islam both in the population and within state institutions. Unlike Megawati Sukarnoputri, his rival for the presidency, he is known to be a skilful tactician and a shrewd politician. Being both male and a Muslim, he enjoys broad legitimacy in predominantly Muslim Indonesia, and he can use this legitimacy to carry out the sweeping political reforms that he has promised. Although his inauguration address sometimes struck an awkwardly nationalist note by putting the assertion of national unity high on the political agenda (in the same breath he bemoaned both the interference of outside nations and above all of Australia in East Timor, and the "insensitivity" of other nations towards Indonesians' pride and national sovereignty) this does not necessarily mean that under his reign Indonesia will resort only to strong-arm politics when dealing with insurgencies in the regions.

In fact, within three weeks of his election, Wahid launched an initiative on Aceh in the course of which he went so far - on last November the 4th - as to concede "in principle" to the demands of the Acehnese for a referendum like the one that made East Timor an independent territory. He added that the Acehnese should be offered the same choices as the East Timorese. This was a surprising move, not only considering that Aceh is - unlike East Timor - a very rich province (Aceh's revenues from oil and natural gas make up 11% of Indonesia's total export earnings), but also because it is indeed likely that the 'loss' of Aceh would trigger further defections from the Indonesian state.

Many analysts agree that one of the main reasons why possibly a majority of the Acehnese, given the chance, would favour secession from Indonesia, is the Indonesian army's dismal human rights record during 10 years of de facto military occupation. (The region enjoyed special status as a *Daerah Operasi Militer*, a military operation zone, from 1989 until 1998, a status which gave the men in uniform almost unrestricted freedoms in their counter-insurgency campaign). On November the 4th the new supreme commander of the Armed Forces announced the withdrawal of all special operation forces - the troops charged with the most horrible human rights violations in Aceh - from the province before the end of November. As a further sign of Jakarta's goodwill, an Acehnese was made Deputy Supreme Commander of the army. And in an unexpected move at the end of October, President Wahid secretly met with representatives of the separatist guerrillas, the *Gerakan Aceh Merdeka* (GAM - Movement for a Free Aceh). Such a meeting, and, indeed, what could be the beginning of a protracted negotiation process, would not have been possible under Suharto's New Order. Under the old regime separatist insurgencies were described as *Gerakan Pengacau Keamanan* (movements whose intention it is to disrupt order, or 'troublemaker movements'). They were the exclusive preserve of the armed forces, since it was denied that they had any political substance at all, or that they might in fact be addressing real grievances.

From an optimist's perspective, it may matter little that to begin with, the Acehnese remained unimpressed by these new signs of openness from Jakarta. What matters more is the fact that the country's new leadership is admitting that they have a serious problem with Aceh, and that that problem needs to be solved, and to be solved - in the main - by political means. Indeed negotiations with the GAM's military leadership which started on a high level in mid-March 2000, have produced their first results. On May the 4th newspapers reported that the government and the GAM were ready to sign a military truce on May the 12th in Geneva. A much more unpleasant scenario, in fact, could be imagined in which the Indonesian leadership tries to deal militarily with the Acehnese. The army could continue to commit grave atrocities, secure in the knowledge that the prospect of an independent Aceh under the flag of a militant Islam sitting atop the all important geo-strategic Strait of Malakka would be cause for alarm among Western governments.

As of the time of writing, things in Aceh seem to have calmed down after the guerrillas lost a lot of political goodwill and military ground in the wake of renewed army offensives in the province in January 2000, which seem to have produced heavy casualties in the ranks of the GAM. As the military

fortunes turned, it became increasingly clear that the expectations raised by the radical Acehnese nationalists regarding the imminent dawning of independence were overblown. The air of optimism and 'revolution' that hung about the streets of the capital of Banda Aceh and the province's smaller towns during and after the events that led to East Timor's separation from Indonesia, has given way to resignation and an increasing weariness with a war that the GAM tells the people Aceh has to go through if it wants sovereignty.

A mere seven months ago, on November the 8th 1999, 500,000 people (a quarter of the province's total population) had taken to the streets of Banda Aceh, the provincial capital, to protest against the "violation of their unconditional right to a referendum". This was because Wahid had refused to indicate when the referendum could take place. A general strike called by the secessionist movement in August had been overwhelmingly observed, making it the largest such mobilisation in Indonesia since the mid-60s. Frustration in Aceh reached a peak after November the 17th, when the President backtracked from his earlier offer, declaring that independence had never been on the agenda. He stated, however, that the province, should it agree to his idea of autonomy, could keep no less than 75% of its oil revenues and introduce Islamic law, a long-time plea of the independence movement. For its part the army lost no time declaring, on November the 8th, that a referendum in Aceh would violate the constitution. Parliament followed suit, issuing similar statements.

While it became ever more clear that the President had just been playing for time when he had hinted that Aceh could - if its citizens should so decide - follow East Timor in seceding, Abdurrahman Wahid and his government may have won over many would be supporters of radical solutions in the restive province by standing up for other promises that he had made. Notably he said he would order investigations into human rights violations perpetrated by the army against Acehnese civilians and bring those found guilty to justice. On November the 25th last year, his then minister of defence, General Wiranto, had to answer charges of having authorised army terror in Aceh under his term as supreme army commander, before a human rights commission of the parliament. He was later sacked by the President on the grounds of similar accusations regarding his role in the violence in the run-up to and aftermath of the referendum in East Timor.

The chances for a negotiated settlement of the conflict at the northern tip of Sumatra seem, at the time of writing, to be intact. Although unruly army commanders may in fact embarrass the central government at anytime by

shedding new blood in Aceh in the hope of derailing the peace process and weakening the President, Wahid has gained a lot of credibility by reigning in the military, and doing everything in his power to bring top-ranking officers to justice for atrocities committed under their command. Such a development would set a good precedent for a novel way of dealing with Indonesia's other regional insurgencies, notably the one in West Papua. The road towards establishing civilian supremacy over the military and overhauling the centralist set-up of the Indonesian Republic is still long and fraught with uncertainties. Yet the Wahid government deserves credit for restoring at least some of the political capital necessary for keeping the wilder political fantasies of the peoples from Indonesia's outlying regions in check.

A second reason for optimism (if, indeed, the first one just outlined qualifies as such) comes from the fact that the economic crisis had grave impacts in some parts of the country, but not in others. It has not been as all embracing or as utterly devastating as some of the earliest reports would have us believe. In most areas the livelihood of many indigenous peoples has not suffered further from the impacts of the meltdown of the modern economic sector (like banking, insurance, industrial production, and many middle-scale enterprises in the town and cities). And in some regions, indigenous economies have, in fact, prospered. Whereas drought-related and forest fire-related, famine was reported in 1997 and 1998 respectively, in parts of Irian Jaya and East Kalimantan, in the absence of such disasters, parts of Eastern Indonesia (including East Nusa Tenggara and Maluku) have been and are doing relatively well. This is as a result of both a cocoa and copra boom, and the end of Tommy Soeharto's monopoly of the clove trade (Forrester 1999:16). For the economies of many regions with indigenous populations, the devaluation of the rupiah has been a blessing, since this led to a sharp rise in exports and in net earnings from the export of cash crops such as pepper, cocoa, fish and prawns. This has been the case in many parts of Sumatra and Sulawesi, where people in fact are happy that the *krisis moneter* (monetary crisis, abbreviated as 'Krismon') occurred, and want it to continue. The outer islands' comparative economic gain over Java may, in the short and mid-term at least eliminate some tensions in the regions on the micro-economic level. It might also compensate the peoples of the periphery for some of the political and social inequities that they are likely to continue to suffer for at least some time at the hands of the centre. If these economic trends on the outer islands continue, the combustible mix of economic and political frustrations that have accumu-

lated there may, for the moment at least, have been rendered a bit less dangerous.

No doubt, post-Suharto Indonesia is a messy, confusing place, with all sorts of people getting at each other's throats. Two years after the ousting of Suharto, an estimated 1500 to 2000 people have died in communal violence in at least half a dozen hotspots across the archipelago. The pervasive depolitization of Indonesian society engineered by Suharto and the elimination of institutional channels to address communal grievances under his regime are now ensuring that such frictions take the form of uncompromising, murderous street action. More often than not, religious differences separate the fighting groups, lending the clashes a particularly cruel and merciless quality. We have learned that where such primordial 'tribalism' rears its ugly face, divisions become unbridgeable and problems defy solutions. Yet a closer look at some of the cases of what is presumably 'religious' violence, will reveal rather that it is mundane matters and not religion that often lie at the heart of the problem. Practical political solutions should therefore be found to remedy such problems. The concluding point here is that the view according to which the collapse of authoritarian rule over a multiplicity of ethnic and religious groups matter-of-factly unleashes destructive 'primordial' energies, is quite simply wrong. It may be true that sometimes "good fences make good neighbours", but there is no natural law saying that fenceless neighbourhoods will automatically and inevitably turn into bloody battlefields. A brief, concluding analysis of the unrest that started on the island of Ambon in the Moluccas in January 1999, will underline this point and maybe help us see Indonesia in a less dark and less medieval light.

The island of Ambon, which until half a century ago was still predominantly Christian, has over the past decades seen a massive influx of Muslim immigrants. These have come from both within and outside the Moluccas. (Contrary to foreign perceptions, many of the Moluccan islands have traditionally had strong Muslim majorities). Conversion to Islam has further shifted the balance. A strong local elite on Ambon equates being Ambonese with being Christian, but recent population figures show that statistically, that this is no longer true. Muslims now enjoy a slim majority on Ambon, and since 1992, it has had a Muslim governor, a convert from an old and prestigious Ambonese family. Now Ambon's urban population - and it is in towns where the unrest started and the first killings happened - is heavily dependent on direct and indirect employment in the civil service. Over a quarter of the town-based population finds employment either directly in the administration, or does contract work for the government. To get hold of government

money and jobs, you need connections - and that is where religious affiliations come in.

People often identify with a particular religious community for quite worldly reasons. In Ambon at least, joining the Protestant or the Muslim community means being part of a network that not only worships God in a certain way, but does practical things for its members - providing access to friends in powerful places for example, or protection when things get tough. These networks extend to influential circles in Jakarta. And they also extend downward to street level, where gangs of young men provide what an inefficient police force cannot. Now the simmering tensions between the old Christian elite and their Muslim challengers increased significantly when, late last year, the incumbent Muslim governor appointed fellow Muslims to the posts of deputy governor and provincial secretary - the two most sought after positions beside the governorship. Soon afterwards, rumours started to circulate which had it that the governor was about to replace a total of 38 top civil servants, all Christians, with Muslims. This effectively was the moment when the disgruntled old families of Ambon, led by the governor's main political rival, decided that they had to act.

It had long been an open secret that the two-time loser in the gubernatorial race for the Christian faction maintained links with certain figures from the criminal underworld not only in Ambon, but also in Jakarta. The Moluccan gangs operating in the capital all have a more or less religious identity - some are Christian, and others Muslim. Christian Ambonese mobsters control, amongst other things, the shopping malls, parking, and gambling dens in north-western Jakarta. The trouble in Ambon began shortly after 200 Christian gang members retreated to Ambon after they had lost a gangland turf war in Ketapang, Jakarta, at the end of 1998. On the invitation of people close to the governor's rival, the Christian thugs started to hold meetings in Ambonese church halls, mobilising for conflict with local Muslims. Rival Muslim gangs, meanwhile, gathered at a major mosque in town. Both sides prepared contingency plans for an attack from the other side. When a trivial incident occurred at the city's bus terminal, word was passed on to each side that the final showdown had started.

From here on things escalated as each side believed only its version of events. Muslims spoke of halting the "christianization drive". Christians spoke of Islamic 'fanaticism' in Jakarta and Muslim zealotry in national politics, while some spoke nostalgically of the Christian-dominated South Maluku Republic which lasted from 1949 to 1950. With the killing of people from the hinterland and from other Moluccan islands occurring during the course of

the clashes in Ambon town, vendetta style violence spread to many parts of the archipelago, resulting in a final overall death toll of several hundred between January and April 1999. Dozens more people were killed as well when fighting broke out anew between mid-July and early August.

If this version of the events is to be believed, it is rivalry between elites and not sectarian conflict that is at the core of the problem in Ambon. The main players are motivated by the prospect of material gain and the defence or procurement of political office and privilege. Instead of there being amorphous masses of irrational, suicidal believers intent on confronting one another, there exist rather, clearly structured opposing networks with aspirant or incumbent governors near their top and, down the ladder, local movers and shakers with connections to the underworld in and outside the region. Clearly, the solution to the fratricidal violence in this part of the archipelago lies not so much in an ecumenical dialogue or in outlawing certain expressions of religious identification, but in reforming government in general and in abolishing pork-barrel politics in particular.

More on West Papua in the section on the Pacific Islands.

MALAYSIA

The Orang Asli of Peninsular Malaysia

The September 1998 sacking of Deputy Prime Minister, Anwar Ibrahim, led to a chain of events that was to change the structure of Malaysian - and in particular, Malay - politics. The general election was not due until April 2000. However, ever since the sacking of the former Deputy Prime Minister and the resultant political crisis within UMNO, speculation was rife that the general election would be held soon - as it was felt that the Prime Minister would want to hedge off the impacts of the strengthening political opposition and the probable further decline of the economy. The elections were eventually held on the 29th of November 1999, amidst a period of political flux in the country, at least as far as Malay support for the ruling coalition and for Prime Minister Mahathir Mohamed was concerned.

The political turbulence had caused many UMNO (the dominant Malay party in the ruling coalition) members to leave the party to join the opposition. It also saw the establishment of a new Malay-based multi-ethnic party, Parti Keadilan Negara (ADIL), the National Justice Party. More importantly, it saw the opposition parties closing ranks and uniting under a coalition called

the Barisan Alternatif or Alternative Front. For UMNO and its President (who is also the Prime Minister), this meant that they could no longer rely on the votes of a large segment of the Malay community who traditionally stood steadfastly behind UMNO and the ruling coalition. As such, the votes of the non-Malays were crucial to the political survival of UMNO and the National Front. This meant that once more Orang Asli voters had to be made a fuss of, with their support again being vital in their role as pawns in the game of Malaysian political chess.

As early as January 1999, the Orang Asli began to be the focus of attention. An instance of this occurred when the National Unity and Social Welfare Ministry, the ministry responsible for Orang Asli affairs, revealed that there were plans to implement several income-generating activities for the Orang Asli that year (*New Straits Times* 11.1.1999). And, given that the issue of Orang Asli land rights and ownership was still the main concern of many Orang Asli, government leaders began once again to reiterate their commitment to resolving the issue. Citing figures that have seen little change over the past three decades, the Minister in charge of Orang Asli Affairs, Zaleha Ismail, urged state governments to speed up the gazetting of Orang Asli land (*The Sun* 8.4.1999). Citing the same figures, but interpreting them mistakenly for something new, the First Finance Minister, Daim Zainuddin, announced that "large areas of Orang Asli land are to be gazetted" (*New Straits Times* 10.5.1999, *Berita Harian* 10.5.1999).

On the 22nd of June 1999, in keeping with the tradition of election years, the Prime Minister officiated at a big Orang Asli 'jamboree' in Bukit Lanjan, on the outskirts of Kuala Lumpur. About 600 Orang Asli village-heads were bussed in from throughout the Peninsular, ostensibly to witness a private developer's function in which certificates in building competency were awarded to 17 Orang Asli youths who had completed training in skills such as brick-laying, plastering and backhoe operations. The establishment of the training institute (at the construction site) was part of the compensation package for the Orang Asli when their land was acquired by the state and later sold to a private developer.

The Prime Minister's speech, in fact, went down well with the Orang Asli guests especially when he assured them that the government wanted to upgrade their standard of living "without changing their culture and tradition ... as in having a *Tok batin* as their leader" (*New Straits Times* 23.6.1999, *The Star* 23.6.1999). He also stressed how the Orang Asli were being well taken care of by the government, citing the case of Bukit Lanjan, the place where he

was speaking, where the relocation exercise of the 158 Temuan families, it was claimed, would soon turn them into millionaires (*The Sun* 23.6.1999). No one however questioned how a RM61 million (US\$16.04 million) compensation package (that included compensation in kind) for 158 families could make them into millionaires either as individuals or as families. Nevertheless, the Prime continued with his arrogant stance when he 'magnanimously' declared that, "There is no other country where their aboriginal people become millionaires", adding that, "In the west, they are herded into reserves and taught to become drunks" (*The Star* 23.6.1999).

However, in the eyes of the print media prior to the general election, the state of Kelantan in particular, became a focus of Orang Asli attention. This was not unusual as the Barisan Nasional wanted to dislodge the opposition Islamic Party (PAS) from its control of the state. Thus, as early as February 1999, the Rural Development Ministry announced that it had approved RM20 million (US\$5.3 million) worth of projects "to improve the living conditions of the Orang Asli" in two settlements in Gua Musang (*New Straits Times* 19.2.1999, 22.2.1999). The projects included widening the existing cement road, improving the water and electricity supply, the construction of a bridge and the purchase of a boat to transport children to school.

In August, at a special function for the Orang Asli community in Kelantan, the State UMNO liaison committee chairman, Tengku Razaleigh, told the Orang Asli that their living conditions and livelihood prospects would improve under a National Front state government. He said that it would also take measures to overcome problems concerning the Orang Asli community including matters pertaining to the gazetting of Orang Asli reserves (*New Straits Times* 4.8.1999). At the same function, Tengku Razaleigh, in his call to the Orang Asli to help the National Front win in the coming general election, also claimed that several areas of Orang Asli reserve land had been encroached on by some parties, including state government agencies, for logging and other activities.

"The Orang Asli have to face a difficult life now. They are robbed of their source of income when other people encroach on their land and steal the rattan. Even their water supply is no longer clean due to the excessive logging being allowed by the state government in the Kelantan forest," added the prince-cum-Member of Parliament for Gua Musang, in an obvious attempt to win the favour of the Orang Asli by putting all the blame for their woes in Kelantan on his one time ally, and now political opponent, the PAS government. Similar pronouncements were made by several government leaders to

woo the Orang Asli vote, especially after the general election was eventually called on the 29th of November 1999.

Orang Asli votes, however, did make a difference in the parliamentary seat of Pekan in Pahang where the Barisan Nasional's incumbent, Najib Tun Razak, who is also the Education Minister, won by a mere 241 votes. Clearly here, even if Orang Asli voters counted for only 6.5 per cent (2429) of the total 35,832 voters registered in the constituency, their vote was instrumental in securing victory for the ruling party. And although the Orang Asli generally voted for the National Front in this election, their votes made a difference for the opposition in at least one constituency. This was the state seat of Chini, in Pahang, where the majority (Malay) vote was split. Here, the National Front incumbent lost by a mere five (yes, five) votes.

Although the Orang Asli voters here comprised just five per cent of the 11,168 registered voters, their 558 votes, though small in absolute terms, were nevertheless crucial in such a situation. As it turned out, the National Front's defeat in this state seat was attributed to its party workers' failure to provide adequate means of transport to the polling station for 80 Orang Asli voters from one settlement. A pick-up truck was sent to which the Orang Asli voters took exception. Their request for other vehicles was turned down and as a result the Orang Asli decided not to cast their votes. This was to cost the National Front the seat.

In fact, a month after the general election, an Orang Asli from the area, going by the pen name of 'Ingin Pembangunan' ('Wishing for Development'), urged the National Front government to learn from the lessons of the last election, especially in his constituency (*Utusan Malaysia* 5.1.2000). Despite having voted for the ruling coalition in the past elections, he wrote, there was nothing to show in terms of development for the community - no electricity, no piped water and no agricultural development project. The Orang Asli may not be a majority here he reminded them, but each and every one of their votes still counted. This admonition seems to have been heeded by the ruling party for, in March 2000, when a by-election was called in the Sanggang state seat in Pahang, no effort was spared to win the Orang Asli vote. Although the Orang Asli voters numbered just 1.4% of the 15,276 voters in the constituency, none of their 217 votes was taken for granted.

Thus, during the campaign, the usual announcements of development projects and aid were made, including a RM10 million (US\$2.63 million) allocation from the state for 'development projects' and another RM50 million (US\$13.2 million) which is being sought from the Federal Government (*New Straits Times* 17.3.2000, *Berita Harian* 17.3.2000). In fact, the state

minister for Orang Asli affairs and his team literally camped in the two Orang Asli villages on a rotation basis during the campaign period and conducted a "mind-boggling, packed itinerary of daily events for the amused villagers" (*New Straits Times* 25.3.2000). These ranged from *gotong-royongs* (community self-help cleaning-up programmes) and telematches to nightly open-air screenings of Hindi films and karaoke events, interspersed with political speeches all boosted by crates of alcoholic drinks. It is therefore clear that due in part to the changed scenario in Malay politics, the Orang Asli vote has become important once again - important enough to make those seeking their votes realise that the Orang Asli have been left behind in the country's march towards development and that it is time to make redress.



Supporter of the Orang Asli independent candidate putting up posters of the candidate as well as that of POASM. November 1999 (Foto: Colin Nicholas).

The 1999 general election also saw a new phase in Orang Asli political activism - direct participation in electoral politics. Over the years Orang Asli leaders, especially those in the Peninsular Malaysia Orang Asli Association (POASM), have advocated the need to participate in the political arena if

they are to get themselves heard and recognised. There have been frequent calls for POASM itself to be turned into a political party. Thus, in mid-1999, moves were afoot to register a separate Orang Asli political party called the *Parti Orang Asli* (POA). By September 1999, the formal application was submitted to the Registrar of Societies and it was no secret that a few key leaders of POASM were behind this initiative. According to Majid Suhut, "The establishment of an Orang Asli party is now most appropriate in order to safeguard the interests of the Orang Asli ... just as how other minority groups in Malaysia have done" (*Berita Harian* 31.8.1999). He added that it was time for the Orang Asli to depend on their own party and not the party of another community.

However, when the general election was eventually set for November the 29th 1999, the party's application had yet to be approved. It was then that a small group of POASM leaders decided that independent Orang Asli candidates should contest the Pahang state seat of N2 Jelai (where 38.8% of the 8995 voters were Orang Asli). The state seat afforded an Orang Asli candidate a fair chance of winning (provided they could garner all the Orang Asli votes) as the political scenario in the country meant that National Front incumbents were sure to be strongly challenged by candidates from the opposition Alternative Front. Norya Abas, a Semelai plantation manager from Tasek Bera, thus contested the state seat which was enough to make the incumbent state assemblyman visibly anxious. The Jelai state seat covered the Semai communities in the main Betau Regroupment Scheme as well as isolated Semai communities in the interior hills of Pahang, most of which is accessible only on foot or by four-wheel drive vehicles. Campaigning for the Orang Asli candidate was therefore an uphill task.

Norya ran his campaign on the premise that there was a need for the Orang Asli to have their own elected representative in government. Despite being offered enough information to discredit the incumbent's reputation, the team chose to campaign purely on its ability to persuade the Orang Asli voters to accept the call for Orang Asli political representation. Such a straightforward appeal to Orang Asli sentiments succeeded in swinging support to the Orang Asli candidate, although the process was very slow and energy consuming. No promises were made about bringing development to the area. Nor did the constituents ask this of the candidate.

The inroads made by Norya's campaign caused much concern to the incumbent, a three-term assemblyman who belongs to UMNO, the major partner in the ruling National Front government. The incumbent's team instigated a major counter campaign that involved the distribution of financial

and material largesse. Nevertheless, the Orang Asli took all these usual election vote catching tactics in their stride and were happy to take whatever goodies were offered without revealing their choice of candidate.

The incumbent's campaign then began using a different strategy, employing Orang Asli canvassers from the area as well as a prominent Orang Asli radio personality and the Orang Asli senator. The Orang Asli voters were told not to vote for the independent Orang Asli candidate because he was not of the same ethnic subgroup and did not reside in the area. There was even a suggestion that the Orang Asli candidate, because of his name, was a Muslim and therefore had suspect motives for participating in the elections. (This was said despite the incumbent not being an Orang Asli himself). In addition, the incumbent's campaign was clever enough not to rely on Malay canvassers, knowing full well the local Orang Asli's relations with them. Instead, local Orang Asli leaders, including those working for the Department for Orang Asli Affairs, were effectively used to campaign for the incumbent.

Not surprisingly therefore, the inroads made by the Orang Asli independent candidate began to quickly collapse in the final 48 hours of the campaign when last-minute visits were made by the incumbent's Orang Asli canvassers to try to swing the vote. The incumbent's campaign also got some help from an unexpected source - non-Orang Asli Christian missionaries. In one settlement in Ulu Betau, where the Orang Asli independent candidate's team was received warmly on its first visit, the reception it received on its second visit could not have been more different. So much so that posters of the independent candidate were pulled down and discarded in front of the visiting team. The about turn in support for the Orang Asli independent candidate occurred primarily as a result of Christian missionaries suggesting to villagers that voting for an independent candidate meant voting for the Alternative Front. And with the Islamic party, PAS (whose stated objective is to set up an Islamic state) being a major member of the opposition coalition, there was nothing to prevent them, if the Alternative Front came to power, to embark on a programme to convert the Orang Asli to Islam.

The personal involvement of the Sultan of Pahang through his endorsement of the incumbent was also instrumental in swaying the votes back to the UMNO candidate. The Sultan's decision to '*turun padang*' (to literally 'come down to the field') in the Betau Regroupment Scheme during the closing hours of the campaign, undoubtedly swayed the Orang Asli voters there, since the Orang Asli have a special place in their hearts for him. Nevertheless, Orang Asli voter turnout for the general election was very low, averaging 42.2%, with the interior settlements only showing about 30% voter turnout.

The low voter turnout in the outlying areas was attributed to the dire economic condition of the Orang Asli. "They don't have enough to eat," said one civil servant, explaining that Orang Asli voters were not willing to forego a day's subsistence work just to vote in a polling centre a few hours walk away. By comparison, voter turnout among non-Orang Asli voters in the constituency was 77.4%.

The number of votes garnered by the Orang Asli independent candidate was a mere 141, causing him to lose his deposit. While this seems to suggest that the Orang Asli are divided on the need, and timing, to seek political representation through the electoral process, it should be pointed out that this particular foray into electoral politics was not without its built-in handicaps. Leaving aside the fact that the Orang Asli independent candidate was up against an incumbent who had a well-oiled election machine, as well as access to a great deal of financial and human resources, it was perhaps imprudent to have assumed, in the first place, that the Orang Asli would naturally vote for an Orang Asli candidate, or any candidate for that matter. Furthermore, the short campaign period did not allow a cash-strapped and resource-deprived team to effectively campaign in all Orang Asli areas. Several settlements were not visited directly by the candidate or his campaign team who instead relied heavily on young, hastily-recruited canvassers (or rather 'messengers') who were unable to articulate the issues adequately.

Nor was any prior groundwork done to familiarise voters with the candidate and his candidacy. That the candidate was a '*calun terjun*' ('parachute-candidate') worked to his disadvantage, especially since he was neither from the area nor of the same language group. The 'secrecy' surrounding the candidacy until just a few days before nominations were called, also contributed to dissension among POASM leaders about the whole process, including the choice of candidate (who incidentally, was neither active in POASM nor widely known to other Orang Asli leaders).

Nonetheless, all things considered, the Orang Asli candidacy was an important learning experience for the Orang Asli. And if we are to identify one good that has come out of it, it has to be the impact it has made on the political players in the country. Undoubtedly the Orang Asli vote will no longer be taken for granted. In what was a clear response to the scare the Orang Asli independent candidacy gave the ruling National Front, the Chief Minister of Pahang announced soon after the general election that four special officers were to be appointed to report directly to him on issues involving Islam, and the Chinese, Indian and Orang Asli communities (*New Sunday Times* 12.12.1999, *Sunday Star* 12.12.1999).

But perhaps more importantly for the Orang Asli themselves, this foray into electoral politics has been an education in itself for them. For one, while it is evident that Orang Asli individuals at the local level are more receptive to the idea of direct political involvement, this idea does not seem to go down well with some of the more educated Orang Asli. Strong attachment to the *status quo* and personal vested interests have variously been suggested as possible reasons why these Orang Asli are not willing to stand behind an overtly Orang Asli cause. As such, it may be necessary for the Orang Asli to reassess the nature and extent of their political aspirations and objectives.

On a more positive note, the current year saw a significant victory for the Orang Asli when in March 2000 the Federal Court - the last leg in the appellate court process - ruled in their favour in the Linggiu Dam case in Johor (*Adong Kuwau & Ors v Kerajaan Negeri Johor and Anor*). The Orang Asli had sued the government for loss of income and subsistence as a result of the construction of a dam to supply water to Singapore in their traditional lands. The state government had ruled that the said land belonged to the state and that the Orang Asli did not have rights to it. However, the High Court judge ruled that, while the Orang Asli may not have owned the land, they had customary rights to its use, and so awarded the community RM26.5 million (US\$6.6 million) for loss of income over a 25 year period. This case is set to boost the cause of other cases that are arguing for land rights pure and simple, and not just usufructuary rights.

Sabah

In Sabah, among the issues that came to the fore in the 1999-2000 period are the ninth Sabah State election and the efforts made by the government towards a sustainably managed forest. This article will also focus on women and the continued struggle to strengthen their organisations.

Politics: The End of Multi-Ethnic Parties?

The state elections in March 1999 saw 3 political parties - the National Front (BN), Sabah United Party (PBS) and the newly-formed Sabah People's Front Party (Bersekutu) - contested in all the 48 state assembly seats. The BN political campaign issues centred on its development achievements and that the opposition PBS's stance of "protecting Sabah rights" would only contribute by worsening economic situation and political instability. Never once though did any of the parties address the real issues of the indigenous com-

munities, which numbers 1.4 million (74% of Sabahan population). Issues such as rights to land, recognition of indigenous identity and the right to determine the type of development that is beneficial to people as a whole.

The results came out almost as planned - BN won 31 seats and PBS 17 - perpetuating disillusion in the election system. PBS blamed scare tactics, money politics, voters' transfer and the giving of identity cards to non-citizens (an estimated 800,000) - thus giving them the right to vote - as the main reasons for their defeat. A very worrying factor is the further delineation of electoral boundaries, which will only widen the ethnic and religious divide. The boundaries have been changed to further reduce the number of constituencies for non-muslim indigenous bumiputras (predominantly Bajaus, Brunei Malays, Irranuns, Suluks and Bugis) resulting in 26 Muslim bumiputra-majority seats, 12 non-muslim bumiputra-majority seats, 7 Chinese-majority seats and 3 "mixed" seats. The election trend has shown consistent support for the PBS from the Dusun, Murut and Paitanic indigenous groups (so called "non-muslim" bumiputras). PBS, which ruled Sabah from 1985 - 1994, also won the 1994 state elections with a simple majority but defections of several assemblymen to the BN, and the repeal of the anti-hop law, denied it from continuing to govern Sabah.

The federal government's all-out effort in the recent campaign ensured that the United Malay National Organisation (UMNO) - the dominant Malay West Malaysian party - won all the 24 seats it contested as part of the BN. This is considered unbelievable due to the prevailing strong sentiments of Sabahans about West Malaysian parties and the support for PBS in some of these constituencies. Although UMNO put this down as a change in the people's perception, it has nevertheless cast a lot of doubt on the election system.

Not long after the State elections, the Parti Demokratik Sabah (PDS), the main Sabah-based bumiputra component party of the BN launched a new image based on an old party name - the United Pasok Momogun Kadazandusun Organisation (UPKO). The move was made to consolidate the non-muslim indigenous communities, as they believe that multiethnic parties can no longer garner enough support to form the government. With the Chinese parties, the present government is made up of a coalition of three ethnic-based parties.

Despite its problems, it was believed by many that the multi-ethnic parties that have ruled for two decades would have been a better choice in Sabah. As expressed by a political analyst "... despite the system of rotating chief ministership and the rhetoric of power-sharing and rule by consensus, UMNO, in fact, dominates the other parties in the Sabah coalition". At the federal government level, struggles for power and control among members in the BN

and the invariable dominance of UMNO in the coalition has always been acknowledged as a silent, but explosive issue. Having such a model should have been a lesson for Sabahans to heed.

Forest and Environmental Management

In an attempt to comply with the ITTO guidelines on sustainable harvesting of logs through timber certification, the Sabah government, through the Forest Department and the newly-formed National Timber Certification Council (NTCC) came together to outline the criteria and indicators for assessing sustainability (see *The Indigenous World 1997-98* for more details on Sabah's strategy to implement its Sustainable Forest Management System, SFMS). Consultations with stakeholders were carried out at the Sabah State level as well as at the national level. These consultations - though attended by NGOs working with indigenous communities - were seen by many to be far too rigid; and limited as it did not involve communities directly and the consultations were carried out in such a short period.

The Malaysian Criteria and Indicators (MC&I) strictly followed the ITTO model guidelines and focused mainly on technical aspects to assess timber extraction and reforestation which is mainly through the establishment of tree plantations. It did not provide enough space for the recognition of indigenous peoples rights to land and forest resources, communities' contribution to forest management and active involvement in the monitoring and assessment of the Forest Management Units (FMU). A social baseline study is required as pre-requisite to a management plan for the community forest area in each FMUs. The requirement for baseline studies however, did not include a specific guideline on the scope and coverage of the study, and did not stipulate the involvement of indigenous communities in carrying out the studies. Apparently, many of the studies were carried out by FMU holders themselves or were contracted to universities.

In general, communities are considered as passive participants and recipient of social and economic programmes in the SFM activities. It was also disturbing to observe that the attempt in timber certification was regarded by the logging companies as holders of the FMU for a 100-year tenure, and the Forest Department as a mere exercise without much commitment and urgency to implement.

To indigenous communities, the SFMS could be seen as a strategy to get recognition to their forest, albeit in a limited way. A number of community workshops were organised to explain the government's policy to take part in delineating and zoning community forest areas within the FMU which is re-

quired by the SFMS. The workshops were meant to prepare communities to be more involved in taking part in the assessment and monitoring of companies operating within or near customary forest areas. These local efforts could be complemented by the ongoing national level campaign to get recognition to land and resources. Other efforts include joint dialogues with Park officers to exclude customary land from parks and protected areas.

Meanwhile, the floods that hit the Penampang district in January 1999 - the worst ever - revealed serious environmental problems that are characterised by poor town planning and management. The flood was made worse by the damming of one of the tributaries of the Moyog River. Much of the forest areas in the district have also been exploited and replaced by either rubber smallholdings or residences, while mangrove, rice fields and swamps have been land-filled to make way for development. The fact that there are no by-laws to control earth-moving activities allows developers to do as they please. Many of the Kadazan and Dusun communities residing in the area complained of huge property and farm losses from the flood as it happened just before the harvest period.

Indigenous Women in Sabah

Generally, the issues affecting indigenous women today centres on involvement in decision-making, lack of recognition of the roles women play in society and getting the same opportunities as men. Active participation in decision-making and having equal opportunities in the social, economic and political arena has to be a conscious effort of any groups working with indigenous communities as well as by communities themselves. In the organising work of the indigenous organisation PACOS (Partners of Community Organisations) with communities and the subsequent activities organised by communities organisations themselves, women have learned that they need not be in a subordinate position all the time, and that they have a stake in the community's affairs. However, women have to be encouraged to take up decision-making positions after gaining the necessary confidence and the few strong women who have emerged as role models have encouraged many others in the community to come forward.

It also includes being actively involved in land issues and negotiating land rights, which for example is regarded as a man's domain. For many indigenous women in Sabah, this process has been through initial involvement in areas that are familiar to women such as education and socio-economic activities for confidence-enhancement, from which they move on to take an active role in other issues.

The discussion on gender issues also brought forward the fact that the division of roles based on gender as practised in traditional activities are considered as egalitarian and need not be seen as stereotyping the roles of women. For example, it is generally accepted that while both men and women work together in rice farming, the heavier tasks still fall on men's shoulders and the lighter but more tedious tasks in agricultural production are generally performed by the women. However, due to change in the social environment, there has to be a constant review of these roles to allow for more sharing of responsibilities.

THAILAND

During the past decades profound changes have taken place among the indigenous peoples - often called 'hill tribe peoples' - who live predominantly in northern and western Thailand. Most of these changes expose underlying problems and are weakening the rights of indigenous peoples where they relate to traditional cultures, economy, and religion. Currently the main problems which they face are lack of citizenship and land rights, changing governmental policies and the reduction of accessible land for sustainable cultivation. Furthermore, the loss of cultural traditions and the forced adaptation and assimilation of ethnic minorities to the Thai majority are creating severe problems in the younger generation's lives.

The disastrous deforestation that has occurred in the wake of economic development since the 1960s and the increase in the Thai population has had serious consequences for the minorities. Both the Thai people, and in many places the indigenous peoples as well, saw their traditional sustainable agriculture replaced by an intensive, export oriented agriculture. Indigenous people were often relocated because the government confiscated their lands. This regularly took place in the name of conservation and the regeneration of land. But in reality the driving interests behind such programmes were those of the mining and logging companies.

One-sided reporting made the indigenous peoples appear responsible for the environmental damage in the uplands. Since the government has become more sensitive to environmental problems many organisations, both Thai and foreign, have been trying to improve the situation. But the ideas and solutions that were used were foreign and did not take the specific situation and culture of the indigenous peoples into account, and this caused new complications. Today there is an urgent need for establishing a network among the different

ethnic groups and their communities to further understanding of their situation and to strengthen them in their struggle for their rights.

Evictions of Upland Farmers

In 1999, the conflict between lowland Thai and highland indigenous farmers intensified further. The lowland Thai farmers and environmentalists were acting both independently of and in co-operation with government personnel. It is estimated that in 1999 about 600 tribal people were evicted from their homes as a result of the collusion of lowland farmers' interests and the government's environment policy in the uplands.

For example on March the 29th 1999, 13 houses and their crops were destroyed in a raid on Tungpaka village in Chiang Mai province, which left 60 people homeless. That day 30 armed men came and walked from house to house. They did not say anything and just set the houses on fire while their inhabitants worked in the fields.

On August the 21st 1999 another incident occurred in Nan province. Led by the Director General of the Royal Forest Department, Plodprasop Suraswadi, about 10,000 lowlanders, forest rangers and soldiers marched through the hills to Paklang village. They trampled over the rice fields and lychee groves of Hmong people and planted tree saplings. That was the beginning of a series of 'reforestation exercises' whose aim is to return the area to its 'original state'. Mr Suraswadi stated that five years from now, he will have closed this land. He insisted that he would not forbid access to the highlands but there would be no more cultivation.

The case of Akha communities in Chiangrai Province struggling to prevent eviction from their lands due to the government's environment policy is reported on in more detail below.

Citizenship and Land Rights

The first population census was conducted in Thailand in 1956 according to the National Household Registration Act. At that time indigenous and tribal peoples were not recorded due to both the difficulty in accessing their villages and due to the lack of officers. An official survey of indigenous and tribal peoples took place in 1969 to 1970 covering 16 provinces in the lower and upper parts of northern Thailand, namely Nan, Chiang Rai, Chiang Mai, Mae Hong Son, Lampang, Lamphun, Tak, Sukhothai, Kampaengphet, Uthaitanee, Phisanulok, Loei, Phetchaboon, Prachuabkeeree, Phetchaburi and Ratchaburi. 119,591 people were officially recorded.

During the past three decades, the highland population has increased from 119,591 to 1,033,931 people in 1999. Amongst these people, there are 494,104 who have already been granted Thai citizenship, while another 107,276 are still in the application process. The rest have been granted various different statuses. These include being a legal immigrant, possessing temporary residence, and having highland people status, which means you are given a highland people identity card (either blue or green). This statistic shows that almost half of the hill tribe people still have not received Thai citizenship. Those people who have not yet received Thai citizenship are vulnerable and easily exploited by outsiders. Moreover, they are not allowed to travel outside their own district since doing so requires a special pass. On many occasions indigenous people mentioned that they were not aliens but second or third generation Thais.

There are two other major problems resulting from the lack of citizenship. Firstly the people cannot apply for a 'Sor Thor Kor', a land use certificate, which means that they cannot legally use the land they occupy. Secondly without citizenship it is difficult to find employment, and once hired, exploitation and extortion by the employer are easily possible.

Because these problems have not been solved, around 10,000 of the affected people, mostly tribal people, gathered for a rally in front of the Chiang Mai City Hall in late April 1999 to air their grievances to the government. The rally protested against the rejection of citizenship for tribal people, the present forest policy (including the non-recognition of land rights) and inefficiency and corruption within the government bureaucracy. The 'Rally for Rights' in Chiang Mai drew a lot of attention to the situation of indigenous peoples in Thailand. On April the 19th the Thai state dispersed the rally by using an unconstitutional degree of force. It was a morning of great terror for the women, children and elderly who had gathered at City Hall in Chiang Mai, so the demonstrators agreed to move away from City Hall.

'The Rally for Rights' of May 1999 did bring about results. One consequence was a Cabinet Resolution made by the Thai government. Addressing both the issues of land rights and citizenship, it provides for:

- a) *Land Rights and Land Tenure / Laws of the Royal Forest Department:*
 - The establishment of an ad hoc working committee to review the contested four forestry laws. This review process must take place within a time limit of 90 days from the establishment of the committee.

- Both individual and communal land use areas within communities must be surveyed and registered at the district offices of the RFD within 30 days of the date of the proclamation.
- The delineation and marking of the land areas have to be registered
- All communities must prove their use of the land before the declaration of National Park or Protected Area status and must prove their ownership of the land according to the law.

b) *The Issuing of Citizenship:*

- The establishment of an ad hoc committee to review the problems of citizenship and the existing processes for claiming Thai citizenship. This review process must take place within 60 days of the establishment of the committee.
- Three categories of people exist within the group who have problems regarding citizenship:

1. People who have fallen through the process of claiming citizenship. This group includes people whose parents or relatives have official Thai citizenship or have documents to prove they qualify for citizenship themselves. People who fall into this group must present themselves at the district office of the Ministry of the Interior and the provincial office and apply for citizenship within 60 days.

2. People who are not yet ready to apply for citizenship, due to incomplete documentation or having not yet completed the necessary process of preparation. People in this group must be aided in the process of preparing the necessary documentation by the ad hoc working committee.

3. People who have entered Thailand after 1991 and therefore fall under the classification of 'alien status'.

The 'Rally for Rights' had further consequences besides. On the positive side, a seminar in Chiang Mai and another in Bangkok were held, their specific focus being on tribal peoples' problems. On the negative side, on May the 24th the Chom Thong Conservation Group composed of lowland Thai villagers protested against academics from Chiang Mai University being involved in the rally.

In May 1999, there was a meeting of NGOs at the Northern Development Foundation, their aim being to plan a more concrete division of tasks and responsibilities among NGOs and to train staff working directly with the communities vis-à-vis the Cabinet Resolution.

With regards to the citizenship issue, a sub-working group was set up after the establishment of an ad hoc working group to study existing laws and regulations concerning the citizenship issue, and the criteria required for granting legal status to illegal highlanders. Furthermore the sub-working group has been mandated to report back to the working group for consideration of its findings, before it submits its recommendations to the cabinet for final approval. The study has just recently been finished and has been approved by the cabinet. It will be in force from June the 1st 2000. The current revised regulation/law is expected to have a big impact on the indigenous peoples, especially those groups who do not yet have legal status. They may be allowed to stay in Thailand on a temporary basis, or even be repatriated to their country of origin. However the classifications and identifications to be applied are still unclear and very problematic.

CAMBODIA

Access to Natural Resources in Highland Cambodia

The majority of the people in Cambodia are ethnic Khmer who live in the lowlands where paddy rice is the main crop. Besides the lowland Khmer, Lao, Cham and people of Vietnamese origin, Cambodia is also home to different indigenous highland peoples. They live in the hills of the provinces of Ratanakiri, Mondulakiri, Kratie, Stung Treng, Pursat, and Kompong Speu and have their own languages and traditional cultures. Their livelihoods depend mostly on swidden agriculture. They grow a great variety of upland rice interspersed, in the same fields, with a number of different vegetable crops. This diet is supplemented by fishing, hunting small animals and collecting forest vegetables and fruits. Other forest products like rattan, bamboo and vines are used for construction and household and agriculture utensils.

Since the onset of peace in the 1990s, previously remote areas are becoming more accessible. As they are rich in natural resources like timber, land and wildlife they attract new settlers, logging companies and poachers. Because of the population growth in the central lowland provinces, land in these areas is becoming scarce and expensive and landless people move to areas where land is still abundant. Meanwhile they are encroaching on the indig-

enous highlanders' communal lands and forests, as these local communities have no official land titles. In general, lowlanders are better informed about how to obtain legal land rights than the local highlanders are, and this is accentuated by the fact that highlanders cannot speak or read the official national Khmer language. Loss of communal lands also occurs as several government, military and police officials use or misuse their knowledge and positions to become owners of large tracts of land. In addition they stimulate land transactions when they can benefit financially from mediating in land sales. Another threat to the traditional communal land tenure system comes from the national government. It is at the national level that concession licenses for logging and industrial agricultural production are given out. This mostly happens without consulting the provincial government, let alone the local communities who live on these lands and whose livelihoods depend on the forest resources.

Illegal logging was unrestrained in the 1997/1998 season. The International Monetary Fund (IMF), the Asian Development Bank (ADB) and big donors called strongly on the national government to put an end to illegal logging as it caused a tremendous financial loss to the national budget, and only enriched a small group of influential officials and the military. The IMF even put their assistance on hold to force the government to take action.

Besides these negative developments positive trends were also visible. Non-governmental organisations (NGOs) and international organisations (IOs) working with indigenous highlanders started to raise awareness about sustainable development among both government authorities and local people. A process of consultation to discuss and respond to indigenous peoples' needs and rights developed between the Cambodian government, NGOs/IOs and representatives of local communities. A number of meetings and workshops took place at local, provincial and national levels, during which issues related to land security, land rights and natural resource use and management were discussed. These exchanges contributed to an increased understanding and appreciation of the unique situation of the indigenous highland cultures and natural resource use practices.

In September 1997, the Inter Ministerial Committee for the Development of Highland Peoples (IMCDHP) prepared draft National Policy Guidelines on Highland Peoples' Development. These guidelines include the recommendation, amongst others, that the highland peoples have the right to participate in and to be consulted on all decisions, plans and projects that affect their lives and communities. In mid-2000, at the time of writing, these policy guidelines still need to be discussed and approved by the Council of Ministers and

the National Assembly. It shows that continued intensive lobbying is needed to keep highlanders' issues on the agenda.

Changes in Access to Natural Resources During 1999-2000

Land Law

In 1998, the ADB linked the provision of agricultural loans to a revision of the 1992 land law as many land issues were not properly regulated, landlessness was increasing and many irregularities and disputes were taking place. To deal with the increasing number of land disputes, Provincial Land Conflict Resolution Committees were set up in 1999 to mediate in local land quarrels. If a case cannot be settled at provincial level it can still be referred to the National Land Conflict Resolution Committee.

The 1992 land law is mainly based on the culture and land use-practices of lowland Cambodians and hardly reflects the communal land management practices of indigenous highland peoples. The land law revision therefore offered an excellent opportunity to lobby for the inclusion of a specific chapter on the land rights of indigenous communities.

Intensive discussions took place between NGO/IO land law working groups, the land law consultants of the ADB and the United Nations Development Programme (UNDP), government officials and highland communities. It proved of utmost importance to provide explanations to and to lobby key figures in the government, since most of them are not very aware of the distinctive culture of highland peoples. The IMCHPD organised a national workshop on the 23rd to the 25th of March 1999 to discuss indigenous peoples' land rights. Both Vice-Prime Minister H.E. Sar Kheng and the Chair of the Council of Ministers M H.E. Sok An, attended the national workshop. The timing proved to be perfect as this workshop followed closely on the heels of the 1999 Cambodia donor meeting which had just taken place in Tokyo and where the chair had stressed that Cambodia should urgently address forest and land management issues. The main contradiction between the opinion of the indigenous peoples and government officials is that most of the local communities prefer communal land titles and recognition of their traditional communal land use and management systems, while government officials prefer the system of individual family land titles.

On the 29th of March 1999, during a meeting with representatives of the Council of Ministers (CoM), it was agreed that a chapter on indigenous peoples' land rights could be included in the revised land law. NGO/IO working group members consulted again with local communities and met several times

with the ADB consultant team. In February 2000, the ADB land law consultant team agreed on the draft chapter on land rights for indigenous communities and on submitting it to the government. However in the Khmer translation, some of the most crucial paragraphs from the chapter on indigenous people had been left out. What was left were some general statements that do not provide the necessary protection to local communities against land grabbing and land speculation nor are they a sufficient safeguard to enable them to continue traditional swidden agriculture in a sustainable way. A quick reaction of the NGO/IO working groups is now needed as the CoM have started their discussions on the new land law proposal.



Will the new Land Law protect their land rights? Members of a Kreung community in Ratanakiri harvesting swidden rice (Foto: Christian Erni)

Encroachment

In Ratanakiri province, non-highland people and companies continue to settle on traditional highland community land, especially near the provincial

and district capitals. Some villages are starting to take protective measures and plant cashew or other fruit trees along the main roads to prevent outsiders taking possession of fallow land. Most highlanders have little means to earn a cash income and because things are changing fast in the direction of a money economy, financial offers are very tempting. Several families started selling land that originally was perceived to belong to the whole community, some sold all the land they had once cultivated and moved on to another area, while others only sold part of the land that they cultivated and remained within the village. They believe that it is better to sell the land now and receive some money for it than to lose it soon to investors without getting anything in return. However, other villagers are opposed to such land sales and this disagreement causes tension amongst the villagers. It has been noticed that nowadays villagers participate less readily in development activities requiring community involvement. Where social coherence is breaking down community support systems are also weaker when compared with other villages in the area that have been less affected by land sales and encroachment. In the above mentioned area land shortage is now developing and some villages are already encroaching on other villages' traditional land causing tension and disputes among different highland communities. (v.d. Berg, 2000)

A new problem is occurring in the southwestern provinces in the Cardamom Mountains. Intensive illegal logging and poaching is starting to take place in areas that were previously inaccessible as Khmer Rouge opposition fighters had camps there. New settlers are also starting to move in to develop agricultural land within deforested areas. The indigenous peoples who have lived undisturbed through all the years of war may now be confronted with outsiders intruding on their lands. If this trend is not properly managed, the forests and their still abundant resources might start to dwindle fast.

Forests

In early January 1999, the Royal Government of Cambodia (RGC) ordered a total crackdown on illegal logging activities and the closure of all companies and sawmills that are active in illegal ways. Immediate action was taken and well-trained armed teams were sent out. By the end of January the 9th logging concessions for a total of 2,173,046 hectares throughout the country had been cancelled. By December 1999 21 logging concessions with licenses for a total of 4,739,153 hectares were still active (Global Witness, 1999).

Nevertheless, new concession permits were given out, even to companies with bad records that had previously been proven not to respect sustainable forest management practices (like Pheapimex Fuchan Cambodia Co. Ltd and Hero Taiwan Co. Ltd). The national government provided Hero Taiwan a

license for a concession of 60,150 hectares in Ratanakiri province for a 25 year period. Within the concession area 10,000 people in 33 villages make their living. The Hero Company's agreement with the Forestry Department states that sites important to culture or tradition, or areas that communities wish to protect, shall be excluded from logging. However, Hero brought road builders and loggers into the villages without any such consultations taking place. In mid-March, Hero's loggers and road builders started to build a road into the forest, against which villagers began a protest. On the 11th of May 1999 villagers in Svay, Khmeing and Santouk villages were forced to thumbprint a document signing away their lands for logging (Global Witness, 1999). The villagers opposed the logging as it destroys the ecological system on which their livelihoods depend. They also believe that the forest spirits will become angry and will cause illness or deaths in the villages. The provincial authorities and NGOs/IOs tried to mediate in the conflict. It was agreed to carry out a cultural resources study to define the impact of logging on sites of religious and cultural significance. Non-timber forest product collection sites, spirit forests and spirit mountains were mapped in O'Chum district and teams were trained to carry out similar surveys in other areas of the concession to ensure that Hero would respect these culturally important sites (Government Departments 2000).

Although Pheapimex Fuchan has a very bad reputation due to previous illegal activities, they once again obtained a logging concession license for 350,000 hectares within Stung Treng and Ratanakiri provinces. The concession includes areas in the buffer zone of the Virachey National Park, one of the most important protected areas of Cambodia. When the park was created, security problems meant that the boundary could only be approximately demarcated. The Royal Decree establishing the park allowed for future expansion. There was a proposal to do this by creating a buffer zone. Both Ratanakiri and Stung Treng provinces approved this, before it was discovered that the National Department of Forest and Wildlife had granted a forest concession to Pheapimex. Since then the proposal for the buffer zone has stalled.

Following talks between the RGC and the ADB in January 2000 to discuss the country lending programme, the RGC advised the ADB that further borrowing for forestry sector development was not a current Government priority. The Government requested that ADB focus technical assistance more on advisory tasks related to a forest concession review, forest law and regulation and community forestry guidelines.

In April 2000, a draft report of a Cambodian Forest Concession Review was released and discussed. The report states that no one entity is to blame for

the crisis situation that has arisen in Cambodia's forests and that the crisis is the result of a total system failure, resulting from greed, corruption, incompetence and illegal acts that were so widespread and pervasive as to defy the assignment of primary blame (ADB 2000). Most forest concessions inspected were rated as demonstrating very poor to unacceptable levels of performance. Concession holders do not agree with all the criticisms levelled at them and remarked that much of the illegal activity takes place by powerful military interests and that it is impossible for them to prevent it (Phnom Penh Post, 2000). A new agreement requires all concessionaires to redo their management plans and to consult and co-ordinate with communities. Given the previous record of many concessionaires, a number of NGOs remain concerned about the retention of the worst concessions and are pushing for their cancellation. It would appear, however, that this will be unlikely and that the ADB and other donors will not push for their removal. In general, there is still no real critique of the suitability (or otherwise) of a centralised industrial forestry system in delivering benefits or compensation to local communities, in spite of the fact that there is much evidence to the contrary.

Water

Deforestation starts to have a negative impact on water supply as less rain is stored in the ground and topsoil is just washed away by heavy rains. Felled trees block streams causing a diminished supply of water and fish to villages. Villagers living in the vicinity of a 20,000 hectare palm oil plantation in Oyadao district, Ratanakiri mentioned that the quality of the water was affected by fertilisers and pesticides used at the plantation (v.d. Berg, 2000).

In the rainy season of 1999, a vast area of low lying agricultural land along the Se San River was flooded when water levels of the Se San River suddenly rose because of the release of a large volume of water from the Yali Fall Dam reservoir in Vietnam. Since then, in the dry season as well, vegetables and tobacco gardens along the Se San River have been flooded due to irregular fluctuations. Flooding due to releases from the Yali Fall Dam seems to have occurred since 1996 (personal comment Ian Baird.) As a result of continued releases it has become increasingly dangerous for villagers to cross the river or fish in it. The quality of the water, especially when the river is high, seems to constitute a serious health threat which needs to be looked into (personal comment Ian Baird). In addition, because people are not informed in advance when water will be released, a large amount of fishing gear and a large number of boats have been lost. Some villagers moved their houses to higher areas and others are planning to do so as well. If more people move to

higher lands they might swap fishing for hunting, putting pressure on the wildlife population in Virachey National Park which is situated nearby (Baird, 2000).

Wildlife

With the opening up of previously inaccessible areas, it was not only poachers but research teams as well who, in 1999/2000, penetrated Cambodia's dense forests to register, count and photograph its still abundant wildlife population. Entire intact ecosystems and food chains have been found, as well as many species that are threatened with extinction in other parts of Asia. Protection and conservation measures are urgently needed to save these unique environmental habitats. However, many people see wildlife as equalling money. Poaching and official wildlife deals through the Department of Forestry and Wildlife pose serious threats, as there is great demand for animals and animal parts that can be used as aphrodisiacs, medicines or for medical tests. Since hardly any institutional protective measures are in place, conservation might prove difficult. A sign of the growing awareness of this problem is that Prime Minister Hun Sen attended the opening of a zoo for rescued and confiscated wildlife situated near Phnom Penh. He called for a halt to poaching, to protect Cambodia's wildlife and to keep animals in the wild.

Health Situation

Healthcare in remote areas remains precarious. In 1999, a serious cholera epidemic spread among the population of Ratanakiri province. One hundred and thirty people died because neither the population nor the health officials recognised the seriousness of the epidemic until too late in the day. The number of victims could have been fewer if immediate action had been taken when the first cases were brought in. Smaller epidemics of other diseases such as whooping cough and measles have also resulted in deaths and disability among indigenous highland communities, since irregular vaccination campaigns do not reach them.

Indigenous Women's Network

During 1999-2000, the Indigenous Women's Network in Ratanakiri has been actively advocating the representation and participation of women in consultations on the use and management of land and forest resources by indigenous peoples. But one of its main activities was to lobby the national government to recognise the communal land rights of indigenous communities in the new land law. This resulted in one of its members being chosen as a member of the NGO/IOs Working Group on Land and Natural Resources.

Some members of the Indigenous Women's Network have been attending national and international workshops and meetings like the ADB consultation in May 2000 in Chiang Mai, Thailand. Individual members also followed a variety of training workshops, including some on leadership and others which dealt with issues relating to elderly people. Some of the indigenous women who know the Khmer language are now studying English as they want to be able to participate in conferences and meetings in a more active way.

Resource Persons

Conny v.d. Berg, UNDP/CARERE, Ratanakiri, Gender/Natural Resource Management Advisor.

Gordon Patterson, Non-Timber Forest Products Project, Ratanakiri, Co-ordinator.
Graeme Brown, Department of Environment, Ratanakiri, Community Forestry Advisor.

Tiann Monie, UNDP/CARERE, Land Advocacy and Indigenous Women's Network.

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BURMA

Burma¹ is a country rich in ethnic diversity. The Burmese regime which calls itself the State Peace and Development Council (SPDC)² has used this diversity as a justification for repression, claiming that its rule is necessary to keep the country united. All ethnic groups, with the exception of Anglo-Burmese, South Asian and East Asian immigrant communities, are considered indigenous to Burma, in their specific localities. The ethnic Burmans who dominate the rich delta area also dominate the central government. It is this Burman dominated military which rules the country with an iron fist. The junta has used a policy of 'Burmanisation' to suppress and eradicate the identity of other indigenous groups. Religion, too, has been used as a justification for oppression, particularly in the context of ethnic nationalities who may not be Buddhists, e.g., Chins and Karens who are predominantly Christians, and the Rohingya who are Muslim.

Prior to colonisation by the British and independence in 1948, some ethnic states and/or principalities considered themselves to be separate or semi-independent from the central government. In 1947, Bogyoke Aung San (Burma's Independence Hero) and several ethnic state leaders signed the Panglong Agreement, a document endorsing the formation of a Union of Burma. The Panglong Agreement enshrined many rights of the different indigenous peoples, which were included in Burma's Constitution. Disagreement and resistance to the erosion of these rights by subsequent (mostly military) administrations have resulted in a continuing situation of civil war in many ethnic states.

For purposes of convenience, the term 'ethnic' is used in this article to define non-Burman ethnic groups indigenous to the country. It is preferable to the use of the term 'ethnic minority', as the total population of non-Burman

ethnic nationality groups may be more than the perceived Burman majority. Brackets () containing dates appearing alongside incidents described in this article indicate the dates these incidents were reported, either in the mainstream or community media.

The Impact of Burma's Human Rights Crisis on Indigenous Peoples

Burma's military regime, the State Peace and Development Council, is one of the world's most notorious offenders of human rights. The gross mismanagement and violations perpetrated by the junta affect the lives of all of Burma's citizens (including, ironically, low ranking military personnel) prompting it to be described as an "equal opportunity violator". Indeed, the junta has used all the labels at its disposal to justify the abuse of a range of communities - on the grounds of political affiliation, religion and ethnicity.

It is important to note that in most situations of conflict and oppression, it is usually women and indigenous peoples who bear the brunt of the impact. Burma is no exception - the most brutal violations tend to occur more frequently in rural areas, especially in the border areas, where there are large concentrations of people of non-Burman ethnic background.

In the civil and political context, the military's refusal to recognise the outcome of the general election it organised on May the 27th 1990 has also greatly disadvantaged non-Burman ethnic nationality groups. The National League for Democracy (NLD) which won 81% of parliamentary seats, has a far more progressive policy on ethnic diversity. Seventeen per cent of parliamentary seats were won by ethnic-based parties, and only two per cent by the military-backed National Unity Party. Several of the ethnic parties have been since banned.

While some observers see the civil and political abuses of the junta as mostly affecting Burman dissidents, such abuses also prevent ethnic nationality groups from legitimately exercising their political rights. Greater democracy in Burma is also desired because it implies greater political space and possibility for the ethnic groups and the Burman administration to achieve a peaceful, political solution.

Gross mismanagement by the military administration, the devotion of greater national resources to military machinery at the expense of education and health, and the more obvious human rights violations have had the following results:

- Greater militarisation amongst some ethnic groups, especially in areas vulnerable to SPDC attack and looting;

- Loss of life and safety;
- Loss of property, access to traditional lands and sources of livelihood;
- Increasing food scarcity and malnutrition;
- Suppression of cultural identity and education;
- Lack of basic healthcare and education opportunities;
- Increase in internally displaced people and refugees;
- Greater vulnerability to human trafficking;
- Increased feelings of humiliation and psychological and emotional trauma.

Militarisation and Civil War

On the junta's side, forced and coerced recruitment into the army continues unabated. Tragically, young men and boys from ethnic groups are often recruited to be pitted against civilians and rebel soldiers in other ethnic areas. The need to defend communities and retaliate against military attacks, has led many ethnic rebel armies to seek to increase their own capacity through contributions of material resources, recruits and information from their communities. The incidence of child soldiers is one of the highest in the world, with all sides guilty of this violation. This was highlighted by the media frenzy over 'God's Army' led by 12-year-old twins Johnny and Luther Htoo in early 2000.

Villages suspected of supporting rebels are subjected to brutal violence and penalties. These communities suffer from being 'sandwiched' between government and rebel forces, having to provide resources and recruits to both sides. Many lose both life and property when fighting between opposing sides breaks out. In recent times, the SPDC has helped establish ethnic militia groups as counter forces to ethnic rebel armies.

Burma is becoming one of the most heavily mined countries in the world. Anti-personnel landmines are used by the SPDC and most of the rebel armies.

Human Rights Violations

The pattern of human rights violations committed by the junta is consistent with general patterns of low intensity warfare inflicted on many indigenous communities around the world and in history. The 'motivations' for these abuses can be broadly categorised as efforts to:

- Control indigenous communities through fear;
- Displace communities from their homelands and livelihoods in order to erode their identity;

- Create pools of low cost and/or slave labour, and maintain a human buffer zone between government troops and rebel armies;
- Cut off support to rebel armies and dissident groups;
- Clear land in order to sell or rent it to migrant or business interests, or in order to produce cash crops;
- 'Sanitise' areas for so-called development projects which will benefit the junta, e.g., the proposed Salween Dam project which will cause immense damage to indigenous communities and their environment.

Human minesweepers. Due to the fear of being made to be human minesweepers, over 500 Karen people fled central Karen State in spite of the treacherous monsoon season. The Karen National Union reports that five light infantry divisions from the junta's military have been told to subjugate the area this year, clear it of landmines, and use villagers as human minesweepers (2nd of September 1999).

Harassment and Forced Relocation. The forced relocation and harassment of villagers thought to be sympathetic to opposition forces continues unabated. A relocation order was issued for 31 in the Kyar-in-seik-kyi township (6th of April 1999), and in early May 1999, three Shan villages were given three days notice to relocate. Thirty-four villages were given three to four days to relocate in the Murg-Pan township and were warned that anyone remaining would be assumed to be "destructive elements" (30th of April 1999).

Forced Labour. Labour is being demanded for the industrialisation of agricultural lands in Kachin State's Mohnyin township. Householders in every village in the Indawgyi region of the township are required to contribute labour (29th of November 1999). The Chin also suffered forced labour orders for road construction (29th of May 1999) and the arbitrary detention of 100 villagers (26th of June 1999).

In January 2000 the Arakan Rohingya National Organisation (ARNO) reported that Rohingyas were being used as forced labour on a UNHCR development project in Arakan state. Local Military Intelligence Chief Major Win Myint used hundreds of Rohingya from Nanragone, Maunggyitaung, Alaygyaung and Seinyaung wai village tracts as forced labour on a highway project. The villagers were forced to sign blank pieces of paper stating that they had received money. Neither the UNHCR nor the SPDC appear to have investigated or responded to this report.

Attacks on villages. A group of 60 SPDC soldiers fired upon a Lahu village in Tachilek, as the village was suspected of aiding Shan resistance (6th of May 1999). An Akha village suffered a similar fate when 30 soldiers entered the village and killed the headman and three villagers as an example to other villagers who might contemplate assisting the Shan (6th of May 1999).

A mother and daughter thought to be carrying food for Shan soldiers were raped and killed (13th of April 1999). Fifteen Shan fisherman also accused of providing food to Shan resistance forces were surrounded by 80 junta troops and were beaten and killed (9th of April 1999). Later, 11 Shan villagers were beaten and killed by SPDC soldiers near the Thai border of Chiang Mai Province (13th of April 1999).

Food Scarcity. Starvation is spreading due to the militarisation of the government and the economy, according to a comprehensive report compiled by *The People's Tribunal on Food Scarcity and Militarisation in Burma*. The military forces farmers to sell a percentage of paddy fields for redistribution at half the market price. It also destroys crops, relocates villages, and extracts cash from people under the pretext of counterinsurgency measures (20th of October 99).

There are reports from eastern Shan State that farmers are forced to sell a portion of their harvest to local authorities at one third of the market price. When farmers complained, they were told that these were orders from Rangoon (3rd of November 1999).

In Laikha Township (southern Shan State), farmers were told to sell a certain amount per acre of their crop, and even those whose crops failed were not exempt (3rd of November 1999). This means that the farmers must buy rice from the market (at market price) in order to sell their quota to the military at the reduced price.

Political Repression. Three leaders of ethnic nationality parties were arrested after meeting with Assistant UN Secretary-General Alvaro de Soto, when he led a mission to Burma. Naing Tun Thein, 82, Chairman of the Mon National Democratic Front, and Kyin Shin Htan, Chairman of the Zomi National Congress were arrested on the 3rd of November. Dr Saw Mra Aung of the Arakan League for Democracy and Speaker of the Committee Representing the People's Parliament (the CRPP, established in September 1998 when the military ignored an ultimatum by MPs-elect to convene Parliament) was also arrested and sentenced for 13 months. No reasons were given for the arrests (12th of November 1999).

U Aye Tha Aung, who represents four ethnic nationality parties on the Committee Representing the People's Parliament was arrested on April the 23rd 2000. At the time of printing he remained detained *incommunicado* with no available information as to his whereabouts or state of health.

Language ban. In an area where signboards bearing village names in Shan script were posted alongside signs in Burmese, an SPDC Commander ordered that all such signboards be destroyed (5th of April 1999). Even in cease-fire areas, ethnic languages are being made illegal. In October 1999, Military Intelligence ordered the closure of an ethnic Mon school in Kwan-Tar village, Mudon township. The students' parents were told that the school was an illegal institution and that the teaching of Mon language was also illegal.

'Cease-fires'

In areas where 'cease-fires' have been negotiated between the SPDC and local ethnic groups, human rights violations such as forced labour, extortion and the suppression of ethnic language education still takes place. In practice, the junta uses cease-fires strategically for both economic and military purposes. For example, a cease-fire group and local junta commanders opened up gambling dens in Mong Pan township (28th of April 1999).

Shan Cease-fire. A report by an SSA-North commander explains how SSA-North's territory was reduced to one-tenth of its former size, and how the junta prohibits logging in the area. But logging, sometimes carried out by Burmese troops, occurs in other parts of Shan State, indicating that the reason for the prohibition is to cut off a possible income source for the SSA-North and not because of environmental considerations. The SSA is also prohibited from recruiting, while local people are forced to serve as militiamen in 'Anti-Insurgency Units' (21st of October 1999).

Refugees

The past year has seen increases in the numbers of people fleeing Burma. In Thailand alone, hundreds of people cross the border each month seeking refuge. While it is to the advantage of receiving countries to categorise those fleeing Burma as 'illegal migrant workers', it is undeniable that most people who leave the country are fleeing conditions of civil war, human rights abuses and extreme poverty resulting from the regime's brutality and mismanagement.

In Thailand for example, Shan ethnic refugees are denied recognition as refugees and no refugee camps exist for them. The same holds true for several other ethnic groups as well. These groups are excluded from the official refugee figure of 120,000. Meanwhile, both internally displaced people (IDPs) in Burma and refugees located on the Thai border are vulnerable to attack, abduction and extortion from the SPDC and SPDC-backed militias. In several instances the junta has also denied the citizenship of refugees or 'migrant workers'.

Refugees along borders. The conditions in refugee camps can differ from one region to another. People living in camps in Thailand are generally provided with rice and salt. Most of the camps have reached their capacity, if they have not already exceeded it. As NGOs are allowed to provide food for the official number of people in the camps, new but uncounted arrivals do not receive rations. They must either find food in the jungle or depend on the generosity of other refugees. The Thai government continues to threaten to repatriate the refugees, with the Thai National Security Council Chief declaring the situation in Burma to be 'normal'.

Internally Displaced Persons. Human rights organisations estimate that between 600,000 and a million people in Burma are internally displaced. Some of these communities have been forcibly relocated by the military several times. While some internally displaced persons move from village to village, others are obliged to hide in the jungle. Others live in relocation sites designated by the military regime. In such sites, shelter, food and employment are not provided, making life extremely difficult. Some people return to the areas from which they were relocated, to harvest crops. This is a dangerous activity as many women have been intercepted en route, accused of providing assistance to ethnic resistance groups, and harassed and killed.

People who flee into the jungle face extreme difficulties finding food and fighting disease. Some are able to forage for food in the jungle, and sometimes they sneak back to relocation sites for rice. Safe drinking water and hygiene are also serious problems. To avoid detection by soldiers, people often do not build houses and avoid making fires, even when it is cold. When IDPs decide to move across an international border to become refugees, their journey is perilous. They have to travel at night if soldiers are near. Some areas have been heavily landmined.

"Migrant Workers". It is estimated that there are about 800,000 'illegal migrant workers' from Burma in Thailand, working for low or no pay. The

Thai government frequently engages in mass deportations of these people but they usually come back, normally after having paid hefty bribes to officials from both Thailand and Burma.

Women

State-sanctioned violence is one of the most serious threats to women's well-being, especially in ethnic areas. This violence may be directed at the population at large, as is the case with forced labour and forced relocation, but it can also be directed specifically at women. Humiliation of and violence against women has been documented repeatedly as a tool used to terrorise communities. Women have been tortured, raped, and killed, and women who speak out against injustice have also been subject to similar violence as examples of what happens to 'troublemakers'. When communities seek justice, it is often not the perpetrators of violence but the communities that suffer.

Economic instability and increasing poverty are also great threats to overall wellbeing. Women bear much of the burden of providing for their families, but lack equal educational opportunities. Yet their responsibilities are great, leading to increased migration to the cities and to neighbouring countries. Exploitation by traffickers is more often the rule than the exception for these women.

Women's Economic Rights

Women in conflict areas often become primary income earners by default, when their husbands are taken away for forced labour or are killed. The lack of employment opportunities often leads to the trafficking of women in Burma both domestically - from rural areas to the cities - and internationally. Women are trafficked to work in various fields including construction, agriculture, factory work, and sex work. Travelling through contacts with brokers is a common means for women to migrate for economic reasons, but it is neither a safe nor secure means of doing so, and it often has devastating consequences. In its attempt to prevent women from being trafficked to neighbouring countries, the military regime created a law prohibiting women between the ages of 16 and 25 from crossing borders unless accompanied by a legal guardian. The regime claims that this law is there to protect women, but in reality it only makes them more dependent on traffickers to get them through checkpoints and makes them more vulnerable to exploitation.

Forced Labour. In conflict areas, forced labour is often accompanied by extreme violence and leads to food scarcity by undermining a family's capacity

to grow their own food or to engage in paid labour to buy food. Women are conscripted to labour themselves, or have to maintain the household while the husband is doing forced labour. In many cases, men flee the village in order to avoid forced labour orders, but women are then rounded up instead. Forced labourers are often beaten and women are also subject to rape.

Access to healthcare. Access to healthcare in general is limited, especially in rural and conflict areas. Approximately 35% of the population has no access to public primary healthcare services of any kind. Women in ethnic areas where forced labour and forced relocation are problems have extreme difficulty in maintaining their own and their families' health. Not only is there a lack of medical care, there is insufficient food and shelter, contributing to poor overall health. Forced labour and fear of violence by the military regime's troops, force many rural communities to flee into the jungle. Whilst there, people can die of diseases which are not usually life threatening, such as chickenpox, fever, and diarrhoea.

Violence Against Women

Military sanctioned violence against women is rampant in Burma. It is exercised for the purpose of making examples of those who challenge authority. Violence can take place anywhere, but is particularly common during forced labour, in detention centres and in conflict areas or areas where there are large numbers of military troops. Seldom is justice of any sort obtained after violence occurs. Much more frequently it is the case that the victim, her family, or community suffers if they report the violence to higher authorities.

Violence and forced labour. Besides being a severe form of economic oppression, forced labour is also a source of terror to communities due to the violence which often accompanies it. The Special Rapporteur for the UN Human Rights Commission on Burma, Rajsoomer Lallah, has also documented violence against women in his interim report to the UN General Assembly. He cites the case of one woman who fled to Thailand after being forced to work as a porter four times while still nursing her baby. She was also beaten. In another case, women of Shan ethnicity were among a group of porters forced to carry chickens and dried meat for a military unit from Murngtong. The porters had to sleep on the ground, tied up with a yoke, but the women were kept separately. At night, their screams were heard by a farmer who was also part of the group of labourers. Although it is not stated here, it is not uncommon for women porters to be raped by soldiers.

Violence whilst in Detention. Women may be detained for their political activities, their involvement in ethnic resistance movements, or even simply because of their perceived links to anti-regime groups. When women are detained, they are extremely vulnerable to rape and harassment. Violence is used to terrorise not only the women and their communities, but to demoralise the men as if to say they are not strong enough to take care of their own women. In one instance in May 1999, four married couples were detained when the captain of a battalion did not recognise travel passes issued by another battalion. They were held for three days and nights, and the women were taken to another place and raped every night. They were released only when their relatives paid 10,000 kyat per couple.

Other Acts of Military Violence. Women are also victims of violence when they encounter soldiers or when troops enter their villages. At the end of October 1999, four women who had been forced to relocate returned to their fields to reap their rice. They ran into 30 SPDC troops and were subsequently raped and killed. The captain of the battalion accused them of providing the Shan resistance with rice. When the troops returned to the relocation site, they told authorities and community leaders that they had gone to shoot rebels but as all the men got away, they were only able to kill four of the wives. The townspeople had to go and find the bodies themselves in order to determine the identities of the women who were killed.

Among the regime's troops, the most feared in Karen areas are the *Sa Thon Lon*, the Bureau of Special Investigations of the Directorate of Defence Services Intelligence and its Guerrilla Retaliation squads. The Guerrilla Retaliation squads work in small groups with the explicit purpose of executing anyone suspected of present or past connections with the KNU or KNLA. The Guerrilla Retaliation squads are known for being especially brutal. If they even suspect that someone is a supporter of or involved in activities of the KNU or KNLA, their methods of execution are often gruesome. People have been stabbed repeatedly and dismembered, no questions asked.

Consequences of reporting sexual violence by military personnel. In general, survivors of sexual violence face not only the physical impacts of violence, but are also stigmatised for their experiences. In cases where women do have the courage to speak out and file complaints against perpetrators who are military personnel, a small amount of money is sometimes given to the family to 'compensate' them. More often, however, the perpetrators face no consequences and those who report the crimes are harassed further.

In one case in June 1999, four women were raped after being interrogated about their links to Shan resistance forces. The father of the youngest victim complained to the headman and members of the Village Committee, so they all went to the battalion and filed a complaint with the Commander. The Commander lined up 70 soldiers and instructed the girl to identify her rapist. The man, however, had been purposely left out of the line-up, and therefore could not be identified. The headman and the Village Committee members were then accused of defaming the military and were detained in the prison at the military base. This was not the end. The following day, the headman was beaten until he lost consciousness and the families were ordered to pay 2000 kyat each for the release of the detainees. Then the four women who had been raped were also fined 500 kyat each.

Forced Marriage. Marriage is sometimes forced upon women, especially in conflict areas, when a Burmese officer takes fancy to a local girl or woman and demands her in marriage. Sometimes the woman's family or community will encourage her to marry if they are afraid of the repercussions of her refusal. Other times they may protest, but the women are taken away by the military and forced to marry anyway. In other cases, village leaders will try to arrange for the marriage between a woman and a man who has raped her in an attempt to 'normalise' the situation.

Others have testified that there is a policy of encouraging soldiers to marry ethnic nationality women. They are promised monetary awards or promotions, the scale of which depends on the education and social rank of the woman. This is significant for two reasons. One is that because the ethnicity of children is most often determined by that of their fathers, marriage between Burman soldiers and ethnic nationality women contributes to the military's programme of Burmanisation in ethnic regions. Also significant is that because soldiers are looking for marriage for promotion or profit, marriages end when troops are rotated out of the area. Women are then left behind with children and no compensation from the fathers.

Final Note: A Cause for Hope

Despite the extreme oppression that indigenous groups in Burma are subject to, there is still cause for hope. The growing commitment to human rights and democratic process amongst many ethnic groups has positive implications for the future of these communities. Local communities have found ways to continue their resistance to the SPDC, often using non-violent means. Their capacity to document abuses and smuggle such information to exiled groups

is one such means. So too is the growing co-operation between ethnic groups, and between ethnic groups and the democratic opposition. This closer co-operation and process of coalition building, while flawed, is a definite stride forward in the struggle against the SPDC. (Until a decade ago, it was not uncommon to see ethnic armies pitting their resources against each other instead of directing them against the greater enemy). Another development that must be supported is the work done on behalf of peace education and on behalf of building negotiating and peaceful conflict resolution capacities amongst ethnic groups. Therefore the increasing participation of Burma's ethnic groups in international forums and in lobbying activities to raise international awareness and support is essential.

Notes

- 1 The junta changed the name of the country from 'Burma' to 'Myanmar' nearly a decade ago. However, this change is not recognised by the democracy movement. The name was changed without consulting the country's citizens. Myanmar is also considered a chauvinistic name by many ethnic groups.
- 2 Abbreviations used:
 - KNU: Karen National Union.
 - DKBA: Democratic Karen Buddhist Army (pro-junta militia).
 - SPDC: State Peace and Development Council (the junta).
 - NLD: National League for Democracy (largest democratic party).
 - KNLA: Karen National Liberation Army.
 - ARNO: Arakan Rohingya National Organisation.
 - CNF: Chin National Front.
 - UNHCR: United Nations High Commission for Refugees.
 - SSA: Shan State Army.

Sources

Large portions of this report are excerpted from the following Altsean-Burma publications:

- REPORT CARD: *Looming Crackdown in Burma*. A5, 56 pp. Bangkok, Sep. 1999.
- REPORT CARD: *Burma: New Hope, Old Reality*. A5, 76 pp. Bangkok, Jan. 2000.
- SPECIAL BRIEFING: *Women's Report Card on Burma*. A5, 28 pp. Bangkok, April 2000.

NAGALIM¹

The India-Nagalim peace process has faced many setbacks in the past 12 months and as a result the peace talks have come to a standstill. In July 1999, Kaushal Swaraj resigned as the Special Emissary of the Prime Minister of India, A. P. Vajpayee, to the peace talks. According to Kaushal Swaraj, the Indian Prime Minister backtracked on his assurance that the cease-fire would not be subject to territorial limits. India has repeatedly failed to respond to the Naga team's proposal on substantive issues that was put forward in March 1999. Now that Th. Muivah, the leader of the Naga peace team, has been imprisoned in Thailand since January the 19th 2000, the peace talks have been postponed indefinitely.

This article presents an update on the implementation of the cease-fire with a short review of the peace dialogue.

Violation of the Cease Fire

No major outbreak of fighting has been reported between the National Socialist Council (NSCN-IM) and Indian security forces in the past 12 months. However, civilian deaths at the hands of 'revolutionary commandos' and minor encounters and uncertainties over the future of the cease-fire have repeatedly shattered this relative peace. Many Naga civilians have been attacked and killed by Kukis commandos aided and abetted by the Indian security forces. In one such Kukis attack, every Naga passenger was pulled off a bus traveling between Imphal, the State capital of Manipur and Nongdam, where they were shot at point blank range killing seven instantly and leaving two others in a critical condition (The Assam Tribune 02-06-1999). Another underground group, the Meitei based United National Liberation Front (UNLF) killed two Naga villagers in Manipur on the 17th of July 1999 as a follow up to its ultimatum that the Anal Nagas must declare themselves to be Meiteis. The UNLF tortured many more Naga villagers and killed three NSCN cadres. In the follow-up operation, Indian security forces arrested six NSCN cadres, killed two KYKL (Kanglei Yawol Kana Lup), who were believed to be NSCN allies, and rescued a UNLF cadre who had been detained by the KYKL (The Assam Tribune 03-08-1999; for more information see the North Eastern Sun 04-08-1999).

The NSCN (I-M) has called for the immediate release of 17 of its cadres detained by the Indian security forces since November 1999 (The Telegraph 07-01-00). On the other hand, the NSCN (I-M) has been accused of carrying out ambushes, one on the 27th of July 1999 in Assam in which eight security

men were killed, and the other on May the 5th 2000, in which six soldiers were killed near Gauhati (Associated Press, 27-07-1999 and 19-05-2000). The NSCN has also been accused of carrying out the ambush on the convoy of the Nagaland State Chief Minister, S.C. Jamir, on November the 29th 1999 when two guards were killed.

The implementation of the Cease-fire Agreement between the NSCN (I-M) and the Government of India has from the beginning been dogged by conflicting interpretations of the Cease-fire Ground Rules, and differences over the cease-fire coverage area. Indian security forces have interpreted the Ground Rules in contradictory ways when it comes to dealing with 'criminal' elements. Some units of the Indian forces have openly fought alongside the Kaplang faction against the NSCN (I-M). Many leading members of the Kaplang faction, a major ally of the UNLF, are said to be on the payroll of Nagaland State Chief Minister S.C. Jamir, often operating alongside undercover state agents. The Kaplang faction is credited with killing at least 12 members of NSCN (I-M) in the past 12 months. On the other hand, about 30 of its cadres including its General Secretary Dally Mungro, have been killed by the NSCN (I-M) in the same period. The Nagaland State Government run by S.C. Jamir is at present "under investigation" for funding the Kaplang faction (The Indian Express 01-07-1999).

Geographical Coverage of the Cease-fire

India has obviously remained deliberately ambiguous on the cease-fire coverage area. The text of the Cease-fire Agreement simply says that "it has been mutually decided to cease-fire between the government of India and the National Socialist Council of Nagaland". Thus, the focus of the Agreement is on wherever the NSCN army has been fighting against the Indian army, and not limited to the territory of a state. In other words, the Cease-fire Agreement applies not only to the territory of Nagaland State but to all Naga inhabited areas in India (which are at present divided up into four states) where the two armies have been fighting. In October 1998, speaking for the Prime Minister of India, Kaushal Swaraj asserted that the cease-fire is between India and the NSCN, and that it therefore applies to wherever they are and is not confined to the territorial limits of the state of Nagaland (The Telegraph 24-07-1999 and 29-07-1999).

The Cease-fire Monitoring Mechanism

The office of the NSCN representative to the Cease-fire Monitoring Mechanism (MM) in Kohima was raided by heavily armed Assam Rifles on the 29th

of November 1999 the moment the news of the ambush on Chief Minister Jamir's convoy reached the city. It was an obvious attempt to blame the NSCN for the ambush. Although no evidence against the NSCN could be found, the office was forcibly closed down on the 1st of December 1999. As a result the MM has completely stopped functioning and this has further strained relations between the opposing armies as they try to maintain the fragile cease-fire. They now face the increased danger of accidental encounters since they are no longer linked by a direct line of communication. There are many loopholes in the way the MM works, and when it is revived it will have to be overhauled so that it can serve the peace process effectively.

Negotiations for a Political Settlement of the Conflict

Six rounds of talks have been held since the cease-fire began in August 1997. There were no peace talks in the first 10 months because of the political instability in India. However, even when the peace teams met around the negotiation table the Indian team was not sufficiently prepared for discussing substantive issues. The Nagas have been patient with these delays. In March 1999, in the Amsterdam round of talks, the Naga peace team presented proposals on many of the substantive issues, but so far the Indian government has not responded to them. Hindu hardliners, starting with L.K. Advani, the Indian Home Minister in the ruling party, want to continue the military occupation of Nagalim. Faced with such constant obstructions, other Indian leaders who, as a rule are largely ignorant of the Naga issue, are scared of entering into serious negotiations.

To make matters worse, the NSCN leader Th. Muivah was arrested at Bangkok Airport for possessing a fake passport on January the 19th 2000. He came to Bangkok to meet leading members of the Naga civil society for the next round of negotiations with the representatives of the Prime Minister of India which was scheduled to take place between the 30th of January and the 2nd of February in Amsterdam. On the 26th of January, while released on bail, Muivah went to the Hat Yai airport with an illegal passport to leave for the three day high level negotiations with the Indian government in the Netherlands. But once more he was detained at the airport and on the 30th of January he was sentenced to jail for one year for possessing an invalid passport.

Muivah's arrest was immediately followed by insinuating stories about the Nagas and Muivah in the national and regional media in an obvious attempt to create an atmosphere hostile towards the Naga people and as a way of prolonging Muivah's detention. It is believed that Indian government agents are behind this move. Furthermore, according to information recently ob-

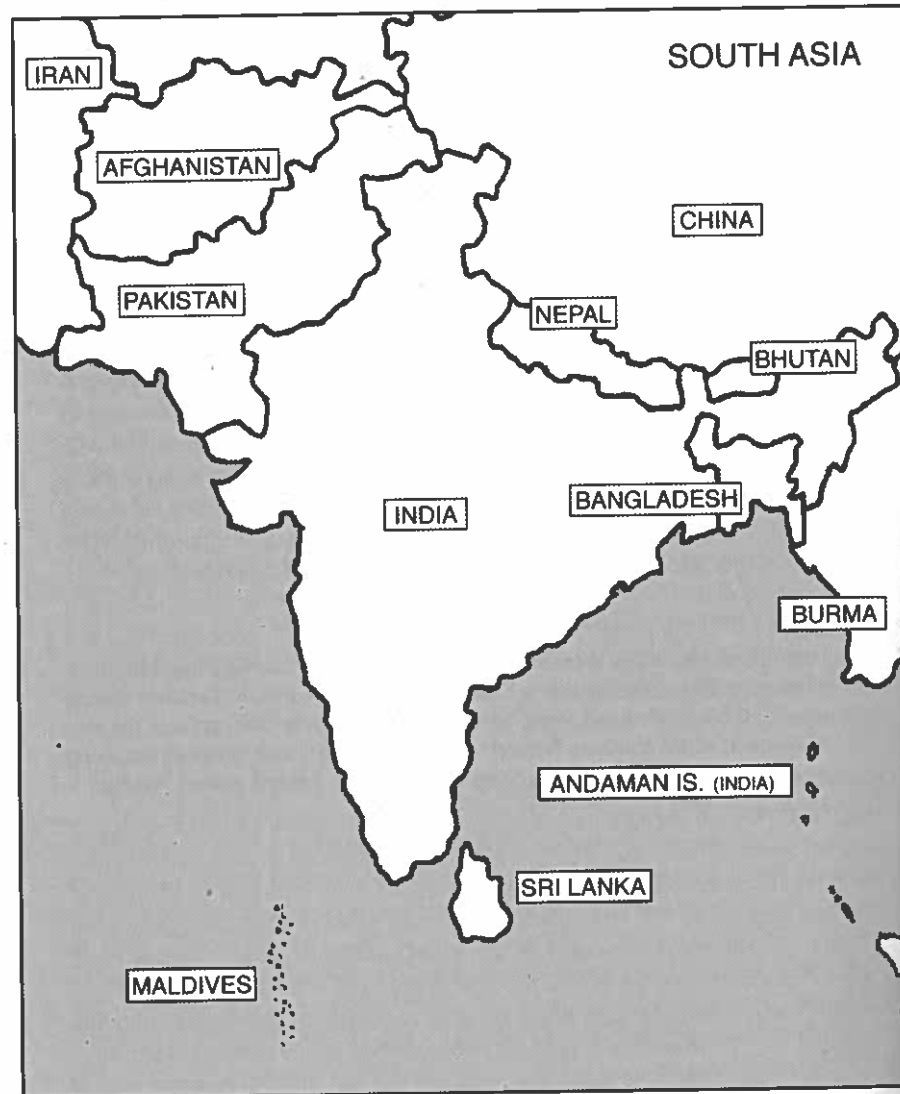
tained from reliable sources, it is very likely that Indian government agents also had a hand in the arrest of Th. Muivah. And so far, appeals from Indian intellectuals and NGO communities to the Government of India to intervene on behalf of Muivah's early release, have gone unheeded.

The purpose and the circumstances that led to Muivah's travelling under an assumed name have received sympathy and support from the human rights NGO communities in Thailand. Leaders and activists have united to organise Muivah's legal and social defence. In the latest hearing of Muivah's case on the 25th of May 2000, several international observers including Senator John Nimrod from Illinois, USA were present at court.

The Naga civil society organisations have come together to initiate a people-to-people dialogue in India to bring fresh ideas to the peace process. A large group of Nagas drawn from different walks of life made a 'Journey of Conscience' to Delhi on the 29th of January 2000, where they interacted with NGO communities and other members of the public for three days. Since then small group interactions have taken place in several Indian cities and more are planned. The Naga Peoples' Movement for Human Rights (NPMHR), and The Other Media, Delhi are the main organisers of this initiative.

Notes

- 1 Nagalim means 'Naga ancestral land' and is the term the Nagas agreed to use when referring to the land they have traditionally lived in. It therefore encompasses all Naga inhabited areas, both in India and Burma and replaces the term 'Nagaland' which had been formerly used, and which is also the name the Indian government gave to the Union State it created in a limited part of Nagalim in 1963.



Countries covered in this issue: Bangladesh, Nepal, India, Sri Lanka

SOUTH ASIA

BANGLADESH

Chittagong Hill Tracts

A peace agreement signed in December 1997 between the government and the Jana Samhati Samiti (JSS') has been largely instrumental in normalising the situation in the Chittagong Hill Tracts (CHT). However, two decades of mass killings, rape, unlawful detention and torture have left their mark on the indigenous Jummas, and there is an urgent need for effective measures to develop trust and confidence in the sincerity of the government's commitment to the peace process.

One of the key factors that is hindering this process is the continued presence of the armed forces. This is in direct contravention of the 1997 Accord which stipulates that all army camps should be withdrawn from the Hill Tracts with the exception of the Border Security Force (BDR) and the six permanent army establishments (one in each of the three district headquarters, and at Alikadam, Dighinala and Ruma). There are an estimated 500 'temporary' army camps in the CHT, of which some 32 have been withdrawn. The others remain and there are no indications of when they too will be withdrawn from the CHT. The military continues to exercise considerable power and influence in the Hill Tracts, including in the sphere of civil administration - an area outside the purview of the armed forces in most democratic countries.

The 1973 executive order which provides the formal basis for the militarisation of the CHT remains in force, and has not been annulled or revoked. If one takes into consideration the fact that the Hill Tracts is an area of 5,089 square miles (approximately 13,295 square kilometres), with 974,445 inhabitants, out of which 536,231 are indigenous Jummas (according to the 1994 census) then, given the present circumstances, the policy decision to retain a large number of military and paramilitary forces in the Hill Tracts, appears excessive and unjustifiable under any circumstances. And this is especially the case in an impoverished country like Bangladesh that is faced with basic problems such as a lack of drinking water, malnutrition, high infant mortality, and illiteracy. This also indicates the emphasis placed on the use of institutionalised force in the CHT, and continues to cast a shadow over the peace process which is currently underway in the region.



Still not withdrawn: Army camp overlooking rice fields of a Chakma community, January 1999 (Foto: IWGIA Archive).

Implementation of the Peace Accord

Over two years have gone by since the Peace Accord was signed, and despite the formation of a committee for its implementation, the implementation process has been markedly slow. In fact, in its report on the implementation of the CHT agreement (February 2000), the JSS describes the process as having come to a standstill.

The main strength of the Accord is that it establishes the modalities for indigenous self-rule in the CHT through a three-tiered approach encompassing a ministry at the central level, one main council at the regional level, and three councils at the district level. However, although these bodies are currently operational, in real terms their powers and authority are circumvented and their participation in the decision-taking and policy-making sphere remain limited. In the past year or so, some legislative measures have been taken to implement the Accord, but the enabling legislation has not been put into place and the Accord continues to be implemented in name only, without any concrete measures for putting its provisions into practice.

Hill District Councils. The Peace Accord strengthens the power base of the three Hill District Councils (HDC) which were formed in 1989 and substantially increases what lies under their authority. However key areas under their control and management such as land and natural resources, environmental protection, development, health, law and order, fisheries, tourism, local commerce and industries, business and *jhum* cultivation (swidden farming), among others, have not been transferred to the HDCs. They remain in the hands of government officials e.g., the Deputy Commissioner, etc. There are also reports of land alienation by the district authorities in clear violation of the HDC Acts (as amended) which require consultation with the relevant HDC and its consent before any acquisition or transfer of lands can be made.

Regional Council. The Accord provides for the establishment of a Regional Council with co-ordinating and supervisory authority over the three Hill District Councils, the police and civil administration, the CHT Development Board, NGOs active in the CHT, disaster relief and heavy industries. The Regional Council also has a major role in legislative matters, namely the right to be consulted prior to any law being adopted which may affect the CHT.

In May 1999, an interim Regional Council was formed with the JSS leader, Mr. Shantu Larma as Chairperson. Although it is currently functional, the Regional Council has not yet been fully empowered and many of its powers and functions remain in the hands of the district administration including those relating to land and development matters. For instance, the CHT Development Board which is the most important development institution in the region with full control and management over all development projects including funding, remains outside the authority of the Regional Council.

Ministry for CHT Affairs. As specified in the Accord, a ministry for CHT affairs (MICHITA) was established in 1998, with the Member of Parliament for Khagrachari, Mr. Kalpa Ranjan Chakma, being the minister. The ministry has overall supervisory and executive authority over the regional and district bodies including the authority to allocate funds. It is to function with the participation of an advisory committee composed of the three traditional Rajas, a representative of the Regional Council Chairperson, the three Hill District Council chairpersons and three non-Jumma representatives. However, two years after the ministry was set up, the advisory committee has still not been formed.

Land Commission. The Accord also provides for the establishment of a commission on land to adjudicate land claims under the leadership of a retired judge. Although land is one of the most crucial issues in the CHT, and many of the outstanding issues are related to this crucial question, the government has yet to constitute this commission.

In addition to these matters, another grave cause for concern is the internecine feud between the JSS and the United Peoples Democratic Front (UPDF). The UPDF does not believe that the peace agreement meets the indigenous Jummas' demands either for self-determination or for full regional autonomy. It has been engaged in anti-Accord activities including demonstrations. However, the rivalry between the two parties has accelerated in the past year or so and both the JSS and the UPDF are reported to have been involved in unlawful killings, abductions, intimidation and harassment of members of the rival party. Earlier this year, there was news of an agreement between the two parties, and an end to the violence. However, there continue to be reports of sporadic incidents indicating that the situation has not yet been fully resolved.

This inter-party struggle is particularly serious when considered in conjunction with the main opposition party's - the Bangladesh Nationalist Party (BNP) - outspoken antagonism towards the Accord and their vow to annul it if and when they return to power. This is somewhat ironic as it may be recalled that it was the BNP that initiated the round of talks with the JSS which culminated in the 1997 Accord.

Land and Forests

Land is a crucial issue in the Hill Tracts. The indigenous peoples have been dispossessed of their lands through various methods. These include development projects such as the Kaptai Dam which flooded over 40% of the CHT's arable land and caused the displacement of some 100,000 people, or the settlement policy which brought over 450,000 non-indigenous people into the CHT, or the transfer of indigenous lands to outsiders. To this day, the process of land alienation and dispossession continues, despite specific provisions in the Peace Accord and related legislation prohibiting the transfer, sale and acquisition of any land in the CHT without consultations with, and the consent of, the Hill District Councils.

In this context, the practice of creating and/or extending 'reserved forests' by government notification, thereby prohibiting the indigenous peoples from entering and using the forest and its resources, continues. Justified by the government as an environmental protection measure, this exercise creates

tree plantations of rubber, teak and other species which have a ready market and are therefore an attractive and easy source of revenue for the government. However, the social and economic costs to the indigenous peoples are immeasurable, as the forests are often their main source of cash income in addition to providing for their daily needs. Many people also live in these areas, often as a result of displacement. The indigenous peoples face imprisonment and/or penalties, as once a forest has been classified as 'reserved', entry to, use of and extraction from the forest and its resources becomes illegal and is punishable by imprisonment and/or a fine.

In 1992, 1996 and 1998, a series of such notifications were issued designating an area of nearly 220,000 acres as 'reserved forest'. Thousands of people are affected by this order, and the Committee for the Protection of Forest and Land Rights was formed in defence of their rights. A delegation met the minister of environment and forests, Sajeda Chowdhury, in August 1999 and demanded that the orders be revoked. Despite her assurances that the government's afforestation programmes would not be carried out if this meant evicting people, the issue has not been resolved and the notifications remain in effect. It is also relevant to recall that reserved forests do not come under the management and control of the Regional Council or the Hill District Councils, being specifically excluded from the latter's authority as are other strategic areas such as the Kaptai Lake, the satellite station, 'state' lands, etc.

Illegal logging is another major source of concern in the CHT. It continues unchecked with trucks carrying timber out of the CHT a common sight. The timber is classified as 'firewood' under a special permit, which allows it to be taken out of the CHT as the sale of firewood for domestic purposes is allowed. In this way thousands of cubic feet of timber are taken out of the CHT. This can only occur with the collusion of corrupt Forest Department officials and police and security forces, who have been described as "a Mafia style operation" by a local official. The environmental degradation in the CHT has reached alarming proportions and has caused the government to adopt an environmental management plan with the support of the UNDP, which is currently in progress.

In another development, a national newspaper reported that indigenous lands in Bandarban and Khagrachari are being leased out by the government to influential non-residents of the CHT, many of whom have close links to the government, to be used as rubber plantations (27th of October 1999, Prathom Alo, Dhaka). These lands were in use and were occupied by indigenous farmers, who are now landless and face poverty and hardship as a result of this

affair. Such a manoeuvre is also in direct contravention of the Accord and related legislation. Another issue that is causing concern is the activities of international companies including United Meridien Corporation who are prospecting for oil and gas in the CHT. The government is eager to exploit this potential source of revenue, and mining is to commence shortly. Within this context it is relevant to mention that the rights of the indigenous peoples to their ancestral lands must be taken into account, especially in view of the 1997 Peace Accord and related legislation. The Accord also provides for benefit sharing and for royalties to be paid to the Hill District Councils for mineral resources.

Refugees and the Internally Displaced

Between 1995 and 1997 approximately 70,000 Jumma refugees who had fled to neighbouring countries in order to escape the violence in the CHT, returned home within the framework of a negotiated agreement between themselves and the Bangladesh Government (9th of March 1997, GOB-Jumma Refugees Welfare Association Agreement). Although many of them have had their lands returned to them, some have been unable to claim them back as these lands are now in the possession of settler families from the plains who came into the CHT in the mid-70s, as mentioned earlier.

The government continues to provide rations and other assistance to the settlers, many of whom were actively involved in committing gross human rights abuses against the indigenous Jummas, in collaboration with the army and paramilitary forces - a contributory factor to the tension and unease in the region. Many settler families have indicated their willingness to leave the CHT and settle elsewhere in the country provided they are given adequate incentives and benefits (as was the case when they were brought into the CHT in the mid-70s). The European Community has offered its help, including financial assistance, in resettling the settlers elsewhere on a voluntary basis. However, the government has been reluctant to take up this offer.

The situation of the thousands of people who were displaced during the conflict remains grave and there continue to be reports of food shortages in some areas, together with outbreaks of malaria and dysentery. As stipulated under the Accord, the internally displaced people are to be rehabilitated and a task force has been created for this purpose. The task force has listed some 130,472 families as being internally displaced. However, this list has created controversy since some 48,452 non-indigenous settler families have been included. The JSS believes that only indigenous families who were displaced between 1975 and 1992 should be included in this list as per the Accord. To

do otherwise would have serious repercussions on the land rights of the indigenous Jummas, many of whom have been displaced mainly as a result of the same settlement programme. As a JSS representative at the 1999 session of the UN Working Group on Indigenous Populations made clear, "This may lead to the legal recognition of these settlers as residents of the CHT and as legal owners of lands which rightfully belong to the indigenous peoples."²

Human Rights Violations

On the 16th of October 1999, in what was a grim reminder of earlier times, there was a reprisal attack on indigenous Jummas at the market town of Babuchara Bazaar, Dighinala Thana in Khagrachari Hill District. In what has unfortunately become a common scenario, a Jumma woman was harassed by a member of the armed forces. When some students came to her aid, an army contingent rushed to the market place and, aided by some 150 Bengali settlers, attacked the unarmed Jummas. Three people were killed and some 75 persons were injured. The settlers continued their reprisal attack and set some nearby houses on fire, ransacked the Benuban Buddhist temple, destroyed some Buddha statues and attacked some Buddhist monks.³ The government has set up an inquiry into the incident but no report has yet been published. Given the government's past record of conducting enquiries but not publishing the findings - as was the case in the enquiry into the abduction of Kalpana Chakma, a Jumma student leader whose whereabouts continue to be unknown - the indigenous people remain somewhat sceptical about the Babuchara inquiry. It is to be hoped that the government will conduct a full and fair enquiry into the incident, and bring those responsible to justice.

Conclusion

The 1997 Accord has initiated a peace process in the CHT, and in 1999, Sheikh Hasina received the UNESCO peace award for her role in agreeing to the Peace Accord. It is to be hoped that this will encourage the government and its agencies to take the necessary measures to ensure the full implementation of the Peace Accord and to bring about a sustained and durable peace in the Hill Tracts region.

Notes

- ¹ The JSS is the indigenous political party which has been leading the indigenous Jummas' struggle for regional autonomy for over 20 years. The 1997 agreement is the culmination of many rounds of negotiations between successive governments and the JSS.

- 2 Statement by Rupayan Dewan, CHT Regional Council Member, UN WGIP, July 1999, Geneva.
- 3 See Amnesty International Report: Human Rights in the Chittagong Hill Tracts (ASA 13/01/00) for details.

The Garos

The Garos are the inhabitants of the Garo Hills of Meghalaya State in North-east India and the adjacent areas across the border, in Greater Mymensingh and the Sylhet district in northeastern Bangladesh, where they live both in the hills and the lowlands. The Garos prefer to call themselves "A'chik" or "A'chik Mandi" and, as such, the appropriate term for their land will be "A'chik A'song" or "A'chik land". The Garo word "A'chik" means "hills" and "Mandi" means "the people". So the Garos call themselves simply "hill people". The Garos population in Bangladesh is approximately 120,000. But the Government of Bangladesh's 1991 census report gives a figure of only 68,210.

The Garos are matrilineal, which means that descent is traced through the mother only. All property belongs to the women, it remains with her clan and is passed on from mother to daughter.



Garos women at a rally in the capital Dhaka (Photo: Sanjeeb Drong).

The Garo communities in Bangladesh are coming under ever greater pressure. They are losing their lands to Bengali land grabbers, their language and culture are not recognised by the state, and although they have lived for centuries in their ancestral lands - that are now divided by an international boundary - they do not enjoy the full rights of citizenship in Bangladesh, being treated as second-class citizens. The case described below illustrates how poorly protected the Garos' rights are, and how forced dispossession by Bengalis is met by government officials with at best indifference, and at worst outright support of the culprits.

The Chailtachara Incident

On the 18th of December 1999, a group of 50 to 60 Bengali Muslim assailants armed with various weapons attacked the Chailtachara Garo village in the Moulvibazar district. There were 20 families in the village with 168 acres of hill land and forest. At first they hit the Headman Gregory Nokrek before stabbing and seriously wounding the 60 year old. Then the assailants ordered the Headman to flee if he want to save his life. Faced with this situation Gregory Nokrek ran away to the forest. Then the assailants plundered and destroyed the Headman's houses. After looting the village the assailants attacked and carried off the Headman's wife, his son's wife, his brother's daughter and a grandson of one year. The Headman Gregory Nokrek was the target of the Muslim assailants because they obviously wanted to get hold of the Chailtachara village lands and forest by force. Allegedly, influential politicians and the chairman of the local Union Council, who are Bengali Muslims, encouraged and helped the assailants attack the village.

The Chailtachara Garo village lies in a remote hill area. Headman Gregory Nokrek could not get any help there. Under such circumstances Gregory Nokrek and others ran to the police station at Kulaura to try to rescue his wife and three relatives. But the Officer-in-Charge (OC) of the police station did not accept the case and did not take any steps to help them. The OC told them he would come to visit the village the next day, but he never showed up. The local tribal leaders went to the police station in order to file a case. The OC abused them and they understood that this OC would not do anything to help them. Then the headman went to Mymensingh to the Chairman of the Tribal Welfare Association, who was a former Member of the Parliament. He reported the facts to the Home Minister and then the case was taken up.

After filing a report at the police station, the assailants threatened to kill the Headman and the other villagers. Headman Gregory Nokrek was therefore forced to leave the village and seek shelter and help in the capital Dhaka.

He visited newspaper offices and his story was published in leading national newspapers. Intellectuals, writers, artists and influential individuals expressed their concern about the incident and they demanded that the assailants be arrested and that the Garos be reinstated on their own land. A group of journalists visited the area and they also published their reports and editorials in the newspapers. Despite all this, the Headman was unable to find his wife and relatives, and the indigenous communities continue to be worried that their Muslim assailants will illegally occupy Chailtachara village in the near future. And they have every reason to be afraid since Garo and Khasi villages have already been occupied by the Bengalis in the past. The government does not yet have a policy or arrangements to protect the indigenous peoples' villages.

Lack of Organizing

However, the Garos of Bangladesh have no political organisation that can protect their rights. They attempted to make the Tribal Welfare Association that was established with the support of the government in 1977 look after their rights. But all that this attempt proved was that the Tribal Welfare Association was a mostly pro-government organisation and that it never supported and defended the demands of the Garo people. But even without their own organisation, Garo leaders and representatives joined the Bangladesh Adivasi National Co-ordinating Council in organising the International Day of the World's Indigenous Peoples on the 9th of August 1999 in Dhaka. About 2000 indigenous representatives from different parts of Bangladesh were present at the meeting. They made a declaration with recommendations on behalf of the 2 million indigenous peoples of Bangladesh that included demands concerning, among others, constitutional amendments, the ratification of ILO Convention 169, the recognition of communal land of forest rights, measures to improve education, and provisions for self-government of indigenous peoples. The declaration was submitted August 1999, but the government has not yet responded in any way.

NEPAL

List of 61 Indigenous Peoples/Nationalities Approved

The Adivasi/Janajati peoples of Nepal have been sticking determinedly to the position that their identity as indigenous peoples is part and parcel of their struggle for autonomy and self-determination. Indigenous peoples have there-

fore been demanding and struggling for the recognition of their identities as such. The list of 61 Janajati communities was formally submitted to the cabinet for its approval in 1995. There was strong resistance to raising the issue of definition from conservative politicians, bureaucrats, Hindu fundamentalists, mainstream academics and the pro-Hindu media. But through the continuous lobbying and sensitisation of the general public and the government, the indigenous peoples succeeded in being recognised. His Majesty's Government of Nepal, by the decision of the cabinet of ministers, approved the list of 61 nationalities on the 16th of April of 1999. They are as follows divided into four groups as follows: a) Mountain - Barah Gaunle, Bhutia, Byansi, Chhaintan, Chintan, Dolpo, Larke, Lhomi, Lhopa, Manamge, Marphali, Mugali, Siyar, Shepa, Syantan, Tangbe, Thakali, Thhintan, Thundam, Topkegola, Wallung; b) Hill - Bankaria, Baramo, Bhujel, Chepang, Chhantyal, Dura, Fri, Gurung, Hayu, Hyolmo, Jirel, Kushbadia, Kusunda, Lepcha, Limbu, Magar, Newar, Pahari, Rai, Sunuwar, Sural, Tamang, Thami; c) Inner Terai - Bote, Danuwar, Darai, Kumal, Manjhi, Raji, Raute and; d) Terai - Dhanuk, Dhimal, Gangai, Jhangad, Kisan, Meche, Rajbanshi, Satar, Tajpuria, and Tharu.

Continuous Struggle for Language Rights

Nepal is a multi-lingual country. There are, according to the Summer Institute of Linguists, 125 languages spoken by the various communities. The languages of Kusunda, Dura and Bhujel have already completely disappeared and about 20 languages are in the process of becoming extinct. The indigenous peoples of Nepal are therefore very concerned about their language heritage. They feel that their languages are the vehicles of transmission for their identities and cultures, which are in danger of being lost with no hope of recovering them. It was in such a context that, following the demands of various language communities, Kathmandu Metropolitan City decided to use the Bhasha Language on the 25th of August 1997 in addition to the prevailing Nepali (*khas*) language. And on the 18th and 25th of November 1997 respectively, the Dhanusha District Development Committee and the Rajbiraj Municipality each adopted the Maithili language as their official languages, also in addition to *khas*. But although the constitution of Nepal recognises every language spoken as a mother tongue in the various parts of the country as a national language, and although the Local Autonomy Act-2055 deutes the right to the local bodies - so called self-governments - to use, preserve and promote local languages, on June the 1st 1999 the Supreme court of Nepal issued a *certiorari* not to use local languages in local government offices. It declared the decisions to use indigenous languages in the offices of Kathmandu

Metropolitan City, the Rajbiraj Municipality and the Dhanusha District Development Committee to be unconstitutional and illegal. The court's verdict raised a serious question about the jurisdiction of the law that states that mother tongues should be recognised as national languages. It also left the various language communities in Nepal with only the option of challenging the constitutional provisions relating to the use of their languages. To protest against the court's verdict the language communities of indigenous peoples organised rallies, demonstrations, posters and banners, mass-meetings, corner-meetings, lantern processions, musical processions, picketing, marching around cities with black tapes on their mouths throughout the country and finally the 'Kathmandu valley wide general strike' on September the 15th 1999 (30th Bhadra, 2056). Subsequently the Nepal Federation of Nationalities (NEFEN) organised the first 'National Conference on Linguistic Rights' with the help of the International Work Group for Indigenous Affairs from March the 16th to 17th 2000 (Chaitra 3rd and 4th 2056), where 44 language communities and human rights organisations gathered together in support of the cause of language struggle. They passed a 'National Declaration on Linguistic Rights' based on the principle that "no language is either small or great, all are equal, and all the language communities have equal rights". In addition, the conference refused to accept the Supreme Court's decision on language and formed a Languages Co-ordinating and Monitoring Committee to follow up the developments. From now on the 1st of June (18 Jesth) will be observed as a 'Black Day for the Supreme Court'.

More Indigenous Peoples Organised

There are many indigenous communities whose total population may not number more than ten thousand. These small communities have now coordinated themselves and have founded the following organisations: the Kisan Community Association; the Rong Sejung Thi Lepcha Association; the Nepal Santhal Association; the Bhrahmu Association; the Mudiya Association; the Bote Association; the Singa Welfare Association; the Tajpuriya Society Council and; the Bhujel Association. It is believed that the populations of the Kisan, Bote, Bhrahmu, Lepcha, Mudiya and Singa number less than 500. These new organisations joined the Nepal Federation of Nationalities whose membership thereby increased to 31 in 1999.

Human Rights Commission Delayed

Since the 1990 Peoples' Movement and the formulation of the New Constitution to legitimise the parliamentary system, Nepal has claimed to be a demo-

cratic country and to be committed to implementing human rights. The parliament passed a Human Rights Commission Act-2053 in 1997. The Act, however, is very weak and powers have not been given to the proposed Commission to question all cases. Its establishment seems to be no more than window dressing for the benefit of the international community. Despite pressure from human rights organisations and indigenous organisations, the government has not yet been willing to form even the Human Rights Commission. Therefore, human rights activists and indigenous peoples are continuing to agitate in order to maintain pressure on the government to form the Human Rights Commission.

Human Rights Violations

Indigenous peoples are facing increasing threats to their security and peace in their territories. In the past four years, groups engaged in what they call a People's War are waging an armed struggle against the government. Indigenous peoples' territories have therefore been militarised and occupied by armed paramilitary groups or the Danga Police. Recently the police razed a whole village in west Nepal and three children died in the fire. Hundreds more people were hurt, animals were killed and villagers' property was damaged and destroyed. In the name of security and law and order, thousands of people have been killed and hundreds have disappeared in police custody. An indigenous leader of NEFEN was held in jail without trial and without charges for about nine months, despite three court orders to release him.

Campaign for Constitutional Amendments

Indigenous peoples are now campaigning to amend the articles of the Constitution, laws and bylaws that impact on them. A national consultation supported by the Minority Rights Group International was organised to sensitise the political parties, lawmakers, intellectuals and various other sections of society. Regional consultations were also conducted. The consultations identified 18 articles of the Constitution, 34 special laws and some common laws that adversely affect the rights and interests of indigenous peoples / nationalities. They need to be amended and a number of new provisions need to be included.

Bill to Form Academy of Nationalities Still not Passed

Because the necessary bill was not passed in parliament, the government failed to create the National Academy for Nationalities which indigenous people / nationalities have been demanding. The government had committed itself to

doing so in 1999 but it did not table the bill at the last session of the Parliament. The bill to form the National Academy (Rastriya Janajati Utthan Pratisthan) was simply thrown into the pigeonholes of members of parliament. It is worth reminding ourselves that over the last six years, each of the seven governments, whether a majority or coalition administration, promised to create the National Academy for Nationalities. But all of them collapsed without having done any such thing.

Indigenous Bondage Labourers Stand up for their Rights

In 1926 slavery was declared illegal in Nepal, and finally, after the introduction of democracy in 1991, debt bondage labour was abolished. Unfortunately debt bondage is still a widespread practice, especially in remote districts of Nepal. Several anti-slavery labour organisations have estimated the number of bondage labourers in southwest Nepal to be between 50,000 and 70,000.

In southwest Nepal, debt labourers are called Kamaiyas, and they are probably among the world's poorest people. Nearly all Kamaiyas belong to an indigenous people, the Tharu, who for generations have been victims of the debt bondage system. Several Kamaiya families have been bonded for up to seven generations. The oppression was intensified when mountain dwellers moved south to the lowlands, also called the Terai, and, legally or not, acquired large areas of fertile land. This resulted in the Tharu becoming landless and being forced into the position of Kamaiyas.

The way the Kamaiya system usually works is that a family has borrowed money from the landowner and is obliged to pay it back by way of the family's labour. Most often the wages amount to between 10 cents and half a US dollar a day for the whole family, paid out in rice. This means that it is impossible for the family to pay off the loan or to have sufficient money or rice for everyday use, which again means that they are forced to borrow more money. The family economy is especially vulnerable at times of illness or during religious festivals. A Kamaiya family typically works from 5am to 8pm, which means that even if they themselves have a small plot of land to cultivate, they are not able to find the time to do so. Their children have no possibility of going to school because they have to tend the cattle all day. In Nepal a minimum wage of between 75 cents and one dollar exists, depending on the district; however, this minimum wage is not enforced for the poorest people.

Nonetheless the Tharu are fighting for their rights. On May the 1st of this year, 19 Kamaiyas claimed that their landowner had not paid their wages for more than a year, and that their daily wages of about 12 cents was too small

compared to the minimum wages prescribed by law. The landowner, a former education minister of Nepal, responded by letting some other landowner's Kamaiyas be beaten thoroughly and by tearing down the homes of four Kamaiya families. It is an established fact that Shiv Raj Panth, the landowner - who incidentally was a former forest minister as well - acquired, as a result of his actions, at least 250 extra hectares of land where his 125 Kamaiyas are now working.

Following this incident, 20 Kamaiyas went to the mayor of Geta village, in the Kailali district, and filed a complaint. Subsequently the mayor, who is well acquainted with the law, called a meeting of the landowner, the Kamaiyas and eight local anti-slavery organisations at the city hall on May the 10th. In the meantime the news had spread across the whole country. All the major newspapers carried the story on the front page, and Nepal BBC Radio carried several feature stories. Nepal TV and several journalists also attended the meeting. Unfortunately the landowner did not appear at the meeting, but the mayor, the Kamaiyas and the organisations agreed to support the Kamaiyas by appointing a joint committee whose task it would be to register the case with the district office.

A large group of 100 Kamaiyas and activists went to the district offices to register the case. However, they were not received with any degree of goodwill. There are indications that the landowner and several other government employees had pressured the district office to reject the Kamaiyas and their organisations. The police were in place and proceeded to destroy a film from a camera and to threaten several of the organisation members with arrests.

On May the 14th large demonstrations took place with the participation of up to 7000 Kamaiyas and peasants, some of them from the two surrounding districts as well. Dilli Chaudhary, the president of BASE (a Tharu organisation of 30,000 members) announced that the demonstrators would remain in place until the case was registered. The village committees of BASE, as well as some women's groups, have started collecting rice for the strikers to eat.

This is where the case stands at present - a law that is not enforced, an administrator who aids and abets the exploitation of the poor by the rich, and a police force that is ready to beat up those who want to register a complaint. In Nepal, as in many other nations around the world, human rights are weak. The unusual thing about Nepal is that the media are free and uncensored, and that they actually do write about the unlawfulness taking place. The sad thing is that the Nepalese Government apparently does not care that much.

INDIA

Mizoram

The creation of the Mizo National Front (MNF) in Mizoram, similar to the Naga National Council in Nagaland, revived feelings of integrity and identity amongst the Mizos, and accordingly the MNF demanded that Mizoram be allowed to secede from India. The MNF turned itself into an underground movement in 1966, a fact which was instrumental in statehood being subsequently conferred on Mizoram on February the 20th 1987. The MNF ceased their underground activities once the Mizo Accord was signed on June the 30th 1986. After two decades of armed conflict, Mizoram enjoyed a period of peace until it became overshadowed by the recent problems relating to the Chakma and Bru minority groups.

The Chakmas are immigrants from the Chittagong Hill Tracts of Bangladesh. The influx of Chakmas started before India's independence, but became a major problem only after partition and the subsequent displacement of many Chakmas by the construction of the Kaptai dam in 1964. The immigrant Chakmas now lay claim to the land they have been inhabiting inside Mizoram and, at different points in time, they have demanded a separate district and Union Territory status. Article 244 (2) of the Constitution of India provides for a Sixth Schedule, giving some protection to the so-called scheduled tribes and their lands. The Sixth Schedule lists tribal areas in three parts. Part three includes the Chakma district, the Mara district and the Lai district in the southern part of Mizoram. Because of the Constitutional provision, the Chakmas are confident that their claim to territorial possession will be upheld. But the majority of Mizos feel that the Chakmas are encroaching upon their ancestral territory. Moreover there are allegations that the Chakmas in Mizoram have political links with the refugee Chakmas in Arunachal Pradesh. And they are said to also have political connections with Chakma organisations in Bangladesh.

While the signing of the Mizo Accord in 1986 reduced tensions and violence, the Mizos now see their autonomy threatened by the demands of the Chakmas, and this has led to new conflicts. The Central Government's inimical attitude towards the problem only aggravated the situation.

Aside from the Chakmas, a good number of Bru (also called Reang) have lived in Mizoram for many decades. They settle mostly in the western part of Mizoram, in an area bordering Tripura. They used to lead a fairly a nomadic life, moving their settlements every four or five years. They are not consid-

ered permanent residents by the Mizos, and they have not explicitly voiced aspirations for territorial possession or political autonomy in the past. However this has now changed. In 1996 the Brus demanded an autonomous council for themselves within Mizoram, resulting in riots between the Mizos and the Brus. In October 1996 about 42,000 Brus fled from Mizoram to adjoining North Tripura. The exodus continued throughout 1997. The Bru refugees took shelter mainly in the Kanchanpur subdivision of Tripura. Allegedly, the Bru insurgent group - called the Bru National Liberation Front (BNLF) - had at that time also been intimidating the Bru inhabitants of Mizoram to try to make them flee to Tripura and take shelter there. The alleged intention of the Bru militants was to ultimately carve out a Bru Territory in Tripura. The repatriation of these refugees has become a major problem both in Tripura and in Mizoram.

This situation was allegedly exploited by the Chakmas so that they could put forward their demands. Things became very tense and threatened the peace in Mizoram. But another conflict has interfered and somewhat diverted attention - the Hmar people's demand for recognition of their separate identity and a Hmar homeland (for background information on the Hmar conflict see the article below).

Hmar activists were made responsible for abduction of six employees of the North Eastern Electricity Power Corporation (NEEPCO), currently working on Tuirial Hydel Power Project in Mizoram, on March the 31st 2000. However, no organisation has claimed responsibility for this action. This event sent shockwaves throughout Mizoram, particularly because in January 2000 the Prime Minister declared Mizoram to be the most peaceful state in the Northeast.

The Brus have also recently intensified their activities by abducting two bus passengers from a Mizoram State transport bus on the Aizawl to Phaileng route. The bus was waylaid and set on fire on April the 15th 2000. This incident was closely followed by another case of abduction where a Sumo Taxi passenger was abducted on April the 19th 2000. The Bru National Liberation Front (BNLF), created in 1997 in the Kanchanpur subdivision of Tripura, is suspected of having had a hand in these incidents. In the case of the NEEPCO employees the abductors demanded 10 million rupees (ca. US\$250,000) for their release, whereas the BNLF abductors demanded five million rupees.

In a recent statement the Chief Minister of Mizoram, Mr Zoramthanga, ruled out setting up a regional council for the Brus. He said that the Brus (Reangs) were originally from Tripura and had come to Mizoram in search of

Jhum (swidden farm) land. The Mizo Protection Force also issued a notice saying that if the abducted persons are not released soon, a 'Quit Mizoram' order will be issued to the Brus. The Young Mizo Association, a powerful youth organisation, also made a definite note of the incidents.

Unlike other minority tribes in Mizoram who are demanding autonomy (such as the Hmars, the Lais and the Maras) neither the Brus nor the Chakmas are considered to be original inhabitants of the region, and therefore the majority of Mizos do not consider them to be indigenous people of Mizoram. The fact that they have enjoyed governmental protection in the past, including after India's independence, does not alter the situation. On the contrary, the Central Government's patronage of and its accommodative attitude towards the Brus and the Chakmas has led to Mizos feeling ill-disposed towards both it and towards Arian plains people in general. This may have been the reason for the failure of the Congress Party and the success of the MNF party in the last State Assembly elections held in late 1998.

The MNF, as guardian of Mizo interests, has promised 'better treatment' of the Chakma and the Brus problem. As soon as he assumed office the Chief Minister, Mr. Zoramthanga, reiterated his promise that the first major step he would take would be to abolish the Chakma District Council. So far this has not happened.

In general, the law and order situation in Mizoram has taken a downward turn in recent times. The Lais and the Maras are also demanding more autonomy for themselves, and Hmar underground groups have been reforming in order to resume their activities. All these factors as well as the complex connections between the different ethnic autonomy movements in North East India, have been threatening the peaceful atmosphere in Mizoram.

Many of the ills of the present day political situation in North East India as well as in the country as a whole can be attributed to the Central Government and to the State Government. The Central Government did not take 'cognisance' of the 'nationality' status of the numerous groups who were the original inhabitants of the different states of North East India. 'Nationality' here indicates nationality as a cultural and social category and does not have political connotations. Equally, the failure on the part of academicians to make proper distinctions between ethnic categories, ethnic groups and ethno-nations and nationalities has also resulted in the failure to understand the political, social and cultural realities of the people of North East India.

The Unresolved Issues of the Hmars

Mizoram is a multi-ethnic and pluralistic state comprising as many as 14 tribes with different languages and dialects. During the British rule, Mizoram was known as the Lushai Hills District which formed a part of Assam. In 1954, its name was changed to the Mizo Hills District. In 1966 after the secessionist movement under the Mizo National Front (MNF) arose, it was upgraded to the status of a centrally administered union territory. In 1987, it attained full statehood.

Of all the tribes in Mizoram, the Hmars are perhaps most exposed to the assimilation process of the Mizo, who are the majority indigenous people of Mizoram. As a result, there are two groups of Hmars, those who are completely assimilated and those who are only partially assimilated by Mizo culture. The first category of Hmars is satisfied to consider themselves Mizos. They have now totally forgotten even the Hmar language as well as their cultural ethos and values. On the other hand the partially assimilated Hmars, while they identify themselves as Mizos, are also fully aware of their distinct identity, traditions, customs and language. This is more the case among those Hmars living outside Mizoram. At school they must even take Hmar language as one of vernacular papers up to class XII. It is among this group of partially assimilated Hmars that the search for a separate identity has gained momentum.

It has never been the intention of Hmars living in and outside Mizoram to distance themselves from the mainstream of Mizo society. When the first political party, the Mizo Union was formed in 1946, all Hmars living in different parts of northeast India, particularly those in Manipur, opted for integration with Mizoram. As a matter of fact, the Hmars in Manipur boycotted the first Manipur general election of 1948 to join the 'Mizo Sarkar'. This never materialised because the Union leadership in Mizoram did not dare take any step which was likely to disturb the existing inter-state boundaries. Again, when the MNF started its independence movement in 1966, the Hmars in and outside Mizoram joined with the movement on the back of the promise of a 'Greater Mizoram', which meant the integration of all areas inhabited by Mizo in northeast India. Keeping this objective in view, the Mizo Integration Council (MIC) was formed in Manipur at the time of the talks between the MNF leadership and the Government of India. But when the Mizo accord was signed on the 30th of June 1996, no mention was made of integrating Hmar inhabited areas with Mizoram. The only redeeming feature of the accord was that the rights and privileges of the minorities in Mizoram as envis-

aged in the constitution should continue to be preserved and protected, and that their social and economic advancement should be ensured.

Disillusioned with all these false hopes, the Hmars in Mizoram began political consultations among themselves, and finally formed the Hmar People's Convention (HPC) in 1986. Since then this party has spearheaded the demand for the creation of an autonomous self-government covering north and northeast Mizoram. Because of the state government's inept handling of the situation, the HPC has, from April 1987 onwards, been compelled to wage an armed struggle for autonomy. The movement peaked in 1992 when the HPC set up clandestine links with Naga militants to co-ordinate guerrilla raids. This armed confrontation continued until the HPC representatives and the government of Mizoram mutually agreed to ministerial level talks in 1992. After having nine rounds of talks, the memorandum of settlement was signed at Aizawl, the capital of Mizoram on the 27th of July 1994. Some of the salient points of the agreement are given below:

1. On the question of the restoration of normality, the HPC agreed to undertake every necessary step to end underground activities within the agreed time frame. They would also return all underground personnel of the HPC to civic life, giving up their arms, ammunitions and equipment, as a way of abjuring violence and helping to restore normality.
2. The HPC was to take all necessary steps to amend its articles of association / constitution, so as to make them conform to the provisions of law.
3. The HPC agreed to undertake not to extend any support to the NSCN, the ULFA or any other such underground groups by supplying arms or providing protection or helping them in any other way.
4. For its part, the government of Mizoram agreed to take steps towards the relief and rehabilitation of all HPC underground personnel who gave up the struggle. They also agreed to make an ex gratia payment to the next of kin, heirs and dependants of HPC members killed during the insurgency.
5. With a view to satisfying the desires and aspirations of the Hmar community in Mizoram, the state government agreed to initiate measures to use the Hmar language as a medium of instruction up to the primary level. They also agreed to recognise the Hmar language as one of the major languages of the state of Mizoram.
6. The government of Mizoram also agreed to take steps to help promote and preserve Hmar culture.

7. To further the social, economic, cultural and educational development of the people in the north and northeastern parts of Mizoram, the government of Mizoram agreed to set up the Sinlung Hills Development Council that would cover an area to be specified and agreed upon by it and the HPC, by notification in the official gazette. A separate fund would be earmarked for schemes to be implemented in the area covered by the council.
8. Regarding political safeguard as available under the Sixth Schedule to the Constitution of India: the government of Mizoram would take immediate measures to include in the Scheduled (Tribal) Area of the Sixth Schedule an area to be specified which includes both areas demanded by the HPC, and other non-scheduled areas of Mizoram.

Soon after signing the agreement, the state government and the HPC got bogged down in procedural wrangles over such matters as the demarcation of the so-called Council's boundaries. As a result of both internal divisions within the HPC leadership and the government's apathy, basic issues relating to the right of self-determination and autonomy have so far not been addressed. Even if the state assembly unanimously recommends scheduling the areas the HPC is demanding be included under the Sixth Schedule, the Central Government would not be able to rush the bill through a divided parliament. Two separate factions, each of them dissatisfied with the implementation of the process, have emerged out of the HPC. First, there is HPC (Democracy) which will be only be content when all those areas in Manipur, Mizoram and Assam inhabited by Hmar are integrated, and when a Hmar homeland is created. Then there is the Hmar Revolutionary Front (HRF), which has its base in Manipur. In the past the short-sighted state administration used excessive force as a counter-measure, a strategy which only worsened the situation and led the HPC to increase their political demands to nothing less than wanting statehood. What is now required is not another series of counter-offensives, but the speedy resolution of all current issues. The present MNF government is well placed to do this because of its past experience of guerrilla tactics.

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Uttar Pradesh

The Van Gujjars

The proposed Rajaji National Park, located in the Himalayan foothills in the northwest of Uttar Pradesh, is the first protected area in India for which a community forest management plan has been prepared. This follows the widespread acceptance, even by the Government of India, that the present legislation for the conservation of forests and their wildlife has not proved successful. An Environment and Forest Minister from each of two successive Governments has gone on record informing the Upper House of Parliament that this legislation is in the process of being changed. The changes will mean that the forest dwelling people and others who are dependent on forest produce can be included in the management and protection of forests.

The CFM plan is based on sustainable traditional systems of management and makes use of the Gujjars age-old traditional knowledge. According to the CFM plan the Gujjars will play a central part in the management of the forest and will be responsible for regenerating the forests, protecting their core areas and guarding against poaching and timber smuggling in an environmentally and economically sustainable way. The rights of other communities living on the periphery of the forests are also respected in the plan, which provides for the existence of a minor forest produce committee in its structure. This committee would participate in the establishing of norms for sharing non-timber produce among them. The Forest Department, police and NGO sectors would only be involved at the apex of the structure. They would monitor the programme and lend support in the execution of the policies decided by the Van Gujjars themselves. The Van Gujjars see the plan as a viable alternative for addressing their insecurity, as it would provide them with control over the land that they use and a more productive framework for their relationship with the Forest Department.

The concept of the CFM plan has made the forest officials desperate, as to date they have been wielding unaccountable power over forest dwelling communities. In the case of the proposed Rajaji National Park they had unleashed a reign of terror against the Van Gujjars. Assisted by RLEK the Van Gujjars approached the National Human Rights Commission (NHRC) in order to obtain redress. In March 1999 the NHRC declared that the Van Gujjars could not be deprived of their traditional grazing and lopping rights or be coerced to leave the forest by the Forest Department 'until their rights are legally deter-

mined in accordance to law.' This decision is the first to deal with the environment-development debate facing the central and state governments and will have far reaching consequences for other tribal and forest dwellers affected by the creation of National Parks across the country.

This landmark judgement has given a boost to the CFM plan especially due to the recent recognition in official circles that existing approaches are not working. On the 9th and 10th of April 1999 a sanctuary committee meeting was held in Mohund, on the outskirts of the park, in which Van Gujjar, media and NGO representatives participated. Forest officials sensing that their monopoly over the forest could soon be broken by the CFM plan, did not participate.

Since this meeting forest officials have started more attacks against the Gujjars and RLEK volunteers. In one case a wireless set was seized from a Van Gujjar, Moosa Pradhan, who was working as an honorary forest guard. Over one hundred Gujjars had been given wireless sets by RLEK to establish a Radio Communication Network for the Milk Marketing project and to promote the practice of Community Forest Management. The Gujjars have been trained to use the equipment to report forest fires, poaching, illegal felling and epidemics attacking the local fauna, to other members of the community, RLEK and the police.

The range officer seized it from an area, which is neither a sanctuary nor a National Park. He gave no explanation as to why he was confiscating it and gave the Gujjar a blank receipt. RLEK filed the case in the Court of Additional Chief Judicial Magistrate, Dehra Dun, against the range officer and the Director of the proposed National Park. The prosecutor argued that the wireless set was being used to assist smugglers in killing elephants and other wild animals and could therefore be considered as a weapon. However, the magistrate found that this argument had no force and declared that the Director of the park had issued illegal instructions to his staff to seize the wireless sets in an attempt to harass the Gujjars.

The judgement concluded that the prosecution had no regard for the law of the land and that the possession of the wireless set was not an offence under any section of the Wild Life Protection Act 1972. The magistrate directed the state of Uttar Pradesh to return the set to RLEK immediately and held that the Forest Department was not authorised to seize the legal wireless sets again. As per the Wild Life Protection Act illegal seizure (i.e., of items that are not weapons) by any official in a protected or proposed protected area is punishable by law with a penalty of six months in prison and/or a monetary

fine. On the basis of this order RLEK has charged the concerned persons with illegal seizure.

International Workshop on Human Rights of Marginalised and Tribal Communities

Between the 1st and the 3rd of October 1999 the International Workshop on Human Rights of Marginalised and Tribal Communities whose title was 'The Role of NGOs and the National Human Rights Commission in Promoting Human Rights Culture' took place in Dehra Dun. The workshop was organised by RLEK, the National Human Rights Commission (NHRC) and IWGLA. Three former Chief Justices of India and three former Chief Justices of the High Court also supported it.

Representatives from tribal and indigenous communities - including Van Gujjars and Jaunsaris - participated in the workshop. Numerous eminent personalities from neighbouring countries also attended. During the workshop issues dealing with fundamental duties and the human rights of indigenous and marginalised communities and the supporting role of the United Nations were widely debated. The human rights situation in India and neighbouring countries, the role of non-governmental organisations in supplementing the NHRC and the role of the media in promoting a human rights culture were also discussed. The conclusions arrived at in the workshop came in the form of the Doon Declaration on Human Rights. One of the most significant ideas was the government's recommendation to set up a Tribal Commission where the Minister of the Commission would be from a tribal community.

Jharkhand

Jharkhand Bill Delayed

Once again it was a case of 'so near yet so far'. Almost everyone thought at some point during the Parliamentary Session which ended on the 17th of May 2000, that the three Bills for the creation of three separate and new states would be introduced and passed. However, already by the last week of the session, it was once again felt that the Bills, particularly the Bill on the creation of a separate Jharkhand State, might not be introduced.

The Jharkhand Bill was approved by the Legislature in Bihar, mainly due to the political pressure of the Laloo led Rashtriya Janata Dal. However, they also proposed about 50 amendments to the Bill. The Bihar and Jharkhand leaders however came to an agreement on the amendments which were accepted later on. The Bill, it would be good to remind readers, deals not with

the total area of around 180,000 sq. km. that people seeking the establishment of a Jharkhand State have historically demanded, but only with the 79,638 sq. km of land that lie in Bihar. The Jharkhandis, particularly the Adivasi feel that this could be one step towards realising the goal of a complete and undivided Jharkhand. There was a half-hearted attempt to introduce the Jharkhand Bill, along with similar attempts to introduce another two bills (one on the creation of Chhatisgarh State, which would adjoin the proposed Jharkhand State and the other the Uttarakhand Bill) on the last day of the session which ended on the 17th of May 2000. The fact that such an attempt was made only on the last day demonstrates that the government is not resolute in its idea to create the proposed states.

It was reported that due to objections from the coalition parties of the Bharatiya Janata Party, as well as to objections from Non-Congress opposition parties, the Bills were stalled. The Parliamentary Affairs Minister later said that the Bills would now be introduced on the opening day of the Monsoon Session. Such a deliberate delay amply demonstrates the position of oppressed and marginalised communities and peoples in India. It also shows that popular regional demands and aspirations can be obstructed by constitutional structures, which are dominated, controlled and pressured by vested interests and groups inimical to the interests of the Adivasi and other marginalised people.

People's Health - a Low Priority in Jharkhand

In April 1999, Prime Minister Atal Bihari Vajpayee speaking in Luknow, Uttar Pradesh said that NGOs should freely come forward to help in completing the Government's pledge to provide all round medical amenities to all classes of people in society. He also said that Government hospitals do not have sufficient resources to provide healthcare for all of India's huge population. To help achieve this, he said, it would be necessary for NGOs to come forward with their support. The Prime Minister's sentiments were echoed in Ranchi, the proposed capital of Jharkhand, by the Civil Surgeon, Mr Y. K. Sinha, who declared, "Voluntary Organisations have an important role in maintaining the good health of society."

It is good that persons from the Government, right from the Prime Minister of India to the Civil Surgeon of a District, are echoing the need for involving voluntary organisations in the health sector. But what are the challenges that are actually being faced? In spite of the woefully inadequate availability of statistics, it is common knowledge that many diseases are rampant right across India. To illustrate the extent of the problem, we will focus on the scourge that is malaria which assumed epidemic proportions last year.

In October 1999 it was reported from Hazaribagh, in Northern Jharkhand, that the rate of malaria infection had reached epidemic proportions, costing over 250 lives in the previous three months. In those same months deaths continued to occur and there was also an increase in the numbers of those suffering from the disease. Furthermore, according to information received from doctors, politicians, and social workers, in the District of Hazaribagh, which has a population of approximately 2.3 million, between 12,000 to 15,000 people were affected by fever.

Adding to this alarming scenario was the accusation that the Health and Malaria Prevention Division was finding it difficult to control the spread of malaria. The negligence of the Malaria Department is made clear by the fact that, in spite of having sufficient stock of DDT powder, spraying has not taken place for the last two years. In the same District, in the village of Karmali tola of Mandu block, it was reported that in April 1999 16 people died and 150 people were affected by malaria within a five day period.

Moreover in the adjoining Ranchi District, it was reported that at the end of November 1999, just as in other blocks in the district, the Angara block had been knocked sideways by an outbreak of malaria. In the more forested areas, hundreds of people had contracted the disease and dozens of people had died from it by end of November. This grim scenario was also reported in many other areas in Jharkhand.

What was the response of the region's Health Department? The opening paragraphs of this section mentioned the need for voluntary organisations. However this need is often created by the negligence - sometimes criminal - of government health services, and also by their corruption. So what is required is not just some NGOs stepping in to do what the government should be doing in the first place, but also political action on the part of the people. The government must be made to do its job.

Disappearing Forests

On the environmental front, too, the scenario does not look positive. As in many other parts of the world, it has been noticed that in India indigenous peoples are found in places rich in mineral and forest resources. Industrial development is dependent on the extraction and exploitation of mineral and forest resources. This has had an overwhelmingly unhealthy and dangerous impact on the lives of indigenous peoples and others who live in proximity to these resource rich territories. In the state of Bihar, the major forest areas are located in its 18 southern districts that are part of the larger Jharkhand area.

The rest of the Jharkhand area lies in the states of Bengal, Orissa and Madhya Pradesh.

Bihar's minister for forests, Tulsi Das Mahato has accepted that in Bihar there is now only around 30,078 sq. km or 16% of the total area under forest cover, much lower than the 33% required for environmental health. In addition to other detrimental effects, the shrinking forests reduce the natural habitats of wild animals. Consequently, there are increasing incidents of animals attacking humans, their fields and habitations.

But the government of Bihar does not show the least inclination to protect or regenerate the environment. According to a report by a Central Government body, a programme designed to promote awareness about the importance of forests that was supported by the Swedish International Development Agency (S.I.D.A.) was begun in 1985-86. This programme was to last for six years, and its main aim was the training and providing of information to people. But even by July 1998, the programme had not been implemented. Nevertheless 5.588 million rupees (US\$136,000) were spent on the salaries of Forest Department officers and clerks. Moreover, due to the negligence and lack of enthusiasm of the Bihar Government, the World Bank rejected a forestry project worth 1820 million rupees (US\$44.39 million). Such irresponsible behaviour on the part of the state raises questions about who one should work with in order to help with the conservation of the environment. Obviously it may, if possible, be better to work directly with the people concerned, or through non-governmental organisations.

The People's Response

In the face of such environmental destruction and crisis the people's response, although limited, has been encouraging. Sometimes it has been rather extreme. Only two examples are given below.

In Pakur in the Santhal Pargana region of Jharkhand, an environmentally motivated group of children has made the activities of the 'Forest Mafia', wood thieves and contractors, difficult. The trucks are not allowed to enter the hills, and trucks carrying stolen wood are being made to pay a large sum of money. They have also demanded that the forest authorities take stern action against persons looting and destroying forests. In August 1999 reports told of more than 50 children from Satna village, in Littipara block, going from village to village spreading the environmental message.

A more extreme response occurred in November 1999 when activists and *padyatris* (persons who try to draw attention to their cause while travelling on foot) of the Chotanagpur Kisan Vikas Sangh (Chotanagpur Farmers De-

velopment Union) announced that because of the unwillingness of the concerned authorities and other parties to pay attention to their protests, it would be better to embrace '*Jal Samadhi*' ('death in water').

The Chotanagpur Kisan Vikas Sangh has, for the last five or six years, been protesting to effect a clean up of what they consider the most polluted river in the world - the Damodar River. In spite of it being the main river in the Hazaribagh-Dhanbad region, the water in the river has been so polluted that it is no longer drinkable. People are however forced to continue using the water, and as a result waterborne diseases are widespread and people are dying.

A few decades ago, the ambitious Damodar Valley Corporation, brought about the construction of the Tilaiya, Maithon, Konar, and Panchet dams, in order to ensure flood control, irrigation, the provision of drinking water and the generation of electricity. Nowadays, except for the generation of electricity, all the other anticipated services, and in particular the provision of irrigation and drinking water, have become redundant or a problem. The Sangh reported that the main culprits responsible for polluting the river are Central Coalfields Limited (CCL), the Damodar Valley Corporation (DVC), Bharat Coking Coal Limited (BCCL), the TATAS, the big businessmen's house, and the Bokaro Steel Plant (BSP).

On a more positive note, the people continue to stand firm in their struggles against big displacement projects such as the Tudurma and Koel-Karo dams and the Field Firing Range.

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Andhra Pradesh

Gottikoyas: Haunted to Disarray

The forest areas of the Khammam District in Andhra Pradesh and in neighbouring Madhya Pradesh and Orissa states are inhabited by the Gottikoyas who moved here due to the inaccessibility of drinking water in the places where they had previously lived. But their new home was declared a Reserve

Forest, and today officials use this as a reason for harassing the Gottikoyas in all kinds of ways.

The Gottikoyas who had migrated to the agency villages of Khammam from different areas of the Bastar district in Madhya Pradesh are now facing an uncertain future. The forest officials are in a fix, as over the years nigh on 20 Gottikoya settlements have sprung up in the Reserve Forest. The Moriyas, an aggressive tribe that has been occupying patches of reserve forest close to the Bastar area, had tears in their eyes on only two occasions. Once when they were blessed with the much-needed water and again when they were all deprived of it. The Gottikoyas had a long fight with the local authorities to obtain basic amenities such as drinking water, but the officials were unable to help them as the Forest Department had challenged their occupation of the Reserve Forest. Finally they turned to a private donor - the Loyola Integrated Tribal Development Society (LITDS) - to quench their thirst. Father Peter Daniel, the head of the NGO, had entrusted the task of drilling boreholes in the water deficient settlements of Jogaiah Jaggaram, Bandi Jaggaram and Pavurlanka to tribal activists.

They engaged a rig for the purpose, but taking it to such inaccessible settlements was a Herculean task for them. In the third week of January this year it started drilling and in just four days all three settlements had had boreholes sunk. But the people's joy was short-lived since forest officials who had been objecting to the very presence of the Gottikoyas in the Reserve Forest were enraged by the felling of trees to make way for the rig to reach the villages. When all the men were away in the jungle, forest guards swooped on the settlement and, under police protection, filled the boreholes with sand and stones and warned those women and children who were protesting not to attempt to repair them under any circumstances.

The boreholes that were sunk in the three villages were all dismantled simultaneously on February the 3rd. Now the women have resumed their old practice of trekking three kilometres to fetch drinking water and forest officials have threatened to sue Father Daniel, for donating LITDS money to sink boreholes in the Reserve Forest. When the Father pleaded ignorance about the reserved status of the forest patches the Gottikoyas were living in, a case was brought against one of the tribal activists, Mr Sode Veeraiah, for drilling the boreholes.

On various occasions forest personnel have also razed settlements to the ground in order to discourage any further influx of Adivasis from Bastar. Bandi Jaggaram, where the LITDS sunk the first borehole, was burnt down by forest officials 10 years ago. But the people did not leave the place. The

Forest Department, which conducted a survey in the division two years ago, identified as many as 299 Gottikoya families settled in the Reserve Forest. They occupied 1173 acres of land in 13 sites in both the north and south forest divisions of Bhadrachalam. The occupation started as early as 1983-84 in Chinnampadu and Errampadu. Today nearly 500 acres of Reserve Forest land is being cultivated by the tribes in the two settlements, compared with 340 acres in 1997. The Gottikoya population also rose from 97 to 150 in the two settlements, and there was a considerable increase in numbers in other villages.

Meanwhile, the Khammam police commenced a special operation to send the Gottikoyas back to Bastar. On the 12th of March this year, police evacuated about 30 Gottikoya families from three settlements including Dayyalavai and Gaddamadugu in the Bhadrachalam division. All the families, along with their belongings, were taken by lorry to the Kunta area in the Bastar district.

Dilution of Land Laws and Legal Deceit

During 1999 and into 2000, the vested interests of non-tribal landlords and the industrial lobby applied maximum pressure on the State Government of Andhra Pradesh to amend the land transfer regulations of 1970-I. As a result of this lobbying by non-tribal groups, the State Government yielded to their pressure by appointing a House Committee on Tribal Land issues, which subsequently submitted its report on the 21st of July 1999. Its recommendations can be divided into four categories as follows.

1. The Presumption Clause - This clause legally defines the land in the scheduled area as belonging to the tribals. It says that legally and historically the land is first and foremost a source of livelihood for the tribals and that it belongs only to them. Later entrants, it continues, are to be treated differently from tribal peoples who should receive preferential treatment vis a vis these areas. Without understanding the historical reasons for this clause, the House Committee adopted an anti-tribal stance and recommended deleting the clause, a move which would be harmful to tribal groups and their rights.

2. The Gladston Report as Evidence for the Committee's Report - Gladston was a government officer in the Central Province who in 1863 took an interest in surveying the upper Godavari tribal areas, including Bhadrachalam and Rekhapelly taluks. This report has nothing to do with the 'problem area' that the present committee wants to study. These areas are Jeelugumelly and Buttyagudem which are in the lower Godavari River area. The Gladston Re-

port admitted the presence of the non-tribal castes in the upper Godavari River areas. The house committee, forgetting the fact that because the area the report describes is not the one they were addressing, used the report as reference material for arguments in favour of the non-tribal claim. The intention behind this is an attempt to dilute Act I of 1970. The learned members of the committee did not even bother to visit either the area which the Gladston report studied, or the 'problem area' set before the house committee. More accurately, the committee did not bother to consider tribal interests as being of primary importance, but instead tried to find pretexts to amend the Act. Act I of 1970 does not harm those non-tribal farmers who lived in harmony with the tribals and who possess clear legal titles up to 1970. The act only covers post-1970 entrants and people occupying lands without clear evidence of title deeds. Illegal tribal landholders prior to 1970 make up one category, and the second category comprises those post-1970 non-tribal land users who have bought or occupied the lands in the full knowledge that such actions or transactions are illegal. This second category is, in brief, made up of settler landlords, cultivators and non-tribal groups who depend on various occupational backgrounds and who mainly belong to backward castes.

3. The House Committee indirectly referred to the 'position certificates' of various non-tribal castes in the agency areas. This is another tactic to dilute Act I of 1970, and it was a move that had already been formalised by the State Housing Ministry through its official circular 899/RH1/99, dated the 8th of July 1999. This officially grants non-tribal people permission to build houses in the agency areas. Officially allowing houses to be built further encourages the ingress of non-tribal people into the agency areas.

4. The Committee also mentioned allowing the sale of land to non-tribals in the agency areas, a stance which exposes the hollowness of the committee's recommendations and its ill preparation on this issue. In fact, Act I of 1970 provides a space for the agent to buy land if any non-tribal surrenders it at the specified rates. This is clearly available in the present Act. But why the demand for permission of land sale among non-tribals? This not only leads to further dispossession of the tribals but also creates a terrible amount of pressure on the scant remaining forest. The correlation between the migratory movements of the people and the steady loss of the forest in these areas of the state is quite obvious. Hence the strict implementation of the land transfer regulations not only protects the tribal people but forest resources too. Furthermore many of the non-tribal land buyers are not members of land depend-

ent communities, castes or classes. A sizable number are just seeking to increase their property stake. A genuine pro-tribal act must not be sacrificed simply for the sake of their unlimited ambition

Gender Exploitation: Deceived Tribal Women in the Godavari Valley

The ruthless plundering of the land and forest resources in the Godavari valley does not stop there. Sexual exploitation of tribal women is another recent type of exploitation that disturbs the tribal communities. The classic mode of plundering tribal lands through acquiring concubines is rampant in the Godavari valley area, where settler landlords, petty traders and employees of the Government are the principal players of the game.

Of late, tribal girls have become the most sought after brides by 'bachelors' from the plains. Pecuniary and property benefits accruing from the girls are cited as reasons for this. With Regulation 1 of 1970 prohibiting the transfer (sale) of land from tribals to non-tribals in the notified areas, landlords from the plains who have an eye on these properties, go to the Girijan areas posing as bachelors. They then marry tribal girls, luring them "with their suit, boot and hat", so as to overcome the difficulty caused by Regulation 1.

The 'grooms', however, 'ditch' the girls after acquiring the properties, government grants, a job if possible and innumerable subsidies given to tribals under welfare schemes. During her recent visit to the Paderu area, the Chairperson of the State Women's Commission, Mrs Susheela Devi, heard many first hand accounts from victims of these 'fake marriages'. In an attempt to find a solution, six hundred tribal women complained to her about these marriages.

The landlords' modus operandi, so Mrs Susheela Devi told The Hindu in an interview, was for them to leave their real wives and children back in the plains - mostly the coastal areas - and arrive in the targeted area as a 'bachelor' seeking an alliance. "No objection if the bride is a tribal", they would say, adding a flavour of reformer to their new role.

A surprise was that some girls who were better placed and working as auxiliary midwives, "felt proud" to have an equally better off 'bachelor' as a life partner. And when the marriage fails the parents or the elders in tribal society do not grumble when compelled to fend for the newly born child of the plain's man. Some girls at Rampachodavaram and parts of East Godavari district, which Mrs Susheela Devi also visited, said they did not know if a law existed that would punish these 'super dupers'.

To contain this menace, the Chairperson sought to introduce a law stipulating that men from the plains wanting to marry tribal girls should file an affidavit before the local magistrate, that he is not already married. This affidavit should also carry the signature of two of his relatives. After this, the district Superintendent of Police would be required to conduct an enquiry about the marital status of the man within a period of four weeks, as happens in the US and other western countries. Mrs Susheela Devi said that if the affidavit is found to be false, then this should be considered a second offence, adding that "this will serve as a safeguard against ditching". She said that the Commission would organise a state-level democratic exercise addressing this matter, and called for suggestions and opinions from women and their organisations before finalising the provisions of law for consideration by the Government.

According to the feedback received by the Commission during its 10 month long existence, women in the state are still subject to harassment over dowry payments and inhuman treatment. It received 283 petitions that described various problems, 169 of which were settled. The Commission achieved a compromise in the case of a family who had been cast out from a place as a result of the non-payment of a dowry and managed to restore a girl, Geetha, to her parents with the help of the police in Hyderabad.

Mrs Susheela Devi said that a large number of cases relating to maintenance, bigamy, harassment and outrage of modesty were pending before the courts and that she hoped that all of them could be solved under the relevant sections of the law. In view of this, she said, she was planning to hold a 'Lok Adalat' (traditional village court) sometime in May to June this year for settling appropriate cases at a group level. The High Court has already 'agreed' to this proposal according to which even a District Judge could do the job.

Other measures that were suggested included amendments to section 125 of Cr.PC and Section 498(A) of the Indian Penal Code (IPC) providing for an increase of maintenance payable to a deserted wife living with 'major' children to from the present 500 rupees a month to 3000 rupees a month. It would also provide for seeking compromises between husbands and wives even after the wife had started a prosecution against her husband for dowry harassment. The Chairperson said that the Law Department was drafting a bill.

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Orissa

Orissa became a separate state in 1936. With its 13 districts - that were recently reconfigured into 30 districts - it has the third largest tribal population of any state in India (1991). As many as 62 different tribal communities, with 25 different languages live here. Twelve have been identified as major groups, including the Kondh who are the largest group, followed by the Santhal, Saura, Gond, Munda, Parja, and Bhuiyan. The tribals inhabit remote and inaccessible hilly regions and have very diverse social organisations and cultures.

About one in four of Orissa's citizens is a tribal and put together they comprise a large minority. In a number of districts like Mayurbhanj, Keonjhar, Phulbanj, Kurapur and Sundergarh, they constitute more than 50% of the population. The government of Orissa considers the development of tribals to be an important objective and about 45% of the state's tribal areas has been declared a Scheduled area, under a 1959 order. In 1977 this order was revised to include seven more areas.

Deprivation Leading to Discontent

In recent years, the level of discontent amongst tribals has risen, and this has been accompanied by a number of bloody uprisings. The majority of tribal areas particularly in Koraput still remain unsurveyed. Tribal land is being lost as a result of land grabbing by non-tribals and because of inadequate government intervention. Access to forest and forest products has been minimised and the prices of forest products are not appropriate. Tribals are forcefully evicted in the name of development. Sometimes this takes the form of irrigation schemes, power projects, industrialisation or the establishment of protected areas without any proper rehabilitation for the people affected. Community rights no longer exist, and the government seems to be the biggest exploiter.

The tribals, however, are no longer prepared to be mute bystanders. In 1999 there were three outbreaks of resistance by tribals. In one case they set the local jail on fire before bringing out two inmates (who were people who had been exploiting them) and burning them alive. Furthermore they burned another person belonging to a Scheduled Caste who had given shelter to those two exploiters. Incidentally, the exploiters also belonged to a Scheduled Caste. In another incident, tribals resisted people belonging to a Scheduled Caste

who wanted to grab their land, and in the process 10 tribals were killed when police opened fire. In another case the 'liquor Mafia' killed a local tribal leader when he succeeded in stopping the production and selling of liquor in the Suridargarah district.

In March 2000, thousands of tribals assembled in the state capital Bhubaneswar and organised a rally which passed by various centres of power. They ended by making their feelings known to the new Chief Minister in the hope that the new government will adopt a different approach towards tribal development. The new Chief Minister made a sincere promise to look into their affairs. Thus a process of self-assertion among the Adivasi of Orissa has begun and is gaining strength day by day.

According to recent reports, there are 172 mines in Orissa. Seventy of these are iron mines, 20 are coal mines and four are bauxite mines. The districts of Rayagada, Koraput and Kalahandi are the nation's poorest regions. Still the tribals in these areas are coerced and intimidated into vacating their land, which is their only means of survival. The 15000 million rupee (US\$375 million) Larson and Turbo project will make 6000 people from 20 villages homeless. Another project at Baphilimali, in the Rayagada district, is being carried out by Utkal Alumina International Ltd. (UAIL) and will displace a further hundred families.

Super Cyclone Wrought Havoc on Orissa

Orissa experienced one of the most devastating human disasters as a result of the worst cyclones for a century which shattered the state's socio-economic foundations. On the morning of the 29th of October a killer cyclone with a wind velocity of about 250 to 300kph hit coastal Orissa. A total of 12.5 million people, among them about 800,000 tribals, were affected by this super cyclone, either directly or as a result of salt water flooding. Many once bustling and prosperous villages have been completely damaged or washed away. The ferocity of the cyclone was such that tidal waves measuring 15 to 20 feet went 30km inland, causing widespread loss of human and animal life, and destroying crops and property. The human death toll is believed to be more than 30,000. The misery was compounded by large scale flooding in a number of areas in neighbouring districts soon after the cyclone wrought its devastation.

Andaman and Nicobar Islands

The Andaman and Nicobar Islands in the Bay of Bengal consist of over 572 islands, islets and rocks. Approximately 87% or 7171 sq. km out of its total area of 8249 sq. km is officially forested, harbouring a unique variety of flora and fauna.

Thirty-six of the islands are inhabited. In 1901, the population of the islands was 24,500. After India's independence from British rule in 1947, the Indian government encouraged immigration from the mainland. According to the 1991 census the population numbered 280,661 people, and today it is estimated to be about 400,000. The indigenous peoples account for only 9.54% of the total population. The official figure of 26,770 does not include the Jarawa and Sentinelese, since they could not be counted. Four indigenous peoples of Negrito origin live on the Andaman Islands - the Great Andamanese, the Onge, the Jarawa and the Sentinelese. The Nicobar Islands are home to two indigenous peoples of Mongoloid origin - the Nicobarese and the Shompen. It is believed that at the end of 18th century, there were 15 indigenous groups in the archipelago. But only the six have survived the onslaught of the British and Indian colonizers.

Plans were drawn up in recent times for a more rapid development of the islands' economy. The setting up of a free port and the development of tourism have been suggested. Claiming to be based on the recommendation of a UNDP/WTO study team, projects for the construction of beach resorts, the development of beaches, water sports activities, manpower planning and training, the setting up of a tourism development authority and more effective modes of communication have been initiated in the past few years.

But for the indigenous peoples of the Andaman and Nicobar Islands, contact and development have only brought about the disintegration of their societies, the loss of their cultures, dispossession, poverty and death. With the exception of the Nicobarese, the populations of the surviving indigenous communities have continued to dwindle rapidly over the past decades.

Many of the *Nicobarese* have been assimilated into Indian settler society, especially those living in Car Nicobar island. Christian missionaries have long been in touch with them and are converting them to Christianity. Numbering around 26,000, they are by far the largest group of indigenous people in the Andaman and Nicobar Islands.

Occupying the remote and isolated North Sentinel Island, the *Sentinelese* have remained completely hostile and have never permitted anyone to land on its

shores. The *Sentinelese* were only 'discovered' in 1967. They are thought to number between 50 and 200 individuals. The Government of India sends expeditions sporadically - boats loaded with gifts of red ribbons, coconuts, sweet potatoes, cooked rice and aluminium vessels. The *Sentinelese* have been known to come out to the boats to accept the gifts except for the cooked rice and aluminium vessels. They have made it clear that they want to be left alone.

The *Shompen* of Nicobar have until recently been fairly isolated on the large island of Great Nicobar. But settlements of ex-servicemen and developmental activities are putting them under increasing pressure. A friendship hut has recently been established to facilitate contact with settlers. But experiences of other indigenous groups show that even such kinds of 'friendly contacts' can be fatal.

The *Great Andamanese* were a community of 10 sub-groups living on the main Andaman islands. When contact was first established with them in 1858, their population was estimated to be about 4800. The British strategy to 'civilise' them consisted of a combination of 'punitive' expeditions and bribery.

After contact a large number of them perished because of introduced diseases. Epidemics such as pneumonia (which broke out in 1868), measles (1877) influenza (1896) and syphilis killed hundreds. They had no resistance to these diseases. Out of the 4800 *Great Andamanese* estimated to have been alive in the 19th century, the population was reduced to 625 in 1901, 209 in 1921, 90 in 1931, and 23 in 1951. As mentioned above, they numbered 28 in 1991. They were the first to be 'civilised' and by now they have ceased to exist as a community. Until a few years ago they had to resort to begging for a living, when the administration settled them on Stuart Island where they now survive on government subsidies.

The *Onge* live on the 732 sq. km large thickly forested Little Andaman Island. After the *Great Andamanese* they were the next to be 'civilised'. With independence, the Government of India encouraged migration of mainlanders to safeguard the country's territorial interests. The Andaman and Nicobar Protection of Aboriginal Tribes Regulation of 1957 accorded the status of a tribal reserve to the entire island. But a 1965 report by the 'The Interdepartmental Team on Accelerated Development Programme for the A & N Islands', Ministry of Rehabilitation of the Government of India, proposed the clear felling of nearly 40% of the island's forests. They also proposed bring-

ing in 12,000 settler families to the area and the promotion of commercial plantations such as red oil palm and timber based industries. In 1967, the island of Little Andaman was opened up for settlement. In 1970 timber extraction began. Twenty thousand hectares (roughly 30%) of the island was denotified from its tribal reserve status in two stages, in 1972 and 1977, leaving 53,000 hectares as an inviolable tribal reserve. The 1600 hectare red oil palm plantation began work in 1975 under the direction of the Forest Department and a major timber extraction operation continues even today.

In 1976 the Onge were forcibly relocated by the government to an area 110 sq. km in size at Dugong Creek in the northeast of the island. In 1980 the second settlement at South Bay at the southern tip was established.

The Forest Corporation logs even inside the tribal reserve, extracting larger quantities than allowed, an act which destroys the forest. The warnings of the Anthropological Society of India and the media have been ineffective.

Only a decade ago, the Onge were skilled hunters and gatherers following a seasonal pattern of moving from the coast to the forest and creek areas in accordance with the supply of food in the sea and the forest. Today, they are confined to their settlements living off government provisions and working as plantation labourers. Alcohol was introduced by the settlers and this is exacting a heavy toll on the community. The steady decline in the size of the community has led to the erosion of their values and social relations - their culture is being lost. Since contact with the British colonialists the population of Onge has dropped from 672 in 1901 to 250 in 1931, and to 101 in 1991. Today the birth of a child has become a rare occasion. The Onge, just like the Great Andamanese, are not only losing their culture but are facing extinction.

The *Jarawa* occupy an area of 785 sq. km along the west coast of Middle and South Andaman, an area termed by the government as the Jarawa Reserve. During World War Two, the Japanese captured and massacred many Jarawas. Middle Andaman and South Andaman are the focus of much of Indian immigration to Andamans. The Jarwas remain hostile. The Jarawa Tribal Reserve was established in order to protect the Jarawa way of life, and to keep them confined to the reserve. To prevent the increasing settler population from encroaching onto the reserve, 44 bush police camps with 400 policemen were established along the periphery of the reserve.

Since the 1970s, the size of the reserve has been steadily decreased in order to appropriate land for logging, settlers and the Andaman trunk road. The 340km long Andaman trunk road cuts through the heart of the Jarawa reserve and has opened up more areas for settlement. The Jarawa's protests in

the form of roadblocks, the demolition of bridges and attacks on and the occasional killing of workers were ignored. Work came to a halt in 1976 but was resumed. Traffic on the road has grown enormously. Many more settlers now live in areas bordering the Reserve thereby increasing the possibility of interaction and conflict. Settlers commonly hunt wild boar and deer inside the reserve as well as poaching forest produce and timber. At times, Jarawa settlements are also destroyed. Many illegal encroachments on the reserve are connected to political patronage. Forced into a smaller and smaller area, conflicts between the Jarawa and the settlers have increased and violent incidents have occurred. With continuing encroachments by settlers onto the reserve, the function of the police force has been confined to keeping the Jarawa at bay. A people who once roamed the length and breadth of their island unhindered are being kept hostage on a fraction of their original lands.



Jarawa run to meet the "contact boat" (Photo: Sita Venkateswar).

In October 1997, settlers in the Middle Andaman witnessed the unfamiliar sight of a group of Jarawa. This was the first recorded instance of Jarawa voluntarily seeking to establish contact with the settlers. Over the next few

months there were several more reports of Jarawa coming out of their forests. Some of them were seen to be pointing out to their bellies, a gesture which was interpreted as an expression of hunger. Packets containing dry fish, puffed rice and bananas were air-dropped from helicopters over Jarawa territory. But the Jarawa have sustained themselves on forest produce for centuries and there is no reason to believe that they have suddenly been pushed into starvation.

Anthropologists have another explanation. It relates to the experience of Enemy, a teenage Jarawa boy, who was found with a fractured foot near the town of Kadmtala in 1997. The local residents arranged for his treatment in Port Blair where he was well looked after. When Enemy recovered, he was sent back to Middle Andaman where he promptly disappeared into the forest. Since October 1997, it is Enemy - and not starvation - who has largely been responsible for bringing his people out to experience the settlers' hospitality. Nevertheless, the destruction of the natural environment and the confinement of the Jarawa into a smaller and smaller territory are undoubtedly threatening factors which are making a serious impact on the Jarawa.

But an even grimmer future awaits the Jarawa should the Government of India prove to have learned nothing either from the genocidal practices of the British or from its own past mistakes. The government's Master Plan (1991-2021) for the Welfare of Primitive Tribes of Andaman and Nicobar Islands lays out a policy of settling the Jarawa. The plan for 2020 and beyond says: "The Jarawas would lead a settled life with surplus economy based predominantly on fishery. There shall be two Jarawa village settlements, one in the South Andaman and another in the Middle Andaman". The government is still in the process of revising the Master Plan, so its policy on the indigenous peoples of the Andaman and Nicobar Islands is not yet clear.

However, forces in the government pushing for forced assimilation have received support from a Public Interest Litigation brought against the Union of India in 1999. Ms Ganguly, a lawyer living in the Andamans, is demanding the forced settlement of the Jarawa. This may, as history in the Andaman Islands as well as elsewhere in the world has shown, lead to the extinction of this hunter-gatherer community. Ms Ganguly said, "It is high time they were acquainted with modern civilisation". She referred to the two other contacted tribes on the Andaman Islands as examples of the type of settlement she wants for the Jarawa. But even the officers from the government's Tribal Welfare Department have admitted that these cases are disastrous. Ms Ganguly has never consulted the Jarawa about her intentions, and they could not take part

in the proceedings. It is highly unlikely that they are even aware of what is going on.

Tragically, warnings raised by anthropologists and other concerned people ever since contacts with the Jarawa were intensified in 1997 have just recently come true. In August last year a measles epidemic broke out among the Jarawa, with subsequent respiratory complications, including tuberculosis and conjunctivitis. One hundred and forty cases have so far been reported in a population estimated to total fewer than 300 people. These illnesses are undoubtedly a direct result of the increase in the number of contacts by the Andaman government and of increasing settler encroachment on their territory. Such reports evoke recollections of epidemics among the Great Andamanese and Onge which severely decimated their populations and led to the extinction of several groups. Anthropologists, local and international support organisations and other concerned people have been pressing the Andaman administration to terminate all forms of contact with the Jarawa, and to close the road running through their territory, but apparently to no avail so far.

Survival International has been leading the international campaign for the rights of the Jarawa. Its campaign can be supported by contacting the web page at: <http://www.survival.org.uk/>

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SRI LANKA

The Wanniyala-Aetto

In 1983, the Wanniyala-Aetto of Sri Lanka were a spirited hunting and gathering people protesting against the discriminatory practices of the government which denied them access to their traditional forest habitat. In 1998, they seemed to be at last poised on the brink of success. In redressing the

grievances of the Wanniyala-Aetto community, the President allowed them to "continue their traditional way of life" and to "get the active participation of the Wanniyale Eththo in the process of protecting fauna and flora in the Madura Oya National Park at their free will" (President of Sri Lanka 1998). The Department of Wildlife was ordered to issue special ID cards to the Wanniyala-Aetto so that they could enter Maduru Oya National Park without harassment or persecution. Twenty-eight cards were handed out immediately after the proclamation, but 1020 individuals remained on the waiting list. Only one year later, in 1999, the government abandoned this creative solution. A new Wildlife Director was appointed and he disclaimed the policy of his predecessor, stopped issuing permits, and refused to renew expired IDs or issue the replacements of lost cards. The Wanniyala-Aetto are back where they were before they presented their case to the WGIP meeting at the UN in 1996. They cannot enter the forest to hunt and collect without endangering their lives. Today, they are a disillusioned and disenfranchised people who are eking out survival by putting their cultural traditions on show for curious tourists.¹

Current Conditions

Conditions among the Wanniyala-Aetto reflect the problems that are all too familiar to indigenous people the world over, beleaguered in their own land by an intrusive, dominant society. In Sri Lanka, the very small number of surviving Wanniyala-Aetto is being virtually held captive as a result of the exploitation of both forest resources and of the people themselves. As the indigenous barter system is inexorably replaced by the market economy, the native people are paying a heavy price both in terms of their cultural integrity and in term of individual survival.

The forest resources continue to be depleted by the removal of valuable timber, game, and animal products such as ivory, skins, teeth and claws. Entrepreneurs who are themselves half-indigenous exploit their own people as well as the natural resources. In the last few years, the forest-dwellers (the Wanniyala-Aetto) and traders from neighbouring areas are beginning to question these practices.

If, for a short while, such complaints unsettle the police, hotel and rest-house owners, and local politicians, everything soon returns to normal. The police will once again look the other way as lorries carrying rare timber under the guise of 'firewood', roll through military checkpoints at night. Corrup-

tion is too large a part of the establishment in Sri Lanka for any significant change to be made by local protesters.

The Wanniyala-Aetto themselves are exploited in a number of ways, all of them resulting from the customs of their culture: balanced reciprocity; animistic beliefs and; traditions of dance, myth and material life. To survive in an increasingly hostile and foreign world, the Wanniyala-Aetto have learned to adapt to both overt and covert legal systems. Since time immemorial, the survival of the vastly outnumbered Wanniyala-Aetto has depended partly on developing and maintaining 'friendships' with the authorities, i.e. to bribe them with gifts or a percentage of their income from felling trees.

Exploitation of Indigenous People: Tourism - Who Benefits?

Tourism is a special form of exploitation, new to the Wanniyala-Aetto. It represents a dramatic break with the past, when indigenous hunters and gatherers mostly hid from outsiders, successfully retreating into the forests. Such an avoidance of other people was no longer possible after 1983, when the last of the great forestlands was set aside as the Maduru Oya National Park. In the years since, a strong eco-tourist economy has grown up in the region, marketing the indigenous people and their exotic culture to tourists, mostly to the 20 million other Sri Lankans, but also to some foreign visitors. Travel agencies and private entrepreneurs in tourist towns promote tours to the see the 'Veddah' people in the jungle. When a tour is scheduled, the local families hurry to greet the outsiders and perform dances, sing, and act 'primitively' to comply with the expectations of the tourists. The people make bows and arrows, figurines and jewellery specifically to sell on these occasions. Eco-tourism can be a responsible form of tourism that promotes concern for the environment and the local community. It can be beneficial if the indigenous community understands business, talks the language, negotiates a fair share of the profit and distributes the income among its members. Unfortunately, most non-acculturated indigenous people do not understand the ramifications of this business, and do not foresee its consequences.

In Sri Lanka one such example is the event that goes by the name of the 'Night Camp Among the Veddahs'. Twice a month a European guide, her local counterpart, and a group of eco-tourists equipped with canvas tents, food, barbecue grills, and coolers of Heineken and Carlsberg come to befriend the 'Veddahs'. The Night Camp is scheduled between mountain biking in Pollonaruwa the day after and a visit to an elephant orphanage in Kandy the day before. For the Wanniyala-Aetto, a Night Camp takes up four to five

days of their time, because any activities such as long distance hunting trips that would keep them from their commitment to meet with the tourists, have to be put on hold. The Sri Lankan tour guide usually comes one day prior to the event to prepare for the group's arrival. On the evening itself, the eco-group is sheltered by a tent (in case of rain) and, with beers in hand, are treated to a night show of 'spirit-possessed' Wanniyala-Aetto, who perform out in the open. After the show there is an informal get together during which beer and other beverages are offered to the performers. The guide sees no problem in letting the tour members offer this alcohol as a friendly gesture of appreciation to the performers. The tourist feels that he or she has made contact with 'primitive' tribesmen, and the guide earns high scores when the tourists evaluate the programme.

Meanwhile, in the Wanniyala-Aetto households, worried mothers wonder if their sons will return without getting into trouble, and their wives are concerned about the condition of their husbands when they do come home. Among the Wanniyala-Aetto, a person who is not in control of his mind is crazy, dangerous to himself, his family, his kin. He is unreliable and no one seriously considers such a person as a friend or as a future spouse or father. Unaware of the damage they might have caused, the guide and the group move on to new adventures. The Wanniyala-Aetto are left to pick up the pieces. The half dozen performers share 2000 rupees (US\$33) for their night's 'work'.

While the night camps are not very lucrative for the Wanniyala-Aetto, daytime tours provide a much higher income for the participants. The father of the family may earn up to 4000 rupees per visit, and his sons 500 to 1000 rupees if the bus has a 'good load', meaning white tourists who pay the men to dance in front of their video cameras. Compare this generous income with the salary of a government schoolteacher, who receives 5000 rupees a month (1999). The high sums offered to the Wanniyala-Aetto families provide very attractive alternatives to foraging or 'poaching'. A man may decide that his time is best used by serving tourists instead of spending hours or even days in search of wild foods and risking arrest. The attendant acculturation of the indigenous culture often results in a breakdown in traditional values, an 'aping' (Denslow and Padoch 1988:122) of wholly inappropriate European clothing, technologies and mannerisms. As noted earlier, there is often an accompanying increase in alcoholism. These consequences are obnoxious even to the tourists, and when they become displeased they seek a new destination.

Acculturated Wanniyala-Aetto, Targeted for Wearing Clothes

Although the Wanniyala-Aetto have lived on their fabled island for thousands of years, and have survived numerous incursions of foreign peoples, the last half of the 20th century has been particularly destructive for them. They are forbidden to follow their traditional, forest-oriented way of life and at the same time they are criticised for attempting to adapt or to modernise. Their traditional vegetable gardens are described by the media as junkyards filled with empty salmon tins, broken glass, plastic bags and discarded bicycle wheels (Sunday Times 1998). The heaviest criticism of them springs from the clothes they wear (The Sunday Leader 1999, Sunday Times 1999, Daily News 1999). Compare the present Wildlife Conservation policy to the President's statement when he publicly announced the return of the National Park to the Wanniyala-Aetto:

"(This policy)...will offer an opportunity to the Veddha people or the Wanniyale Eththo to continue their traditional way of life (if they choose to do so) and to make progress of their civilisation" (the President of Sri Lanka, August the 7th 1998, emphasis added).

Regrettably, Sri Lankans are not generally aware of their island's indigenous people or how they live in modern times. Many people, including the Department of Wildlife Conservation staff, believe that the Wanniyala-Aetto still live in caves, hunt with bows and arrows and, apart from loincloths, go about basically naked. While this last description may be correct, the other images stem from adventure stories (for example, Robert Knox, 1681), and from novels and folk tales (Spittel, 1953, 1950; Parker, 1971). As a result, the Wildlife Department justifies targeting the Wanniyala-Aetto's right to hunt in the park by arguing that since they wear clothes, these hunters cannot be indigenous people (Sunday Leader 1999).

The word 'traditional' in the President's statement causes serious controversy. The present generation of Wanniyala-Aetto does not live in caves. To avoid getting killed, they now ask the authorities what to wear in the forest. Some government officers think native people should wear only loincloths, and live in simple lean-tos. Hunting should be pursued only with bows and arrows, while salmon tins and bicycles are incompatible with a traditional 'Veddah' life. Others agree the Wanniyala-Aetto can wear a sarong, ride bicycles, and hunt with muzzleloaders, but only for their own consumption. There can be no sale of forest products to outsiders.

Today, the standard of living in Sinhalese or Tamil villages is not very different from that of the Wanniyala-Aetto. Many Sri Lankans, therefore, cannot understand why the Wanniyala-Aetto should be treated differently. On the surface such an opinion might appear justified, but a closer look at matters reveals the real reasons for the government's seeming benevolence toward indigenous villages. In the modern state, the political parties pay attention to matters before elections. The poor 'Veddahs' live in villages quite distant from cities, and are often depicted by the media as innocent tribesmen leading a romantic life in the jungle. When journalists are on hand to document their generosity, politicians find it more advantageous to donate books and pens to Wanniyala-Aetto children, and roof tiles to their parents, than to scrutinise the welfare of a people who live so far outside the norm.

Unaware of the political currents, people and the media criticise the Wanniyala-Aetto for living in 'modern' houses, receiving government aid, consuming alcohol, selling meat, exploiting their culture for tourists, and using cash. Among most Sri Lankans, the level of awareness of the value of indigenous people to the country at large is almost non-existent. There is neither respect for their knowledge and skills nor any appreciation of what they have contributed to Sri Lanka in the past. There is not one Sri Lankan organisation that defends the rights of the Wanniyala-Aetto. Although the Sri Lankan Constitution forbids discrimination on the grounds of sex, ethnicity, caste, social origin, or place of birth (Sri Lanka Draft Constitution 1997: Chapter 3 11 [2]), the opposite way of acting permeates every aspect of Sri Lanka society. The Wanniyala-Aetto are physically and socially marginalised from the two major social groups, the Sinhalese and the Tamils. The two thousand Wanniyala-Aetto individuals have limited influence compared to the twenty million non-indigenous citizens. The government, scarred by the violence of the civil war that began in 1983, is determined to tone down the emphasis on ethnicity within the country, and instead promote the spirit of nationhood. Total Sinhalisation of the Wanniyala-Aetto is the official policy of the government, despite the President's 1998 statement to the contrary.

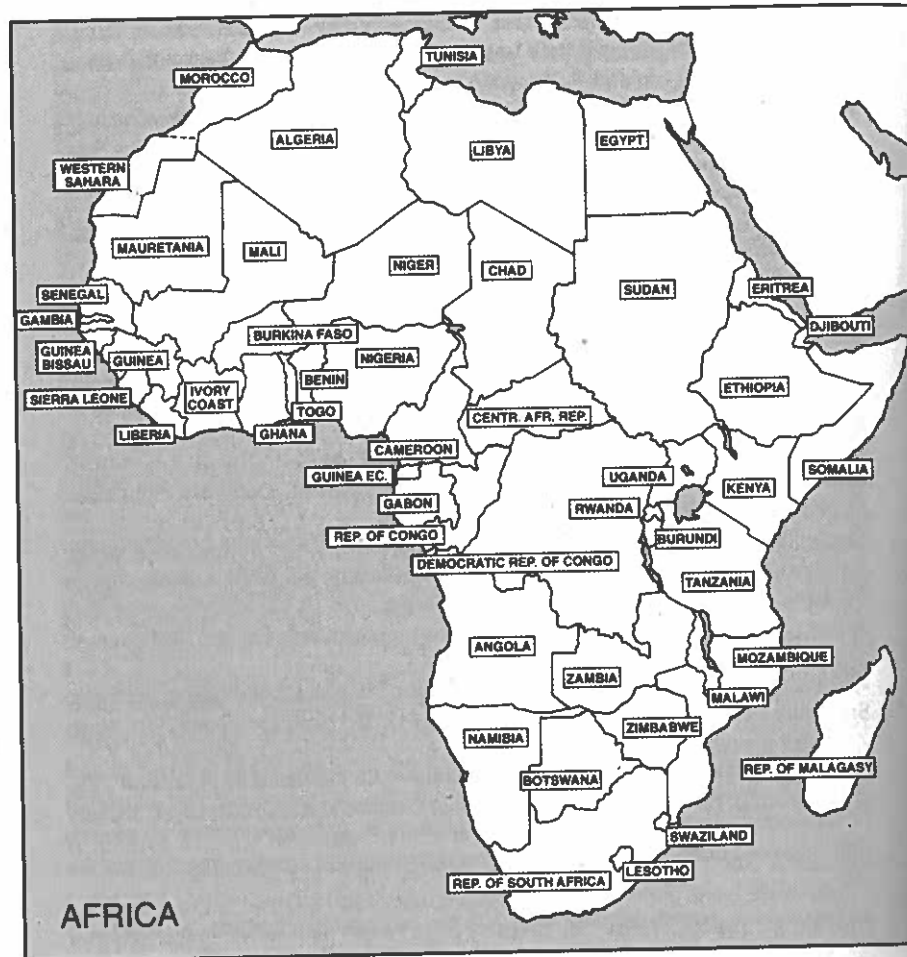
The author would like to acknowledge and thank Elizabeth von Till Warren for carefully editing the manuscript for publication.

Notes

- 1 For background information, please see IWGIA publications dating back to 1985, and the *Cambridge Encyclopaedia of Hunters and Gatherers* (Lee and Daly 1999).

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Countries covered in this issue: Northern Africa, Ethiopia, Kenya, Great Lakes Region, Botswana, Namibia, South Africa

AFRICA

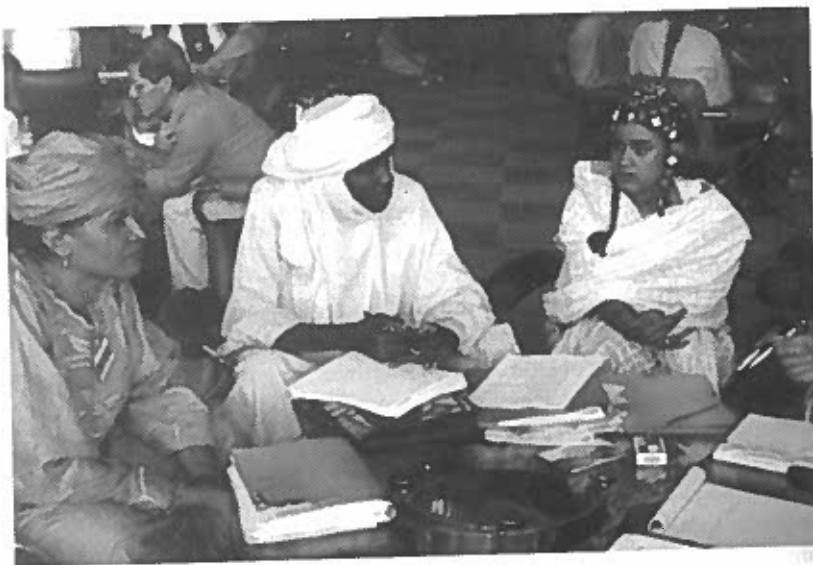
Introduction

Over the last five years considerable momentum has built up within African indigenous peoples' organisations. Nonetheless, indigenous organisations in Africa find themselves at a disadvantage compared to movements on other continents. This is due to the fact that there is widespread poverty on the continent, political and cultural repression, weak civil organisations, and a denial of aboriginality / indigeness by both African governments and influential foreign players, such as development and donor agencies.

During the 1999 United Nations' Working Group on Indigenous People (UNWGIP) session in Geneva, the African indigenous peoples' movement experienced its most significant threat. Ironically this came from the UNWGIP itself, with the release of Don Alfonso Martínez's report on treaties. Martínez questioned whether all delegations from Africa and Asia could be considered indigenous, and suggested that some would do better at the UN the minorities' forum. This issue was extremely sensitive for African and Asian delegates due to the fact that certain African and Asian states deny that there is any such thing as indigenous identity. There was general outrage against the implications of Martínez's comments, although he explicitly included reference to the San peoples of Botswana as a clear example of an indigenous people in conflict with a member state. The issue of where the dividing line between indigenous peoples and minorities in Africa and other parts of the world should be drawn, will remain an intensely emotive and hotly disputed topic.

During the Indigenous Caucus Martínez explained that he was reflecting the views of those African governments which rejected any notion of there being distinct indigenous peoples. Through the Indigenous Peoples of Africa Co-ordinating Committee (IPACC), the African caucus was able to convene swiftly and agree on a statement that praised Martínez's observations on treaties and sovereignty, while challenging his right to surpass his given mandate (i.e., to comment on treaties, not pass judgement on identities). IPACC condemned the inadequate work done in Africa, Asia, Pacific and Russia. In all African societies the concept of indigenous peoples is widely recognised in folk culture and in linguistic designation. The African indigenous movement's ability to respond quickly and efficiently to Martínez is an indicator of the increased capacity of the movement. The challenge for African indigenous

peoples has been to mobilise themselves simultaneously at local, national, regional, and continental levels. Despite the enormous scope of the task, substantial achievements have been registered in the past decade, particularly as the UN Decade gains momentum and becomes increasingly visible.



Tuareg activists at Geneva, including West Africa Representative to IPACC Saoudata Aboubacrine and her gender deputy Zahra Mohammed (Foto: Nigel Crawhall).

The Decade and the UNWGIP process have led to the start of a number of initiatives around the continent. There are currently national or regional networks in North Africa (Tamaynut in Morocco and Amazigh International Commission for Development and Human Rights - CAIDDH - throughout the region), Southern Africa (Working Group of Indigenous Minorities of Southern Africa - WIMSA - in the San world, the new South African National Khoe San Forum), East Africa (PINGOs Forum in Tanzania) and Central Africa (Community of Rwandan Indigenous Peoples - CAURWA, and the emerging federation of Pygmy community organisations).

Three continent-wide networks have emerged in the last five years. The first network, the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) was initiated by the Amazigh (so called Berbers) and Maasai alliances in

1996 and formalised at Geneva in 1997. IPACC has a secretariat in Cape Town with independent funding and organisational support from the South African San Institute. IPACC has regular bi-annual elections in Geneva, and an Executive Committee representing movements across the continent, including a gender representative. IPACC concentrates on assisting indigenous leadership improve their effectiveness at the international diplomatic level, and also assists in raising awareness amongst northern governments and donor agencies. IPACC has over 60 member organisations. Fieldwork and training have been conducted in South Africa, Namibia, Tanzania, Kenya, Rwanda and Morocco.

The second formal continental structure is the Association of Indigenous Women of Africa (AIWO). AIWO emerged out of the first conference on indigenous women in Africa held in Agadir, Morocco in April 1998. The conference, supported by the Netherlands Centre for Indigenous Peoples (NCIV) and Tamaynut, was a major success in mobilising women activists and their organisations. A book was published from the proceedings. Follow-up workshops have been held in Nairobi, and another is scheduled for Southern Africa. AIWO is a major continental player in its own right, and has the potential to ensure that gender equity and visibility remain priorities in other continental and regional structures.

The third continental structure emerged out of a human rights training workshop held in Arusha, Tanzania. The Organisation of Indigenous Peoples of Africa (OIPA), primarily regroups East and Southern African indigenous peoples' organisations. It has received institutional and technical support from the Saami Council and IWGIA.

The three continental bodies have concentrated most of their efforts on promoting communications between organisations, encouraging the sharing of experiences, and building up a common purpose for action. IPACC has lobbied the South African government, as well as a number of foreign governments including those of Norway, Canada and France, directly.

IPACC has also put resources into lobbying major international NGOs to develop clear policies on co-operation with countries with indigenous populations. Despite the adoption of such a policy by the EU, field trips in Morocco, Rwanda and Kenya indicate that European and North American NGOs do not have clear directives, and that there are some discrepancies between the various countries' offices. During major consultative exercises by UNESCO in Paris and the UNDP in Geneva, African indigenous peoples were grossly under-represented.

In contrast to other UN related bodies, the International Labour Office (ILO) has played a major role in stimulating awareness and policy formation on indigenous issues in Africa. ILO staff conducted visits to Cameroon, the Central African Republic, Morocco, Kenya, Tanzania, South Africa and Namibia. Very positive results emerged from South Africa and the Central African Republic in particular. All of the ILO work has led to the strengthening of indigenous peoples' positions.

The great strength of the continental bodies is that they help demonstrate that the principles of aboriginality and indigenous identity are found in most African countries. The experiences of the Bagyeli Pygmies in Cameroon are comparable to those of the $\ddot{K}$ homani San in South Africa. And the issues facing the Tuareg in Niger can be compared to those of the Barabaig in Tanzania (e.g., securing land tenure with nomadic / seasonal migrations). This broader perspective helps move the debate away from defending specific claims on the ground, and towards a discussion focused on basic principles. The other advantage of having the continental bodies in place is their ability to use bilateral mechanisms to influence policy. South Africa is strongly committed to human rights on the continent and is willing to raise such issues in bilateral forums with other countries. Now that South Africa is on the verge of adopting an explicit policy favouring the recognition of indigenous peoples, this could have a strong impact on allies such as Morocco, Burundi and Namibia.

On the other hand, continental structures can only be as effective as their constituent parts. The level of organisational development amongst the different indigenous groups varies enormously, with many groups still entirely unrepresented in their own civil society structures. The divide between French and English speaking African countries runs very deep, and introduces cost burdens in any serious attempt to build continental unity and action. The great distances and weak communications infrastructure across the continent create another level of cost and difficulty.

In July 1999, the IPACC Annual General Meeting adopted a formal strategy document. The highest priority for IPACC is to ensure that South Africa takes a leadership role in the UN Commission on Human Rights. South Africa's endorsement of the current wording of the Draft Declaration, and its bilateral lobbying, might unblock the stagnation of the intersessional working group by bringing African countries out from the shadows and into the frontline of the work. An equally important priority is for African indigenous leadership to come together and work through a strategic planning process that will include all the players and accelerate the work on the ground and at Geneva.

The World Bank's Consultative Workshops

The World Bank, as part of its process of reappraising the Bank's Policy on indigenous peoples, organised two Workshops in Africa which were attended by indigenous peoples from different African Countries. The first workshop was held in Dakar, Senegal and attended by francophone and other West African countries. The other consultative meeting was held in Kampala, Uganda and was attended by participants from East Africa up to the Great Lakes Region. According to Professor Kinuthia Macharia, who was the consultant from the World Bank, Washington DC, some of the key issues raised in both workshops concerned what leverage the Bank was prepared to use in order to protect targeted indigenous populations. For example the possible withdrawal of government support and funding if a government ignores the development rights of indigenous peoples was mentioned, and the kind of support the Bank will provide the NGOs, especially those which genuinely represent indigenous peoples, was also discussed.

Participants were concerned that the Bank's policy could be divisive and may lead to unanticipated results if applied while a loose definition of the term 'indigenous peoples' persists. They were particularly concerned with the question of neighbouring communities who might be envious if only indigenous peoples were targeted for certain projects. It was feared that this could lead to animosity instead of unity between communities. They were concerned with the possible impact of policy on the delicate issue of national unity in African states, and the dynamic nature of settlement in Africa. In other words, could this bring about more divisions than already exist in Africa?

Participants who attended both workshops were concerned that most African governments are not open to what indigenous peoples have to say. The participants were afraid that the same Bank staff may be influenced to the detriment of indigenous peoples themselves and felt that there was a need to reappraise and understand how the present boundaries on the continent were created.

African Indigenous Women Organisation (AIWO)

Since its inception, in Agadir Morocco in April 1998, the AIWO has been having consultative meetings with an ad hoc group, which was nominated during the first conference in Morocco. The African region is now divided into five sub-regions in order to facilitate co-ordination - the North, West, Central, Eastern and Southern Africa sub-regions. Each of the sub-regions is supposed to organise a conference to create awareness and also to recruit

members. So far only the Eastern Africa sub-region has organised its conference, which took place in Nairobi in August 1999. The other regions are planning their meetings this year.

The indigenous women of Africa formed the AIWO with the hope that it will grow as strong as other indigenous women's organisations in Asia and the Americas. Indeed at its inception, its members realised that they were embarking on a long journey, and so far they have used every opportunity to strengthen the organisation and make it more widely known. Attending the various meetings at the UN in Geneva and elsewhere has been very helpful. Thanks to the International Work Group on Indigenous Affairs (IWGLA), the Netherlands' Centre for Indigenous peoples (NCIV) and the United Nations Voluntary Fund, women were sponsored to attend both the United Nations Working Group on Indigenous Populations, the United Nations Draft Declaration, and the Permanent Forum. Participating in these forums also helped in planning the way forward for the Eastern Africa meeting and raising funds for it.

Sub-regional Conference in Nairobi

The Nairobi conference was attended by women representatives from Tanzania, Rwanda, Burundi, Sudan, Ethiopia, and Kenya. South Africa attended as an observer. The main objectives of the Eastern Africa Indigenous Women Conference were:

- to clarify the role of indigenous women as supporters of the communities;
- to strengthen indigenous cultures and traditions and;
- to give the indigenous women of Eastern Africa an opportunity to meet, learn, share and network together.

The conference came up with various recommendations. These involved working out a plan for the way forward, and making steps towards raising funds for strengthening the organisation both regionally and in the sub-regions.

The Nairobi conference proved a success and there was a great demand for a follow-up conference in order to make the women continue to be visible. The conference also opened new avenues for networking among indigenous women, and representatives from the sub-region attended several other meetings in 1999 creating more awareness about the activities of Indigenous Women from Africa. One such forum was organised in Lima, Peru by Chirapaq,

a non-governmental organisation that works for indigenous peoples in Peru, and is especially concerned with women and children who live in poverty. The meeting in Lima brought indigenous women together from every continent (for more details on this conference see the Latin American section).

Another event in which Kenyan AIWO representatives participated was the South African Parliament of the World's Religions held in South Africa from the 1st to the 8th of December 1999. The AIWO's presentation focused on the role indigenous people can play as peacemakers. Human rights advocates stressed the fact women's rights were human rights. Therefore women must aspire to be women's rights advocates. Mr Nelson Mandela, the former President of South Africa, Mr Nxuma the Vice President of South Africa and the Dalai Lama all graced the conference with their presence. It was really a worthwhile experience for African indigenous peoples.

Horn of Africa Pastoralist Advocacy Network (HAPAN)

HAPAN is a regional advocacy network formed as a result of two successive meetings that took place in December 1998 in Nairobi and in September 1999 in Addis Ababa. Representatives of pastoralist communities and other organisations working to promote the rights of pastoralists agreed on the importance of and the potential role that an advocacy network can play. In the Addis Ababa meeting, participants who came from Ethiopia, Uganda, Tanzania and Kenya shared their advocacy experiences and the achievements made during the consultative meeting in Nairobi organised by the Minority Rights Group of London, England.

HAPAN's mission is to promote and protect the rights of pastoralists through advocacy, research and lobbying activities and, through non-partisan approaches to issues, to promote the image of pastoralism as a dynamic way of life and a viable system of production. It also seeks to acknowledge pastoralists' contribution to the national culture and economy. Its two other main goals are to gain recognition for and appreciation of the pastoralist way of life in national, regional and local policy formulation and in the implementation of government development policies, and to promote the peaceful resolution of conflict and establish gender equity within and between pastoralist peoples.

THE IMAZIGHEN OF NORTH AFRICA AND THE SAHEL

The Imazighen, known commonly and in a pejorative way as 'Berbers', were the first inhabitants of the whole North Africa and the Sahel. Amazigh, the singular of Imazighen, means 'free man'.¹ The whole region, from the Canary Isles in the west to the western part of Egypt in the east and to Burkina Faso in the south, was called 'Barbary'. The Imazighen called it Tamazgdha. To the north, where the climate is Mediterranean, the populations are sedentary but to the south, in the desert region, the people are nomadic.

Throughout history Tamazgdha has suffered many different occupations - Phoenician, Roman, Vandal, Arab, Turk, Spanish and French. During the French colonisation of the 19th and 20th centuries, Tamazgdha was divided into states, and these remain in existence to this day. They are the Canary Isles (Spain), Morocco, Algeria, Tunisia, Egypt, Mali, Niger, Burkina Faso, Mauritania and the Western Sahara. With the Arab invasion of the seventh century, and the advent of colonial borders, the Amazigh population sought refuge in the most inaccessible regions, the mountains and the desert.² This is where we find the peoples that have safeguarded their language and their culture and have avoided arabisation today. They are the Rifi, the Shluh, the Soussie, the Rgibi, the Tuareg, the Qabilah, the M'zabite, the Djerba, the Shawia, the Nefousi, the Siwi, and so on. In the absence of a census along ethnic and cultural lines, the Amazigh population is estimated to comprise some 50 million inhabitants spread throughout North Africa and the Sahel. Today they represent no more than small linguistic pockets. This is why, even at the United Nations, they are spoken of as Berber minorities and not indigenous peoples. Such a distortion of historic reality has encouraged the divide and rule policy of the invaders.

Tamazight, which is the identity, culture and language of the Amazigh people, has never been free to develop. On the contrary, it has always been prohibited in the name of outspoken domination or in the name of a colonisation that does not declare itself. When the North African and the Sahel states finally achieved independence, the Amazigh people believed that they would at long last regain their identity and cultural heritage. But there was worse to come. In the name of Arab and Muslim nationalism, history has been falsified (just like during the French colonisation, in order to benefit French identity), glorifying Arabism and consecrating the Arab language, institutionalising texts and laws based on Islamic law. These texts (e.g., the Family Code in Algeria) either bear no relation to or are completely in contradiction with Amazigh

society and its norms and standards. Tamazight was not recognised and Imazighen who demanded their fundamental rights were severely repressed. Ignorance of the plight of the Amazigh peoples at international level was due to their exclusion from the media in these countries which were (and still are in almost all of these places) the monopoly of the state. It has to be said that the arrival of the internet has contributed considerably to making the Amazigh peoples, culture and language known.

When independence came the new states inherited lands and resources that had been snatched by the colonial powers from the indigenous peoples. Instead of returning these to their rightful owners, the new leaders shared them out. The resources automatically became the property of the state which, by increasing the number of 'development plans', managed to destroy most of the land by establishing industrial zones over the most productive areas. The few local initiatives were discouraged by the various governments' policies. Economy and business reverted to the leaders and their allies, who favoured the importation of international products. North Africa, which even in classical times was known as 'the breadbasket of Rome', was turned into a straightforward consumer of imported products overnight. This was to lead to the displacement of populations from the northern regions to the cities or abroad. The drought of the 1970s and the war fought by the governments of Mali and Niger led to a massive exodus of their Tuareg populations to Algeria, Mauritania and Burkina Faso. At the beginning of the 1990s, and following the embezzlement of the international aid that was earmarked for them, the Tuareg rebelled, accentuating the forced population displacements. The aim of all these policies was none other than to dislocate the indigenous peoples, who were clinging onto their values, their culture, their organisation, their links with the land, the Spirit and so on.

In 1994 and 1995, cease-fires were signed between the Tuareg movement and the governments of Mali and Niger. These agreements provided for the return of the refugees, the reintegration of the combatants and the development of the Tuareg regions in the north of the country. However, to date, none of this has happened. The refugees are settled on the outskirts of towns in Algeria, Burkina Faso and Mauritania, with no resources, no education for their children, and in a substandard environment. Abandoned to various contagious diseases such as tuberculosis, AIDS and childhood illnesses, the Tuareg population is on the verge of extinction. To all these problems must be added a birth rate that has virtually dropped to zero.³

Under Spanish colonial rule, the Canary Isles experienced the same problems of exodus and exile.⁴ Almost a third of the Amazigh population of the Canary Isles (out of a total population of 1,631,798 inhabitants) emigrated to Venezuela or other areas of Latin America, making way for a similar number of foreigners to come and take over the main sources of the islands' income. The wealth of the islands in no way benefits the indigenous peoples. They make up 30% of the unemployed, and have no prospect of independence whilst the banks that control and hold all the profits are in Spanish hands. Alongside this there exists an increasing number of military bases, which irritates and concerns the indigenous populations. Unlike other regions of continental Spain, such as Catalunya, Galicia, the Basque Country and so on, where local specificities are recognised, the Canary Isles are not recognised as being specifically Amazigh. The Tamazight language is neither recognised nor taught, thus violating the European Charter for regional and minority languages.

Until the death of King Hassan II, the situation in Morocco was catastrophic. Oppression, repatriation, the disappearance of people, torture and the violation of fundamental rights being just some of the problems. Because of the proclamation of the 'Republic of Confederated Tribes of the Rif' on the 1st of February 1921, the Amazigh populations of Morocco were excluded from the social and political life of the country. This exclusion led to impoverishment, high illiteracy rates, and a total abandonment of these peoples, the aim being to force them into submission. The iron hand of the king prevented - or at least hampered - the Amazigh Movement from claiming its rights. When activists were not murdered they were arrested, tortured, imprisoned, these operations being followed up with reprisals against the civil population. Arabisation and the prohibition of the indigenous language, Tamazight, led to illiteracy amongst most Amazigh, who represent half the total population of the country. The names of people and places were prohibited, transcripts in Tamazight were severely repressed and publications prohibited. Now, a project for a "Charter for Teaching and Training" has been drawn up. Is this a new beginning or, as we are led to believe, merely a more effective form of arabisation? The Amazigh population has had no other option but to settle in the poorest regions (the south, the High Atlas, the Rif) or - like other Amazigh peoples - to leave for a lengthy exile.

In Algeria, the situation is even more dramatic. The arabisation of the populations has had catastrophic results, and not only in the realm of education. It has also led, and this can be particularly noted today, to acute Arab

nationalism, fundamentalism, racism, discrimination, terrorism, illiteracy and the acculturation of the Amazigh population. Algeria always wanted to be more Arab than the Arabs, more Muslim than the Muslims. This was how the falsification of the history of North Africa began, assimilating it into the Arab world and separating it from its continent, Africa. This is what caused all today's difficulties. In the 1980s, the Algerian government severely repressed Amazigh activists and the Amazigh population⁵ (300 arrests and arbitrary detentions, tortures, rapes, etc.⁶) who refused to be assimilated and instead demanded the recognition of their own identity and ancestral culture. On the 5th of July 1998, following the murder of the Amazigh leader and singer, Lounès Matoub, the Algerian authorities immediately relaunched a programme of arabisation. The Amazigh populations reacted violently, providing the government with a pretext to carry out repressive reprisals, with, amongst other things, the head of state making threats in their direction. The newly elected President, who had been long awaited and well supported by the Amazigh population during the Presidential elections, visited Cabilia (an Amazigh region in the east of Algeria) and on the 3rd of September 1999 declared that "Tamazight will never be official...it will become national only on the basis of a referendum". This declaration followed another on the occasion of his trip to the same region in which he stated, "From afar I saw them as giants, but close up I find them no more than dwarves". Discrimination is thus now official. This attitude caused anger amongst the Amazigh, both in Algeria and abroad and, following these declarations and if the Head of State holds a referendum on the Amazigh language which is the Imazighen's mother tongue, there is the risk of an outburst. On a socio-economic level, it is impossible to state what line is being taken towards the misery of the Amazigh population that rejects arabisation and integration, participation in civil wars and power struggles, and all ideology. Yet, prostitution, paedophilia, drugs, power abuse, hunger and deprivation have now been permanently introduced into this region. Is this meant to be a substitute for repression on the part of the armed forces and armed groups?

Can we speak of Imazighen in Libya, in Tunisia, or in Egypt, where minorities of Tamazight speakers can be found alongside Imazighen who have been assimilated and acculturated and deprived of any freedom of speech? The few scholars that have taken the initiative to study this issue have been forced to suffer constant surveillance from the police or the special forces, who fear seeing objective information disseminated abroad, where the state authorities of these countries have no control. This will also be the case with the new internet technology. Yet, in so many regions of these countries the Imazighen

speak and understand only Tamazight, which is their mother tongue and in which they express themselves, work and dream. Until these countries open up, it will be very difficult to give them much information on their brothers.

At the international level the refusal of many governments to recognise the Imazighen places a double sanction on those who are exiled or who have emigrated, as they are unjustly considered to be Arabs or fundamentalists. In the sphere of development, the refusal to recognise this non-arab, Amazigh specificity prevents the Amazigh people and organisations from obtaining any international aid for development projects, the promotion of local production, health and human rights. In the same way the United Nations' timidity in recognising Amazigh identity and culture has contributed considerably to their assimilation and their oppression and to the continuing hegemony of the rulers of the countries they live in.

The governments of North Africa and the Sahel still show no courage or political will to restore fundamental rights to indigenous peoples and minorities. When they do not prevent conferences or seminars on Indigenous Rights from being held, or misinform national opinion, they make the concept of indigenous rights taboo. Any solution therefore first requires the United Nations to recognise and pass statutes on indigenous peoples because, without international recognition, we will always be dependent upon the goodwill of those who dominate us. The United Nations must identify all the indigenous peoples and mention them - like all peoples - in official speeches and documents, taking care not to reduce them to 'small details'. Recognition at international level will almost certainly encourage the reluctant governments to make efforts to create space for constructive - rather than destructive - dialogue.

Notes

- 1 *Histoire des Berbères et des dynasties musulmanes de l'Afrique septentrionales*, by Ibn Khaldun, translated from the Arabic by Baron de Slane, 1925.
- 2 *Histoire de l'Afrique du Nord: Tunisie, Algérie, Maroc*, by Charles-André Julien, Payot, 1951.
- 3 *Histoire de l'Afrique du Nord: Tunisie, Algérie, Maroc*, by Hadj Mohamed Habaye, 1998.
- 4 *Denunciation on the colonial situation of the Canary Islands*, by Frepic-Awañak, 1998.
- 5 *Chronologie du Mouvement Berbère, un combat et des hommes*, by Ali Guenoun, Casbah Editions, 1999.

- 6 *Situation des Droits de l'Homme en Algérie et autres considérations*, by Samia Slimane, OMCT, 1999.

ETHIOPIA

The Oromo

Popular sentiment has it that incumbent regimes in Africa excel only in rendering the bad ones they replace with the undeserved status of the 'good old days'.

The declining poverty levels of poverty; bordering on famine, continued and violent suppression of any form of opposition and the ever-deepening inter-group animosities that could lead to sectarian violence have characterised Ethiopia in the year 1999-2000. To make things worse, the decade-old regime in Addis Ababa is determined to follow in the footsteps of all the Abyssinian-dominated regimes that have ruled the empire-state of Ethiopia for centuries. The states' propensity to proceed with the misplaced glories of warfare have rendered the Oromos hope for decent living conditions hostage to the whims of the warlords-turned-leaders of Ethiopia.

The Oromo nation has an estimated population of 28 million or 40-50% of the total population of Ethiopia. A smaller segment of the nation is to be found in the Republic of Kenya. It is the largest ethno-nation in the eastern half of Africa and the second largest in the continent. The Oromo belong to the ethno-linguistic group that includes the Somali, the Afar, the Beja, and the Sidama of North Eastern Africa.

The Oromo country extends from latitude 13 degrees north, not far from the border between Ethiopia and Eritrea, and runs south past the equator to the Galana creek just north of the Kenyan coastal city of Mombassa. However, most Oromo are concentrated in the more fertile southern half of Ethiopia.

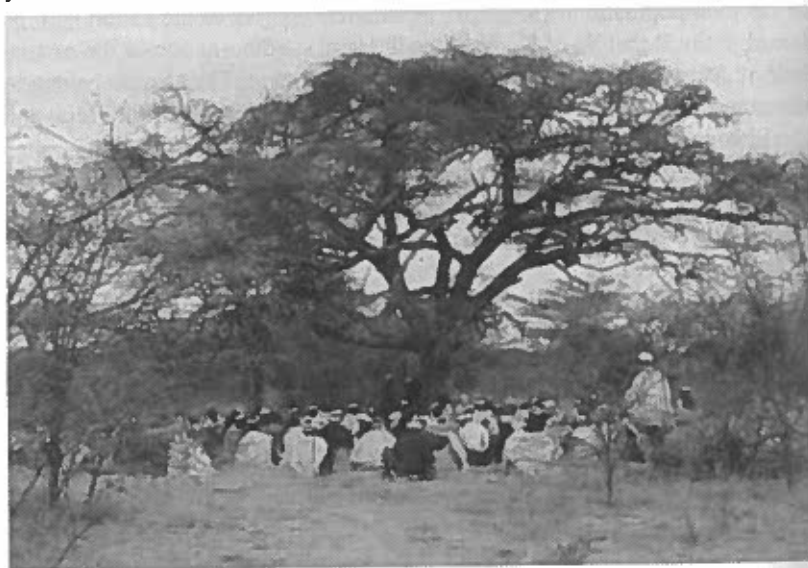
Genesis of Triple Alienation

Like Imperial Spain in the Americas, it was not a trade but a conquest-based mission of forcefully 'saving' the natives from the 'evils' of their indigenous way of life and their spirituality, that brought the Oromo under the rule of 'Semitic' Christian Abyssinians (the ruling people of Ethiopia). As well as both being essentially theocratic empires, the two regimes employed similar models of colonisation to finance their respective missions. The Spanish *encomienda* system has its equivalent in the Abyssinian *gabbar* system. Both

centred on the premise of triple alienation: the extinguishment of native title over land, the labour pool of the family unit and the native identity being replaced by the 'blessed' soul of the conquerors. The combination of alienated land and enslaved family labour formed crown-owned estates, known as *goolt*-estates in Ethiopia and *encomiendas* in Spanish America. Such estates of the Ethiopian crown generated *gibbir* or revenue for the mission. From the second half of the nineteenth century, the Oromo families assigned to the *goolt*-estates, like the *encomendado* indigenes of Spanish America, constituted no more than crown-owned slaves.

The net effect of such 'contact' has been economic alienation as well as the alienation of indigenous identity or spirituality. Hence, such a legacy underpins the current identity and resource impoverishment of the Oromo nation.

This alienation, despite the change of regimes at the centre and the less-than-ideal economical and social effects that it has engendered, remains the dominant feature in Oromo-Ethiopia relations. The continuing Oromo efforts and demands for the reversal of their imposed condition, as illustrated by the ongoing appeal made by the *Gada* parliament (a pale imitation of what was once the indigenous government of the Oromo) has been a central issue of the year.



Oromo Indigenous Parliament (Gada) in Session (Foto: Liban Wako Adi).

The Oromo in Kenya

The Boran, Gabra and Tana-Orma (Wardai) are segments of the Oromo who were once part of British East Africa. They share many of the post-colonial conditions that affect marginal and pastoralist groups such as the Maasai, the Turkana and the Samburu in Kenya. The British model of colonisation led to the extinguishing of native title over land and labour (which went to the British crown). Such land became the farm-estates of British colonists. The registration and allocation of native labour to the colonists' farms led to what some call the practice of 'Posho slavery' (*posho* being the maize-meal ration fed to native labour). The legacies of native land alienation are yet to be fully reversed as the post-colonial State of Kenya has assumed the status of *de facto* crown. The creation of a Kenyan parliamentary committee to look at land title has also been notable during this year.

The Position of Women

In the pre-conquest era, the condition of Oromo women was dictated by the patriarchal and sexist norms associated with many cultures. Polygyny continues to be a common practice, especially amongst the Moslem Oromo communities. Property ownership and inheritance rights were generally the domains of the male. As a result, an informal female association known as *Siqqee* has challenged gender-based oppressions. Today, as part of the Oromo resistance against the occupying Abyssinians, there is a growing female participation both in armed and political efforts. But women's contribution, so far, has presented a dilemma. Female participation is highly sought but remains unrecognised and devalued, according to Oromo female nationalist Kuwee Kumsa. Although there has been a significant increase of female participation in education in Ethiopia and Kenya.

Enduring Alienation, Illusive Native Title and Ongoing Resistance

There are no indications of any improvement in the already-precarious economic and social conditions of the Oromo. Poverty has increased and famine conditions are widespread with the prevailing and cyclical drought. This situation is aggravated by the war between Ethiopia and Eritrea. Forced recruits of young Oromo and the appropriation of resources sustain Ethiopia's war. Hence, the levels of mass discontent have intensified, manifested through the familiar signs of simmering inter-group rivalry.

Political marginalisation and the lack of an independent political process have resulted in the continuation of Oromo armed resistance under the Oromo Liberation Front and other groups. This has led to a rise in State-sanctioned

and State-instigated violence against Oromo communities suspected of harbouring or supporting the resistance. The extra-judicial imprisonment and killing of Oromo peasants and members of its small middle class have increased. International human rights groups such as Amnesty International and Africa Watch have registered many of these abuses, as well as those reported by local human rights activists. The phenomenon of 'unmarked' prison cells in the middle of suburbia and the disappearance of political opponents have become a norm here.

Regional Geopolitics and the Oromo Cause

The region formed part of inter-superpower rivalry during the Cold War period. The proximity of the Arabian oil fields and the fear of Soviet expansion into Sub-Sahara Africa led to the strategic and military marriage-of-convenience between the West and Ethiopia, under the regime of Emperor Haile Selassie I. Today, Islamic Fundamentalism and the perceived threat from it has revived the old politico-military alliances. The year has seen newly forged inter-state alliances, such as that between Ethiopia and Kenya, targeted at fighting what they call, 'troublemakers'. Forced deportation of Oromo refugees from the neighbouring countries to the the Ethiopian security forces has been reported. As has been the tacit provision of free passage to Ethiopian security squads, aimed at assassinating Oromo community and political leaders based in adjacent countries. Regional or extra-regional alliances have undermined the cause of the Oromo and other non-Abyssinian groups who constitute the great majority of the total population of Ethiopia.

What the Future Holds

The conditions of triple alienation and all forms of resistance continue. There is a modest but increasing awareness of the plight of the Oromo people around the world. Self-help organisations amongst the Oromo at home and in diaspora are emerging. The role of Radios' 'Voice of Oromo Liberation' as an independent source of information will grow. Externally-based groups, such as the Oromo Studies Association, Oromo Students Associations, Oromo Support Group (OSG), Jiru Jireen Afrika, are contributing to the national effort. Like the Ogoni of Nigeria, the Oromo cause stands for the restoration of native title over the material and spiritual wealth of their nation.

For further information on the Oromo, please contact:

Oromo Support Group (OSG), The Willows, 6 Orchard Road Malvern, Worcs WR14 3DA UK (Email: 100674.3200@compuserve.com) <www.oromo.org>;

Oromia Online, is an Oromo site on the internet and provides information on Oromo culture, history and regularly updated news on human right situations. It can be found at <www.oromia.org>;

Voice of Oromo Liberation (Radio SBO), Postfach 510 610, 13366 Berlin, Germany; Jiru Jireen Afrika (Email: Jirujireen@interspeed.com.au);

Oromo Studies Association, C/- 1643 D Spartan Village, East Lansing, MI 48823, USA;

Amnesty International
Africa Watch.

KENYA

1999 was an important year for the indigenous peoples of Kenya. Important discussions relating to the rights of pastoralists took place and a wide range of activities were initiated to create awareness about indigenous peoples and their situation in Kenya, and to try to improve their wellbeing and their rights.

The Debate on the Constitutional Review

In 1997 it was decided to review the Kenyan constitution, and in 1998 a Review Commission was set up. It has 25 members - 13 nominated by the political parties and 12 by civic organisations. The latter represent a broad spectrum of interests: three come from the three dominant religious denominations (Catholicism, Protestantism and Islam); five are nominated by women's organisations; and four are nominated through the National Council of NGOs and represent indigenous pastoralists and youth, disabled and professional associations. Not represented in the Commission are the Hunter-Gatherer communities (and other smaller tribes), the labour movement and the unemployed. The political parties, on the other hand, have not been able to divide the 13 seats among themselves and decide who should represent them. The Commission has therefore not been able to start its work.

The Kenya Pastoralist Forum has been active from the start, and in 1999 a number of conferences, workshops and meetings for affiliated organisations were organised. The idea has been to inform members - and through them pastoral communities - about the process, to discuss various issues and eventually to reach some recommendations which will be presented by its representative to the Commission. Everybody agrees that the process will be difficult and that it will be a hard task to involve the grassroots as many people have little understanding of what is at stake or may not even know that Kenya

has a constitution! The KPF identified the following as some of the main issues of interest to pastoralists.

Land tenure and land rights including the exploitation of natural resources, which today is under the control of the central government but which should be devolved to local people who should have the right to decide. Locals should also be fully in charge of the revenues accruing from wildlife resources.

Government system and parliamentary representation, on which two positions can be found - the devolution of power to the local level or a federal system. Abdi Umar from the KPF considers that 50% of the population would be for the devolution of power, and 50% against it, the latter point of view being held by the two large ethnic groups, the Kikuyu and the Luo.

New criteria for forming constituencies should be defined as the present system has led to a gross under-representation of the 80% of the country that is inhabited by pastoralists.

Human rights - Pastoralists are seen and treated as second class citizens. Affirmative action should be taken to redress this situation

Women's rights - A big issue is that of women's inheritance rights.

Right now, however, there is a deadlock in the constitution review process due to disagreement over the modalities that should be followed in obtaining peoples' views. It is expected that the exercise will be a participatory one and will involve all stakeholders, experts and relevant professionals.

Conflict Resolution Efforts Among the Northern Pastoralists

Land alienation, competition over grazing areas, livestock, water and politics lie at the root of many of the conflicts Kenya has witnessed for the past several years. Cattle rustling has always been a traditional economic survival strategy as it was the only way of re-stocking herds. The Morans (Maasai and Samburu warriors) used it to obtain cattle in order to pay their bride price and get married. And, to a certain extent, cattle rustling still occurs as a result of both these above reasons. But it has also become a highly commercialised activity supported by high-tech weaponry and trucks that take the cattle across the border to be sold.

Ethnic conflicts may occur between pastoral and non-pastoral tribes when there is competition for natural resources as, for example, in Marsabit in the north where different tribes use the resources of the Marsabit mountain - some for pastures, others for agricultural purposes. Such conflicts will sometimes degenerate into ethnic clashes. This has been the case several times between, for instance, the Maasai on the one hand and the Kisii or the Kipsigis on the other, resulting in the loss of many human lives, burned houses, and the loss of cattle.

Clashes also occur within the same tribe. They may happen when people who have been pushed out of the pastoralist system try to settle and, for instance, make use of an irrigation scheme, thereby blocking access to land for those who have remained pastoralists. A similar situation is created when there has been a parcelisation of land, and people put fences up and practice intensive cattle ranching.



Most valuable livestock: Samburu woman watching the camels leave the kraal (Photo: Indigenous Information Network).

Some of the most severe conflicts, however, occur between pastoralist tribes in the north, where competition over grazing areas and water is severe. The Pokot-Turkana have conflicts about cattle rustling, with people even coming across the border from Uganda. The people in Isiolo and Marsabit have clan

disputes over pastureland and water. The north has a long tradition of these types of conflicts but today they tend to degenerate into veritable massacres and war-like conditions because both sides are well armed. The problem is how to handle this new situation, and how to become aware of the responsibilities and privileges one has, as well as what the cost of conflicts are. In the north, the communities operate outside normal state structures. They have always been subjected to heavy-handed state operations and human rights abuses. Outsiders, who are seen as invaders, occupy all the official posts - from teachers to local administrators. This has made people suspicious and hostile. They do not trust the government but live in a world where violent situations (either man made or created by nature) are everyday events. People are vulnerable, risk is the number one element in their lives but the death of one person is normal since the clan will always prevail.

Politics plays an important role in kindling small controversies and creating ethnic clashes. It is a well-known fact that most Kenyan politicians depend on supporters with whom they have tribal links. The existence, so to speak, of these politicians depends on tribal differentiation, and they would lose ground if tribalism were to be extinguished. An example is that of the Ogiek, whose harassment by the local authorities is seen as retaliation for not having agreed to join the Kipsigis in their attack against the Kikuyu in the mid-1990s. The government is also involved. When Kenya adopted a multi-party system Moi, who opposed it, predicted an increase violence, and many clashes are believed to have been fomented in order to prove him right.

Efforts are currently being made to improve the situation. A Judicial Commission has been set up to inquire into tribal clashes since 1991, and it has already heard more than 170 days worth of testimonies. Although it will probably not solve anything nor lead to any action, it is generally thought that the exercise is useful, as it brings the various conflicts out into the open.

Conflict resolution, peace and reconciliation have become the new mantra of many NGOs working in the north. Meetings, seminars and workshops are being organised so that representatives from the various tribes can meet, and discuss and exchange ideas on how they can settle their disputes. The whole process appears rather donor-driven. Still everyone seems to think it is a good idea, and that it eventually will solve the problem. However, it seems that while many elders are very committed and attend one workshop after the other, the younger ones, i.e., the warrior age group who are the core of the problem, do not seem interested and continue to do whatever they like. And with a constantly growing population and a constantly deteriorating environment, competition will become even fiercer. Some people, therefore, talk of

the need to systematise ways in which one clan can receive other clans into, or remove them from their homelands. This presupposes the recognition and demarcation of clan lands, and the use of customary laws and regulations.

The Illoodoariak's Land Adjudication Bill

While it is the case that land alienation occurs or is a threat in most Maasai areas, it is near and around Nairobi that the situation is most acute, since the land has much development potential and a high market value. The land of the Illoodoariak community lies some 20km from Nairobi, near the attractive Karen and Ngong suburbs. This explains why very highly placed persons were interested in declaring the Illoodoariak Group Ranch an Adjudication Section in 1979. In fact this made it possible to replace the old Land Register which carried all the original Group Ranch members' names with a new one in which some of the members' names were substituted for those of outsiders, mostly high ranking persons without any connection to the land, who were later given title deeds.

Realising what had happened, the Illoodoariak community started to fight back. With the support of the IIED (International Institute for Environment and Development) and Survival International, they documented their case and drafted a bill. This bill addresses the situation of not only the Illoodoariak but of other pastoral groups in general by allowing the nullification of title deeds based on fraudulent land grabbing. The bill also provides a mechanism for the local people to have a say about how land is administered. Since most land is in pastoral areas, if the bill becomes law there will be no more land grabbing.

For the past two years, the Illoodoariak have been lobbying for the bill to be gazetted and tabled in Parliament and, in May 1999, it was finally published in the Kenya Gazette Supplement. This meant that the bill was available for public scrutiny. On the 4th of July 1999, the bill was presented to Parliament for a first reading. But after that the bill disappeared and it looks as if there will be no second or third readings. This seems to be the result of the appointment of a Land Commission in late June by the Economy recovery team headed by Dr Richard Leakey. This Commission was to look into the issue of land grabbing. However, according to Mr Joseph Ole Simel, the Illoodoariak's programme co-ordinator, this was in fact a calculated move to kill the bill. Not only can the Commission only make recommendations, but the bill cannot go back to parliament before the end of the Commission's tenure which is two years from now and will coincide with the end of the present parliament. Furthermore Dr Leakey's family is involved in the land

grabbing issue and Dr Leakey is therefore an interested party and not the right person to address this issue.

Still, the Ilodoariak Land Bill Founders have at least achieved one thing. In spite of being a small group, they have made the government admit that irregularities have taken place. Lawyers are now preparing a memorandum to be submitted to the Land Commission highlighting that the only solution is that the proposed bill should be presented to parliament for a second and third reading. The Ilodoariak are also calling for local and international support to put pressure on the government to solve the pending land problem. If the Land adjudication Amendment Bill passed is passed, it will be the greatest achievement of Kenya's indigenous peoples in the 21st century.

Military Training Endangers Indigenous Peoples

The Kenyan, British and US armies - either as a joint venture or on a country by country basis - have for many years now regularly used the open areas of Laikipia, Samburu, Isiolo, Marsabit and Moyale districts for military exercises. The exercises are conducted each year between the months of January to June and September to December.

The training exercises are carried out regardless of the settlement pattern and without prior consultations with the local people. During the exercises the military leave behind a great deal of unexploded and dangerous ammunition. This ammunition has killed or maimed many people as well as many grazing animals. The latest incident happened on Wednesday, April the 19th when four children were killed by powerful explosives on the British Army training field in the Archers Post area in Samburu District. A fifth child lost his leg and an unknown number of livestock were killed or injured as well. More than 500 residents of the Archers Post training centre staged a protest march on Friday the 21st demanding compensation for the affected families because since the beginning of training operations they had asked that the army should leave their area or at least fence off the training field.

The environment suffers just as much - trees are cut down, holes are dug for cover exercises, pastures are eroded or destroyed by heavy military equipment and poisonous gases cause water pollution. Furthermore, the military draws water from the same watering points as the local communities, using water trucks mounted with power driven engines that facilitate quick water drawing and which thus, during times of low rainfall, create water shortages that affect the livelihood of the pastoralists and their animals. Other damaging effects are caused by the military's use of drugs and commercial sex in which young schoolgirls become involved.

Yet, the land on which the military exercises are being carried out is private land that is communally owned by and registered in the names of various group ranches under 'the group representatives act', Cap. 267 of the Laws of Kenya. It is thus a blatant violation of private property ownership rights.

However a survey which the Laikipia based indigenous Maasai organisation OSILIGI conducted, shows that due to lack of know-how or fear of harassment from the authorities, local people have no single remedy to address these issues. OSILIGI has therefore decided to embark on a campaign to publicise the facts and hold a regional workshop with representatives from the affected pastoralist groups as well as government and NGO representatives. Their aim is to further document and explore the impact of military training on pastoralist groups' rights over their traditional lands, their survival and issues related to their environment and natural resources.

The Case of the Ogiek

The Ogiek people of Kenya's central Rift Valley have lost the first part of a legal battle over their habitat and heritage. On March the 24th 2000, a Kenyan court handed down a ruling that the judges characterised as benefiting the environment after the indigenous community sought to block a government eviction order to remove them from a natural forest. "The eviction is for the purpose of saving the whole of Kenya from a possible environmental disaster and it is being carried out for the common good within the statutory powers", judges Samuel Oguk and Richard Kuloba said in a summary of their judgement. The judges said their verdict was aimed at people who have made homes in forests and are exploiting forest resources without following statutory requirements. Yet the Ogiek have alternative land that was given to them in colonial days, land which is not inhospitable, the judges said.

The Ogiek people live in the forests of the Mau escarpment in Kenya, 250 kilometres (155 miles) west of Nairobi. Identifiable by their traditional regalia of skin-wrappers and handy clubs, they still hold to their traditional way of life and regard the forests as their natural habitat. These forests are one of the most important forest ecosystems and water catchments remaining in the country. By tradition, the Ogiek, often referred to as Dorobos, are a hunter-gatherer people, known as harvesters of honey, which they use for home consumption and which they exchange with their neighbours. They have been living in these forests and have been practical conservationists since time immemorial.

Caught between a cultural conflict and political imbalances brought about by modernity and civilisation, the Ogiek took the government of Kenya to

court in May 1999 for evicting them from their ancestral forestland. The Ogiek Welfare Council demands that the Ogiek of Tinnet be allowed to stay in Tinnet Forest. This demand is being made on behalf of 5016 members of the community and an additional 800 Ogiek people not included in the court list.

The Ogiek were alarmed by a group of corrupt individuals invading the forestland that they, the Ogiek, had previously inhabited before they were evicted by the government. In their view, the government is not being honest when it says it is protecting the environment for the common good. The Ogiek accuse some powerful individuals close to leading politicians of wanting to grab their ancestral land. Even as the Ogiek shed tears about the loss of their ancestral land, large chunks of this land have already been given to private individuals.

They sued the government in their attempt to obtain a declaration saying that their right to life had been contravened by forceful eviction from the forest. They were also seeking orders for the government to compensate them and pay their legal costs. The court dismissed all their petitions but assigned the legal costs to the Kenyan government.

Human rights groups accuse the government of being insensitive to the community's basic needs, saying that the Ogiek's right to land and natural habitat has been trampled on for too long. They have called upon the government to revoke the eviction order so that the community can live in peace in the forest.

The plaintiffs, representing the 5016 members of the Ogiek community, brought their case to court. Their lawyer was Joseph Seregon who was assisted by Mirugi Kariuki, the lawyer for the Nakuru Catholic Diocese, who was allowed into this case because of its 'substantial investments' (i.e. churches, schools, marketplaces) in the area. In its ruling of May the 5th 2000, the Kenya Court of Appeal ordered a stay of execution of the High Court Decree of March the 23rd 2000. As a result the Government of Kenya was restrained from evicting the Ogiek people, pending the outcome of an intended appeal. The Attorney General, the Rift Valley Provincial Commissioner, the area's Provincial Forest Officer and the Nakuru District Officer, who had all joined in efforts to evict the Ogiek people, will now have to suspend their plans to relocate the Ogiek to the edge of the forest.

The Court of Appeal's decision to grant the Ogiek a stay of eviction was reached both because it was found that such a move would have far-reaching effects on their livelihood and in order to avoid a major upheaval. It was also clearly shown that the Provincial Forest Officer, a Mr Ezekiel Korir, had lied by denying that the Ogiek had lived in the forest. A copy of the 1936 popula-

tion census was produced from the Kenya National Archives, clearly showing records of the Ogiek people living in their Tinnet Forest homeland. But the suspension of the eviction is now pending the outcome of the intended appeal. The community, which insists that it has lived in and from that forest since time immemorial, has until the 23rd of May to present the appeal.

There is an urgent need for local and international support to pressurise the government to grant the Ogiek the right to their heritage.

Sources

Ecoterra news mail 'Ogiek Eviction Stopped', May the 6th 2000

Girls' Education Workshop

In many parts of Kenya, and especially within pastoralist communities, girls face more disadvantages in terms of access to education. Such discrimination is rooted in cultural attitudes and practices. Between the 6th and 8th of December 1999 the IIN (Indigenous Information Network) organised a Workshop on Girls' Education in Pastoralist Areas. The theme was 'Constraints on Girls' Education in Pastoralist Communities'.

The Netherlands' Development Organisation (SNV) sponsored the workshop while the Indigenous Information Network planned, co-ordinated and conducted it. Prior to this meeting the IIN had consulted different communities about the plight of girls' education in pastoralist areas.

The members of the communities shared their experiences of girls' education. They expressed crucial and unique points of view, which were later discussed at the workshop by the heads of NGOs' education departments and community members from pastoral areas. The workshop covered a wide range of issues with a special focus on the situation in the Samburu, Isiolo and Marsabit districts. Participants also came from the Pokot, Kajiado and Laikipia districts. The specific objectives were to promote girls' education, share information with other education providers and discuss ways to monitor and evaluate the way stakeholders were managing education.

The workshop came up with various strategies to solve education problems facing girls. These included: making education accessible through sponsorship and scholarships; adapting school curricula to pastoralist communities; changing attitudes towards education (i.e., showing that education is for knowledge and not primarily for employment); providing mobile schools and teachers; encouraging non-formal education; and giving a separate bursary scheme to pastoral areas.

The IIN intends to address the problem of delivering cost effective education in a form and approach that is appropriate to girls. This is in recognition of

the need to take the initiative in providing formal education to marginalised groups so as to enable them to participate effectively in the development process. To initiate the process, the IIN intends to continue holding awareness workshops on girls' education.

THE GREAT LAKES REGION

During 1999 there has been no significant improvement in the situation of indigenous communities in the Great Lakes Region. Indigenous organisations have however been active in promoting national and international awareness and pressing for changes.

Networking

Last year saw an increased level of networking and contacts between indigenous groups. In June 1999, the Rwandese and Congolese Twa organisations CAURWA and PIDP collaborated in a joint tour to meet Twa communities and local authorities in Uganda, Burundi, Rwanda and the Kivu region of Democratic Republic of Congo. Contacts were reinforced at the celebrations of the seventh International Day of Indigenous Peoples, organised by PIDP, on Idjwi Island, Kivu in September 1999, which brought together 450 Twa representatives from Congo, Burundi and Rwanda as well as local officials and NGOs.

Also in 1999, PIDP and the Cameroon Bagyeli organisation CODEBABIK collaborated in an IWGIA financed tour of Cameroon, the Central African Republic and Gabon, to visit Pygmy communities and organisations working with them. In February 2000, CAURWA again visited Ugandan Twa communities around the Mgahinga and Bwindi National Parks as well as local authorities and religious groups carrying out literacy and education programmes with the Twa. The Twa who have been moved out of the national parks are landless and no longer have access to forest resources. They eke out a miserable existence by labouring on other people's land in return for food, and face continued discrimination by other ethnic groups. These communities have now established the United Organisation for Batwa Development in Uganda (UOBDU), to strengthen their voice in pressing for land to be allocated to them. UOBDU representatives are in contact with the Rwandan Twa organisations, with whom they share the same language. A Minority Rights Group funded study of the Twa of the Great Lakes region,¹ followed by a workshop in Kampala, brought together Twa representatives from Rwanda, Burundi

and Congo. The participants developed a regional plan for training and the promotion of human rights.

All these networking activities have helped strengthen solidarity among Twa and Pygmy organisations in central Africa, by promoting collaborative work and the exchange of information and experience between different Pygmy groups living under different conditions.

Advocacy

During 1999 Twa, Mbuti and Bagyeli representatives attended several international and regional meetings on indigenous rights. These included: the UN Working Group on Indigenous Populations, held in Geneva in July and the UN Working Group on the Draft Declaration on Indigenous Rights held in Geneva in November; a World Council of Churches meeting on African Indigenous Peoples; a meeting on Land and Spirituality in Kigali in September; a Conference of Indigenous Women in Nairobi; a World Bank workshop on Indigenous Peoples of Africa held in Kampala in June and; a meeting organised by the World Health Organisation on Indigenous Health. PIDP was nominated to sit on an indigenous advisory committee established by the WHO meeting.

Central African indigenous representatives are contributing to a review and evaluation of the implementation of the World Bank's Indigenous Peoples' Policy (Operational Directive 4.20) organised by the UK NGO Forest Peoples Programme and the Washington based Bank Information Centre. Bagyeli and Twa representatives have prepared case studies on respectively the impact of the World Bank underwritten Chad-Cameroon oil pipeline on the Bagyeli people in southwest Cameroon, and the World Bank funded cattle ranching and cash crop projects which displaced the forest dwelling Twa (Impunyu) of the Gishwati forest, Rwanda. An additional study is being prepared by the Forest Peoples Programme, in consultation with Ugandan Twa communities, on the impacts of the World Bank-funded Mgahinga and Bwindi Impenetrable Forests Trust, which is supposed to carry out activities to mitigate impacts of the Parks on the Twa. In May 2000 a total of 12 case studies were presented by indigenous peoples from around the world to the World Bank, with the aim of determining why the principles and practices set out in the Indigenous Peoples Policy are not being implemented, and to press the Bank to modify projects which are harming indigenous peoples.

To facilitate a platform for Twa advocacy and information dissemination, a Pygmy web page has been created by the Congolese Human Rights NGO Héritiers de la Justice in collaboration with the Forest Peoples Programme at

www.heritiers.org. The page is under the editorial control of the Pygmy organisations CAURWA, PIDP and CODEBABIK. In addition a short video "People of Clay: the Twa of Rwanda", which sets the Twa situation within the context of the international indigenous rights movement, is being produced by CAURWA in collaboration with the Forest Peoples Programme.

Rwanda

At the national level CAURWA has continued to call for the recognition of Batwa concerns and the legitimacy of referring to the Batwa by name, given that this minority group does not pose any political threat to the stability of Rwanda. CAURWA has taken the initiative to write a letter to the President of Rwanda setting out Batwa concerns and highlighting the lack of significant change in the situation of the Batwa since the new administration came to power five years ago. Following complaints by Twa representatives that the Committee for National Unity and Reconciliation has only focused on the two most numerous ethnic groups, the Committee is working with Twa representatives to carry out visits to Twa communities to assess how they are being included or not in the post-genocide reconciliation process and thus in the reconstruction of an integrated society. The Twa organisations' increased activities and contacts with authorities have resulted in a higher national profile for the Twa as a result of radio and TV broadcasts. An independent review of the BBC's Rwanda Service recommended greater coverage of the interests of minorities, including Batwa issues and the participation of Batwa in programme production.

The overall situation of the Twa remains unchanged with many communities lacking land and the access to education and employment. The Twa are still severely marginalised in society. Many donors are unaware of the Twa's inability to access development programmes. At commune level, government programmes frequently do not reach the Twa who lack the confidence and status to demand inclusion. The Twa are very dependent on the Twa organisations to ensure that their interests are voiced.

A national villagisation programme is underway to regroup households into discreet settlements, apparently to provide more effective services and land utilisation. Households which are currently scattered across the hillsides must swap their lands for plots in the new villages. However, majority of the Twa lack land and so have nothing to exchange for village plots. In many areas they live in flimsy huts built of sticks or maize stalks, perhaps with some plastic sheeting, squatting on the edges of the fields and plots of their land-holder neighbours.

One of the Rwandan Twa organisations, ADBR, has obtained authorisation to visit Twa prison detainees, who are estimated to number about 2500. Working in collaboration with church and human rights organisations, ADBR has surveyed prisons in the greater Kigali area. The Twa prisoners are in very miserable conditions. Only two out of the 150 individuals surveyed have come to trial. Families cannot afford to visit or supply clothes, soap or food. Blankets and food that are distributed inside the prisons do not reach the Twa. ADBR is seeking help from local agencies for clothes, blankets and is in contact with a local human rights group to obtain a lawyer to help move cases forward.

At grassroots level, some 20 Twa associations or co-operatives have established themselves to carry out a range of community activities such as agriculture, animal husbandry, literacy, pottery and house construction. The Twa organisations provide financial and material support for these activities. Some two hundred school children are currently being supported by Twa organisations. CAURWA is working to increase the revenues of Twa potting communities by developing the internal and external markets for Twa pots, through technical and business support based on fair trade principles and the establishment of a sales outlet in Kigali.

Kivu, Democratic Republic of Congo

The situation in Kivu has deteriorated since last year. Pygmies are accused by both the Mayi Mayi/Interahamwe militias and the Rwandan backed RCD rebel forces of complicity with the other side, and are consequently continually fleeing from one group or the other. Large numbers of displaced and destitute Twa and Mbuti have arrived in Bukavu where there is no agency taking specific care of them.

Despite the insecurity in the region, the Twa NGO PIDP has continued its activities, visiting Pygmy communities in the field and supporting their agricultural activities and animal husbandry as well as seeking humanitarian aid from local agencies (blankets, clothing, food, cooking utensils) for displaced Pygmy families. Some communities have succeeded in harvesting crops and raising pigs, guinea pigs and chickens, but many have had their produce looted by militias and RCD soldiers.

PIDP has also encouraged the creation of grassroots committees composed of representatives chosen by the Twa communities themselves, and working with PIDP's field workers. PIDP's expanded committee consists of elected representatives from different territories who are responsible for overseeing PIDP's activities in their area. Their main activities are to promote

literacy and school attendance, to collect information about the local situation and monitor those projects that are underway in their area. PIDP has recruited two additional women staff to support its work with women in development, health and hygiene.

The dire situation of the Twa expelled from their traditional lands in the Kahuzi-Biega National Park, Kivu, has been documented in a report to be published shortly by IWGIA and the Forest Peoples Programme.² The report explores this particular case within the context of indigenous rights in Africa. It discusses various legal mechanisms available for the restitution of Twa rights and presses for participation of the Twa in decision-making and park management in line with modern conservation policies.

Notes

- 1 Jerome Lewis. *The Batwa Pygmies of the Great Lakes Region: the Problem of Discrimination*.
- 2 Albert Kwokwo Barume with Dorothy Jackson. *Heading towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*.

BOTSWANA

The Controversy over the Central Kalahari Game Reserve

The controversy over the Central Kalahari Game Reserve calls for continued unified efforts to obtain recognition of the land rights of the population within its boundaries. The CKGR Negotiating Team, the representative body of the residents in the Central Kalahari Game Reserve, supported by First People of the Kalahari (FPK) and other NGOs are continuously trying to maintain a dialogue and negotiations with the Government of Botswana.

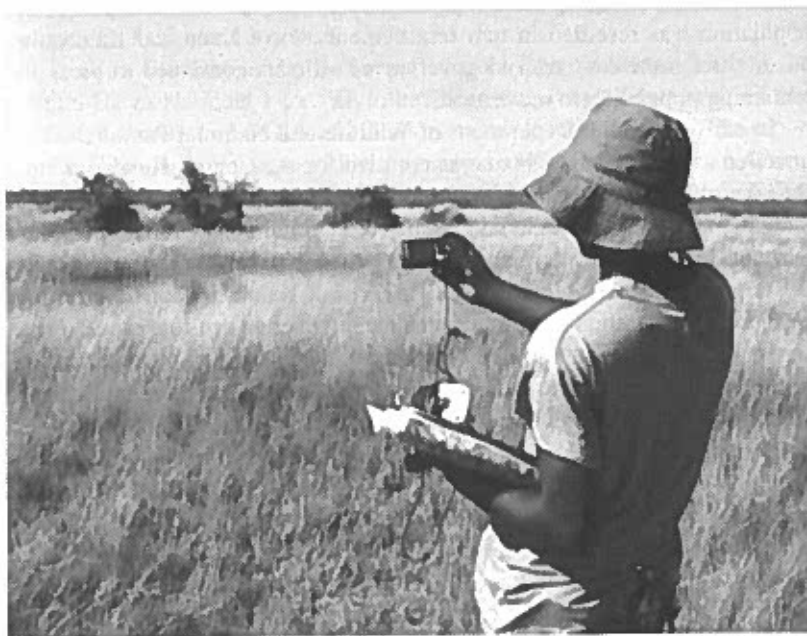
The CKGR controversy has lasted for over a decade and has considerable symbolic significance for the San population in the entire Southern Africa region. The Central Kalahari Game Reserve (CKGR) is, at 52,000 square kilometres, the last vast refuge in which San communities are provided with the means of practising their traditional culture. When the game reserve was established in 1961, George Silberbauer, assigned as officer-in-charge of the official Bushman Survey, recommended that the area "be declared a game reserve and the Bushmen be allowed to continue to hunt freely within it." However, proposals from Silberbauer and others to formalise 'Bushman' rights over the CKGR as well as to establish development programmes for the area were shelved during the ensuing transition to Botswana's independence. Since

the mid-1980s Botswana's government has attempted to remove the population of the CKGR, as development and nature conservation objectives were considered to be incompatible with one another. In 1997 a major part of the population was resettled in two resettlements, New Xade and Kaudwane, outside the game reserve, and government officials continued to press the remaining population to move.

In early 1999, the Department of Wildlife and National Parks (DWNP) unveiled a draft of a new management plan for the Central Kalahari Game Reserve, allowing for the sustainable coexistence of people and wildlife within the game reserve. Although, community consultations had not yet been carried out, the management plan funded by the European Union provides for the remaining communities within the Central Kalahari Game Reserve to continue their traditional lifestyle and to be involved in eco-tourism. FPK has an ongoing constructive dialogue with the DWNP and welcomed the initiative, as it was presented to the Ghanzi District Council in July 1999, to begin community consultations. Initially FPK was invited to assist with the consultations on the ground. However, between August and the end of the general elections in October 1999, the consultation process ceased, apparently as a result of media reports about the return to the reserve of people who had been previously relocated.

Consultations with the CKGR communities inside the reserve were recently resumed without them being represented by FPK. This has led to the communities rejecting the consulting team because of their demand that FPK is present at talks with the authorities. At a recent meeting with the district authorities in Ghanzi it was agreed that future consultation visits be performed in collaboration with FPK. The agreement is a tentative sign that FPK are being recognised as an equal partner by the authorities and that the value of civic organisations in conflict resolution is being acknowledged. Since the mandate of the CKGR Negotiating Team was rejected by the Minister of Local Government, Land and Housing at the last negotiation meeting in October 1998, the residents of the CKGR have registered their petitions and land claims through FPK. Although the rights of the CKGR residents have hitherto been denied by the government, the new regulations for National Parks and Game Reserves in Botswana, in place since April 2000, set down provision for persons who can lay claim to traditional hunting rights in the CKGR, to continue to exercise those rights. The former system of special hunting licenses issued by the DWNP for subsistence hunting in the Game Reserve and in Wildlife Management Areas will cease when the new regulations come into force. In July 1999 a group of 13 residents from the resettlement in New Xade carrying the special hunting licenses were arrested inside

the game reserve and charged with illegal hunting. The trial of the 13 hunters is set for the 3rd to the 5th of July this year.



FPK field workers mapping the traditional land use system in CKGR (Foto Ivan Baehr).

The new regulations for National Parks and Game Reserves also provide for community use zones to be designated for the benefit of communities living either in the game reserve or in areas immediately adjacent to it. FPK has embarked on a process documenting traditional land use pattern, kinship and the affinity that connects people to the land of their ancestors. Two FPK fieldworkers, residents of the CKGR, have been trained in survey and interview techniques. Communities in the CKGR have started mapping their traditional territories and land use systems, using modern satellite and computer technology (GPS and GIS). It is envisaged that the information gathered by the communities will be of interest to future natural resource management of the reserve and to environmental monitoring. The compilation of local knowledge will contribute to the environmental awareness of the communities and

will be a valuable asset for the communities in cultural and environmental tourism related joint ventures.

It is expected that, as a result of these activities, FPK and CKGR communities will qualify as equal partners in those joint efforts aimed at protecting this unique environment on which the life of the residents depends. The recent public debate in Botswana shows that the private sector has a stake in the CKGR controversy, with the Director of Botswana's Association for Hotel and Tourism (HATAB) publicly blaming the Government for hiding the real reason for the resettlement policy. The Director of HATAB is concerned that the removal of CKGR residents will affect Botswana's tourist industry negatively if it results in an international boycott. He has asked the government to introduce a policy of community based natural resource management in the Central Kalahari Game Reserve. In his contribution to the debate the Director of HATAB suggests that diamonds were the real reason for the residents of the CKGR being resettled. However, De Beers, the large diamond consortium that has been prospecting for more than a decade in the game reserve, stated in an earlier press release that there is no conflict of interest between their mining ventures and the presence of the San people in the CKGR. This opinion was supported by the conclusions of an Environmental Impact Assessment of the Gope diamond mine carried out for the mining consortium in early 1999.

The private sector's recent contribution to the controversy over the Central Kalahari Game Reserve, is an indicator that the opportunities for dialogue and negotiations are not yet exhausted. These developments also show the importance of civic organisations and structures like First People of the Kalahari and the CKGR Negotiating Team as partners in a democratic model for conflict resolution. However, in case negotiations and dialogue fail, the residents of the Central Kalahari Game Reserve have taken decisive steps to prepare themselves for litigation.

Pending Execution of the Tlhabologang Maauwe and Gware Brown Motswetla

On the 15th of January 1999, at the instance of DITSHWANELO (the Botswana Centre For Human Rights), the High Court of Botswana issued an interim order suspending the execution of the two San - Tlhabologang Maauwe and Gware Brown Motswetla, both members of the San indigenous people of Botswana, which was set for the 16th of January 1999.

Tlhabologang Maauwe and Mr Gware Brown Motswetla committed the offence of murder in February 1995. The deceased had caught them after they

had stolen and slaughtered an ox which had been in his care. They were pronounced guilty by the High Court of Botswana in April 1997 and sentenced to be hanged. Their sentences were upheld by the Court of Appeal in July 1997. In November 1998, their appeals for mercy to His Excellency President Festus G. Mogae were turned down.

From April 1998, DITSHWANELO had made repeated attempts to obtain information from the Botswana Government about the execution of the two men. However the response was always that such information was classified. All requests made by DITSHWANELO to visit the prisoners were also denied.

On the 13th of January 1999, the Botswana media announced that the prisoners' appeal for clemency to the President had been turned down and that the executions were scheduled for Saturday the 16th of January 1999. DITSHWANELO took immediate action and managed on Friday the 15th of January 1999 to make an urgent application to the High Court of Botswana to stop the executions of the two men. The Court then issued an interim order, suspending the execution.

The court gave the State until the 22nd of February 1999, to show cause why the two men should be executed. In November 1999, Judge Reynolds decided that the two men had been denied a fair trial. He set aside both the convictions and the death sentences that had been imposed on the two men and ordered a new trial. He also said that Attorney General Skelemani had both the right to decide on the *nature* of the charges to be brought against the men as well as the right to decline to prosecute at all.

Mr. Maauwe and Mr. Motswetla introduced additional grounds to those which had been brought by DITSHWANELO, namely that the "delay in carrying out the death sentence upon the two condemned men is cruel and degrading punishment" and also that "death effected by hanging by the neck is cruel and inhuman punishment". The second postponement was granted by the Judge in order to give the applicants more time to adequately prepare their case. The additional grounds included a challenge upon the constitutionality of capital punishment itself. Legal counsel for Mr. Maauwe and Mr. Motswetla contended that the death penalty has the effect of being applied in an arbitrary and discriminatory way in relation to the poor and illiterate, in contravention of the Constitution of Botswana. The Constitution provides protection for everyone against discriminatory laws, either in themselves or in their effect. The legal counsel also contended that they were accorded insufficient legal representation at their trial and appeal, rendering their trial unfair and in contravention of the Constitution of Botswana. Due to the difficulties in arguing

this case and its vital importance to the people involved, DITSHWANELO was forced to retain Advocates who had the necessary experience and specialisation to effectively challenge the death penalty.

Current Situation

At the time of writing this article, the date for trial has not yet been set. DITSHWANELO seeks to engage the same legal team which it employed in the case in 1999, as it is familiar with the human rights based approach which DITSHWANELO has insisted be utilised.

The legal system of Botswana allows for *pro deo* legal representation in cases where indigent persons are charged with an offence which carries the death penalty. This was the case with Maauwe and Motswetla *before* the involvement of DITSHWANELO. As part of the argument in the case in 1999, DITSHWANELO challenged the effectiveness of the *pro deo* system because it believed that it had failed the two men. Ultimately, under the current judicial processes, justice tends to evade the poor and illiterate because of their economic status. Without financial assistance, DITSHWANELO will be unable to ensure that the two men have a fair trial. The projected costs of the entire case are estimated to amount to US\$172,000. As one of its strategic objectives, greatly influenced by the processes of the Maauwe and Motswetla case, DITSHWANELO aims to work towards the establishment of a State funded, functioning legal aid system for all poor people who require legal representation.

NAMIBIA

The San of Namibia

The year under review has been very encouraging for Namibian San communities in several respects, particularly in the respect of capacity-building, although certain San communities in the country have fallen prey to extremely discouraging national and regional influences.

Regarding capacity-building, a number of important education and training activities were initiated during the year, including:

- comprehensive research into the educational situation of San children in southern Africa;
- production of a video about the educational challenges facing San children;

- planning for and establishing San pre-schools;
- assistance to San learners to enrol in primary schools, secondary schools and the Namibian College of Open Learning;
- training in oral testimony collection;
- training for San traditional authorities;
- training in tourism;
- on-the-job training in administration and development for young San individuals.

Another important achievement has been the establishment of the Omaheke San Trust, which serves the approximately 6,000 San residing in the Omaheke Region in the east of Namibia. An essential aim of the trust is to help the San to organise themselves at the local and regional levels, the Omaheke San having emphasised such organisation as crucial for their progress.

The San communities in northern Namibia have been very severely affected firstly by political measures imposed by the Namibian government in the wake of a secessionist uprising in the Caprivi Region, and more recently by the government's decision to allow Angola's national army to operate from Namibian soil in its efforts to overcome the rebel Unita forces and end Angola's civil war. Attacks in which foreign and Namibian civilians have been wounded or killed, and the alleged harassment, intimidation and even torture of civilians by both Namibian and Angolan military forces, have created a climate of fear and led hundreds of San to flee to neighbouring Botswana where Namibian refugees are granted asylum.

Research into the Educational Situation of San Children in Southern Africa Development worker and authority on education Willemien le Roux conducted intensive field research for one year into school and socio-economic realities to gauge their effects on San children's academic and social performance. She also analysed existing regional educational policies and structures as part of her study. She consulted communities of almost all San language groups, as well as school personnel, government officials and NGO representatives involved in education for marginalised minorities in Namibia, Botswana and South Africa.

Willemien le Roux has communicated her findings in a report titled *Torn Apart: San children as change agents in a process of acculturation*. The report provides invaluable insight into the perceptions of educational and related issues held by the San and all other stakeholders, and it elaborates on the chief factors influencing the San's relationship to formal education. These

factors include power and dependency, poverty, language of instruction, discrimination and abuse in schools, and traditional culture versus formal education. The researcher's comprehensive recommendations refer firstly to clearly identified crisis periods in a San child's life (i.e. pre-school and the early years of primary education, the pubescent years and late adolescence), secondly to the aforementioned factors influencing the San's relationship to formal education, thirdly to policies on education, and finally to regional strategies and co-operation on education.

The members of WIMSA's Board of Trustees, who commissioned the research in conjunction with the Kuru Development Trust based in Botswana, agreed after the findings were presented at their December 1999 meeting, that the report should be discussed at the local, national and regional levels. A regional conference on education is thus envisaged for 2000/2001, in which San representatives and educational planners will draw up a plan of action.

"Listen to us"

WIMSA, UNICEF Namibia and the Intersectoral Task Force on Educationally Marginalised Children ('Task Force') in the Ministry of Basic Education and Culture agreed in early 1999 to commission a documentary film about the challenges facing San children in formal education. Before the actual filming began, research into the issue was conducted among San pupils, their parents and community elders, school personnel and farmers residing in the far north, north-east and east of Namibia. A summary of the findings, mainly reflecting the San's views, was compiled in a report for WIMSA titled *Listen to Us: Challenges facing San children in education*. This report is regarded as a valuable supplement to the aforementioned study carried out in the southern African region.

It was decided that the film should focus on key issues for the San, such as loss of land, poverty and hunger. It was also decided that three films should be produced: the first titled *Education is important*, for screening in the various San communities; the second titled *Listen to us*, aimed at Namibian educators and policy-makers; and the third, a shorter version of the second, for screening on national television to raise public awareness of the educational constraints experienced by the San. The first film has been translated into the four languages predominantly spoken in the areas where the research was conducted: Ju/'hoan, Nama, Oshikwanyama and Afrikaans. The Task Force officially launched the second film in October 1999. In her keynote address, Deputy Minister of Basic Education and Culture Clara Bohitile referred to the San's educational problems in an empathetic tone, while simultaneously

drawing a realistic picture of their situation within the overall context of school education in Namibia. With this film the Ministry had once again demonstrated its commitment to "plac[ing] the plight of educationally marginalised children on the public agenda".

Support for San to 'Join' the Formal Education System

During 1999 the Epako San Pre-School, based in a township on the outskirts of the town of Gobabis, and the Donkerbos/Sonneblom Community school, situated on a communal farm run by approximately 70 San families, progressed well despite temporary setbacks. The student teacher at the Epako pre-school was awarded a Grade A Early Childhood Development Certificate after completing the two-year series of eight training courses under the Bokamoso Pre-School Programme run by the Kuru Development Trust ('Kuru') in Botswana. Another training workshop was organised for San from the Omaheke Region who are already involved with pre-schools or who are interested in running one in the near future. The majority of the participants (all except one of them were women) were illiterate, which prompted the trainers to focus on practical sessions and provide theoretical background information through culturally appropriate visual aids. Regular follow-up visits to support the trained pre-school students have been and will still be made by the training course co-ordinator.

The Nyae Nyae Village Schools Project (VSP) continued to offer mother-tongue education in Ju/'hoan for pupils in Grades 1-3. With reference to the VSP, researcher Willemien le Roux writes the following in her aforementioned 1999 report titled *Torn Apart: San children as change agents in a process of acculturation*:

The Namibian Institute for Educational Development (NIED) provides a distance learning upgrading programme for teachers ... In order to qualify for this programme, the 12 VSP teachers were enrolled in a special programme to upgrade to Grade 10, with exemption given for certain subjects not relevant to their environment. The teachers passed the Grade 10 qualification conditionally, given only if they pass the Instructional Skills Certificate, after which they will be accepted as fully qualified government teachers.

The Namibian College of Open Learning (NAMCOL) provides an opportunity for school dropouts to upgrade their formal education qualifications by offering courses for learners in Grade 10 (the compulsory minimum level that a Namibian learner should attain) and Grade 12. During the year under review 43 San Grade 10 students (41 of them men) and three Grade 12 students (two men) enrolled in NAMCOL. Their examination results were disappoint-

ing. It became apparent that one reason for this was that study materials were delivered late, while another reason was that the learners lacked self-discipline and commitment in adhering to a daily study schedule, which in distance education is self-set and absolutely essential.

Training

The WIMSA/Kuru joint offer to train interested San from Botswana and Namibia in recording their people's oral history testimonies was enthusiastically accepted by a number of young San from the Hai//om, !Xõo, Kxoe and Naro communities. A total of 14 people (7 of them women) received training in motivating community members, interviewing techniques, transcribing interviews and visualising family trees and lifelines. The majority of these trainees have already conducted one or two in-depth interviews and produced handwritten transcriptions – on average 11 A4 pages in length – in either English or Afrikaans.

The series of four workshops on land rights and basic legal education run under the title *Land and Law* continued in 1999 as a joint project of WIMSA and the First Peoples Worldwide arm of the US-based First Nations Development Institute. The approximately 30 San traditional leaders who participated in the workshops on a (more or less) regular basis deemed the project a success because it had afforded them the opportunity to become better informed on land rights and legal procedures in Namibia and thereby enhance their leadership competencies. During the first workshop the participants established the San Action Committee on Land Issues, which should function as a liaising body for future workshops and a monitoring body in respect of Namibia's land reform process. Another positive outcome of the project was a submission collectively prepared by the traditional authorities and presented by their representatives to the Standing Committee on Natural Resources at a public hearing on the Communal Land Bill.

WIMSA and the Windhoek-based Centre for Applied Social Sciences (CASS) jointly organised a workshop for secretaries to the already officially recognised Ju/'hoan and !Kung Traditional Authorities based in Tsumkwe District East and West respectively. Follow-up training workshops were conducted in these two communities, focusing on office administration and book-keeping as relevant for secretaries to San traditional authorities.

The WIMSA tourism trainer has conducted on-the-job training since April 1999 for the committee of the community-run Omatako Valley Rest Camp in the north-east of Namibia, for !Xõo community members who entered a joint venture with the Intu Afrika Lodge in the south of the country, and for the

!Xõo community in Aminuis Corridor 17 in the east, which has taken its first steps in implementing plans for a community-owned campsite. In co-operation with the Namibia Community-Based Tourism Association (NACOBTA), the WIMSA tourism trainer conducted a workshop on tour-guiding for interested San from Tsumkwe District East and West.

During 1999 WIMSA continued to train young San individuals (two women and two men) from South Africa, Namibia and Botswana in office administration and development issues. Training themes such as 'Efficient meetings' and 'Preparing a funding proposal' were carefully selected to ensure that the trainees are able to assist their communities efficiently with these fundamental activities.

In April 1999 the WIMSA board appointed a young Hai//om activist as assistant to the co-ordinator. The appointee had never had an opportunity to gain working experience in administration and development, but being motivated and committed, after being introduced to WIMSA's manifold tasks in networking, advocacy and lobbying, it did not take long before he began representing the organisation on national, regional and international fora.

Capacity-building for San Communities

With regard to San communities' efforts to set up their own organisational structures, a most significant achievement was the establishment of the Omaheke San Trust in 1999. This body is tasked to serve the approximately 6000 Ju/'hoan, !Xõo and Naro San scattered around commercial and communal farms and on the outskirts of towns and villages in the Omaheke Region in eastern Namibia. The processes of drawing up a constitution for the Trust and electing a board of trustees are complete, and the board is currently occupied with making the public and the relevant NGOs and government departments aware of the Trust's role in lobbying for San rights in the Omaheke.

The Kxoe of West Caprivi

The tendency of San in Namibia's troubled north to flee to neighbouring Botswana continues to escalate. The fleeing began in November 1998 when reports of a secessionist movement in the Caprivi started to emerge, and it escalated after members of Namibia's Special Field Force and police swept through Kxoe villages in west Caprivi in search of secessionist military training camps and weapons. Many more San fled in August 1999 when the Namibian government declared a state of emergency in part of the Caprivi following a secessionist attack in the area, and still more fled later in the year when fighting between the warring Angolan forces intensified along the bor-

der. The Kxoe's Omega III settlement is now deserted, many schools in the area are not operating as teachers and pupils fear for their safety, fields have not been cultivated and development projects have been put on hold.

Conclusions

Despite the discouraging developments in the north of Namibia, great strides have been made around San issues. Organisations like Integrated Rural Development and Nature Conservation (IRDNC), the Nyae Nyae Development Foundation (NNDFN), the Nyae Nyae Conservancy (NNC), the Ombili Foundation, the Omaheke San Trust (OST) and WIMSA have co-operated to assist the San to acquire education and training, to gain access to land and control over the natural resources on those lands, to advocate and lobby for their rights and in making the wider public aware of their problems and aspirations. In the words of WIMSA Chairperson Kxao Moses =Oma (board meeting, December 1999):

"WIMSA has established good cross-boundary communication regionally and internationally. The recognition which WIMSA has gained at all levels has given us more courage and strength to continue to further enhance our co-operation with our stakeholders."

SOUTH AFRICA

1999 saw the consolidation of a number of official structures representing indigenous peoples in South Africa, as well as progress on the policy front. Some indigenous groups were able to start returning to their ancestral land and reviving their cultures and languages following successful land claims.

In March 1999, the South African government made an historic land restitution settlement with the !Khomani San of the Southern Kalahari. The then Deputy President, Thabo Mbeki, flew to the remote desert region to hand over 40,000 hectares of good land to the San who had been dispossessed by white farmers and by the creation of a National Park in the 1930s. In his speech, Mbeki stated: "What we are doing here in the Northern Cape is an example to many people around the world. We are fulfilling our pact with the United Nations during this decade of Indigenous People."

According to the Indigenous Peoples of Africa Co-ordinating Committee (IPACC), South Africa could play a major role in advancing the UN Draft Declaration on the Rights of Indigenous Peoples. Previous President Nelson

Mandela and the government of South Africa are seen internationally as having moral weight when it comes to human rights issues. African and Asian states have remained aloof or uninformed about the UN Decade. If South Africa took a strong stand in favour of the Declaration and mobilised its bilateral connections it could bring about an important shift in the North-South dynamics in Geneva. The first signs of real action came in March 2000 with South Africa openly supporting the UN Declaration and the Permanent Forum during a Commission for Human Rights debate in Geneva.

South Africa is going through a period of rapid change and policy reformulation. Thabo Mbeki has replaced Nelson Mandela as President of South Africa. With adequate lobbying he is likely to approve domestic and foreign policies that address the restoration of human and civil rights of indigenous peoples, including ILO Convention 169. Under the racially based apartheid system of the old regime, all aboriginal/indigenous peoples were put under heavy pressure to assimilate into other language and ethnic groupings. The liberation movement did not deal with this aspect of oppression during its struggle. However, now it is in a democratic dispensation, indigenous activists have been able to bring their plight to the government's attention. The Mbeki government says that its policies, both domestic and foreign, will be guided by the principles of our constitution that guarantees both dignity and protection from discrimination.

Two formal structures were created to represent the voices of indigenous peoples: the *National Khoe-San Forum* and the *Khoe and San Language Body*. With regard to the former, the Department of Constitutional Development (DCD) worked with indigenous activists to create an elected interim representative structure to carry out negotiations and research with the government. The *National Khoe – San Forum* came into being in March 1999. Its Chairperson is Joseph Little of the Cape Cultural Heritage Development Council (CCHDC), and its Deputy Chairperson is Cecil LeFleur, who is an Executive Member of the Griqua National Conference and the Deputy Chair of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC). The Khoe-San Forum is composed of the following five interest groups claiming indigenous status:

- the San communities
- the Nama communities
- the Griqua organisations and Korana groupings
- CCHDC and

- the Khoisan Representative Council (KRC).

Department officials work with elected representatives of each grouping to help conduct baseline research into identity, history, and traditional leadership of each claimant community. This research will feed into a second process whereby the National Khoe-San Forum and the government discuss models of representation for indigenous peoples.

The second official structure created is the *Khoe and San Language Body*. This is an official advisory structure, created by the Pan South African Language Board (PanSALB)—a statutory constitutional structure that is meant to monitor language rights and implementation of policy. The formation of the Khoe and San Language Body is a major breakthrough for indigenous peoples as it is the first time they have a direct voice in trying to stop the process of language death. The South African San Institute (SASI) has provided training and support to the new structure that represents traditional communities in remote rural areas that still speak their original languages and possess a great deal of traditional knowledge.

In addition to government initiatives, the Chairperson of the South African Human Rights Commission (HRC), Dr Barney Pitso, has taken an active role in promoting policy formulation around the rights of indigenous peoples in South Africa. The HRC held a series of workshops on the indigenous question and is due to release a report that will provide guidelines to the Mbeki government. Some elements of the report include improving the possibilities of cross-border movements for indigenous peoples to ensure cultural survival and religious freedom. Pitso took the issue further, but challenging the African Commission on Human and People's Rights to create a research team to investigate the violation of rights of indigenous peoples on the continent. There was initially much resistance but the Commission agreed to the investigation.

The International Labour Office's Project for the Rights of Indigenous and Tribal Peoples continued to play an important catalytic role with the Department of Constitutional Development. ILO co-sponsored two national conferences to bring indigenous activists and government officials together. Henriette Rasmussen attended National Khoe-San Forum meetings and kept track of developments. The ILO commissioned SASI and IPACC to produce a research document on the needs of the most vulnerable of indigenous peoples in South Africa. This was published as *"Indigenous peoples of South Africa: Current Trends"* in October 1999.

The office of the Canadian High Commissioner in South Africa has remained positive about providing technical assistance to the South African government. The two governments are currently discussing an exchange programme of civil servants to study indigenous rights issues.

The restructuring of the Department of Constitutional Development, which is to be dismantled and its functions divided between the Department of Justice and the Department of Provincial and Local Affairs, will retard progress on policy development. The Department of Foreign Affairs (DFA) has expressed a keen interest to engage with the UNWGIP on the issue of indigenous peoples rights, and IPACC has lobbied DFA to raise issues of human and civil rights abuses in its bilateral relations inside Africa. Unfortunately, DFA can only generate policy based on domestic policy, which is still far from being consolidated. It will take a direct move by Mbeki to break the logjam that has been created. Despite the problems of communication between government departments, the South African government gave its first formal report on progress at the UNWGIP session in July 1999.

The significance of South Africa in the UN Decade was further demonstrated with the formation of the Commonwealth Association of Indigenous Peoples (CAIP) in July 1999. Australian, Canadian, Asian and African activists came together in London and Geneva to create an official interest group within the Commonwealth. A six-member committee was elected with South Africa Griqua activist, Cecil LeFleur being elected as the President and Lucy Mulenkei, Kenyan Maasai gender activist, also serving on the committee. CAIP participated in the Commonwealth Heads of Government Meeting (CHOGM) in Durban, South Africa in November 1999. The willingness of the South African government and non-governmental organisations to welcome CAIP's presence increases the moral pressure on the Australian government to give space for indigenous issues at the next CHOGM meeting in Australia in 2001.

On the Ground

All three major San communities in South Africa started to deal with the realities of getting land settlements. The !Xû and Khwe began the process of establishing housing and income generating projects at the new settlement of Platfontein. They had to convince the provincial government that they had the right to live in two separate areas to protect and promote their cultural and linguistic identities. The ǀKhomani San of the Southern Kalahari began the process of resettlement at Witdraai. Detailed negotiations on transfer of land

from farmers proceeded smoothly. The ǀKhomani San must still negotiate the details of their rights inside Kalahari Gemsbok National Park.

The South African San Institute is working with the ǀKhomani San elders to map out traditional land occupancy and usage, including the history of dispossession and the diaspora. Through investigations, the number of identified elderly speakers of the ancient N/u language increased from ten to eighteen. Several N/u speaking elders returned to their ancestral land after the land settlement. The cultural landscape mapping inside the Kalahari Gemsbok National Park is being used to help define the types of rights to be negotiated. The mapping and history project has already demonstrated that the San lived in the Park prior to its proclamation, a claim originally denied by the Parks Board.

The Legal Resources Centre of Cape Town is assisting the Nama people of the Richtersveld to conduct an aboriginal title land claim for land taken by mining companies and farmers. The Nama people of Riemvasmaak on the Orange (!Garib) River remain in a tense situation with the Augrabies Falls National Park that is located on their ancestral land and includes grave sites that the community may not access. Griqua groups in the Western Cape are involved in the management and cultural interpretation of a new conservancy area near Vanrhynsdorp on the Knersvlakte. No progress has been made over the issue of correcting place names in the Northern Cape, though the UN Expert Group on Geographical Names was lobbied and the Department of Arts, Culture, Science and Technology was informed of the grievance.

Overall, the progress in South Africa has been remarkable in a short space of time. Domestically, San and Khoe activists must ensure that all the right policy initiatives become converted into reality on the ground. Poverty and the threat to cultural survival remain overwhelming for the more traditional communities. The challenge for indigenous activists globally is to mobilise South Africa to play a stronger role at the UN and in its bilateral relations.

PART II

INDIGENOUS RIGHTS

THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES REMAINS ON ITS TROUBLED PATH THROUGH THE UN

By Sarah Pritchard

Introduction

On the 3rd of March 1995, the Commission on Human Rights (CHR) decided to establish an open-ended inter-sessional working group with the purpose of elaborating a draft declaration, "considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled 'Draft United Nations declaration on the rights of indigenous peoples'." (CHR resolution 1995/32). The fifth session of the CHR Working Group (CHRWG) was held in Geneva from the 18th to the 29th of October 1999. It was the first session following the death in May 1999 of Andrew Gray on a networking trip in the Pacific for IWGIA. Throughout the fifth session, the loss to the process of Andrew's insight and sensitive analysis was manifest.

In *The Indigenous World 1998-99*, Andrew Gray provided a typically thoughtful account of the history and structure of the CHRWG (pp. 355 ff.). The purpose of this note is to describe the debate at the fifth session (CHRWG5), and to evaluate the movement, if any, in building consensus in relation to the provisions of the Draft Declaration.

Participation

The session was attended by 331 people, including representatives of 52 indigenous and non-governmental organisations, and 47 governments. For the first time since 1996, a Maori delegation participated in the CHRWG. The representative of the Wellington Maori Legal Service stated that the Maori delegation had withdrawn in 1996 because there was no equal participation of indigenous and governmental representatives. The representative has been sent as an observer to report on whether the right to full and equal participation was being recognised in the practice of the working group.

Following the return to Lima of former Peruvian Ambassador to the UN at Geneva, Ambassador Jose Urrutia, Mr Luis-Enrique Chávez of the Peruvian Mission was elected Chairperson-Rapporteur of the CHRWG. In his opening remarks, Chávez expressed a commitment to continuing to work in the same spirit of dialogue and transparency as his predecessor, and with full participation.

Organisation of Work

At its fifth session, the CHRWG held seven formal plenary meetings and nine informal plenary meetings. As with previous sessions, the report of CHRWG5 contains a record of the general debate and the debate which took place in formal plenary meetings (UN Doc. E/CN.4/2000/84). The discussions which took place in informal plenary meetings are reflected in the Chairperson's cursory summaries contained in the report. One problem with this approach is that there is no detailed record of delegations' often technical interventions in informal meetings.

At the first meeting of CHRWG5, the Chairperson gave a brief account of his consultations, including those with the Indigenous Peoples Preparatory Meeting, on the organisation of work. He proposed to allow first a general debate on general aspects of the process - self-determination, land rights and natural resources - then to focus on articles 15, 16, 17 and 18, and finally to make some progress on articles 1, 2, 12, 13, 14, 44 and 45. On behalf of governments, it was proposed to convene each day between 15.00 and 16.30, within the official work plan, to conduct informal consultations amongst governments. Observers were generally agreed that the proposal was initiated by a group of governments consisting of Canada, the United States, Australia and the United Kingdom, with Canada as principal co-ordinator.

The proposal to convene informal inter-governmental meetings as part of the official work plan was resolutely opposed by indigenous representatives. In an attempt to defuse a deadlock, the Chairperson proposed that indigenous representatives be allowed to observe at, but not participate in the informal inter-governmental consultations. This proposal was similarly rejected by the indigenous caucus. On behalf of the caucus, co-chairpersons Kenneth Deer and Marcial Arias emphasised that indigenous representatives had fought long and hard for full participation. They considered it unacceptable that informal governmental meetings should take up valuable time of the working group. The formalisation of informal meetings excluding indigenous participation was objectionable, and would detract from the transparent and participatory process in which indigenous representatives had agreed to take part. Whilst indigenous representatives were not opposed in principle to the idea of informal governmental meetings, they rejected the proposal that these meetings should be included in the official work plan. Particular concern was expressed that the outcomes of such meetings should not be part of the final report of the session, unless agreed to in a plenary meeting.

After two days of negotiations, the first formal meeting of CHRWG5 was opened. Canada stated that informal governmental meetings were essential to

ensure broad governmental participation in the elaboration of the Draft Declaration. The United States stated that informal governmental meetings were valuable in order to develop precise texts and discuss alternative wording. In a significant intervention which effectively broke the deadlock, New Zealand described the full engagement of indigenous peoples as vital and valuable, and in order to ensure an atmosphere of confidence and progress, agreed to strike informal governmental meetings from the work plan. Accordingly, the working group adopted a revised work programme from which informal governmental meetings were deleted.

General Debate

a. General Aspects

Only a few government delegations participated in the debate on general aspects of the Draft Declaration. These were Australia, New Zealand, China, Cuba and Switzerland. During the contributions of indigenous representatives to the debate a number of themes were consistently raised on the following general aspects:

- It is a basic principle of international law that human rights be applied uniformly and universally. Without the non-discriminatory application of international standards, the fundamental integrity of the UN's standard-setting on the rights of indigenous peoples is seriously compromised. Accordingly, all discussion of the Draft Declaration should take account of the principles of equality, non-discrimination and the prohibition of racial discrimination.
- Relevant to the CHRWG's work are important developments in the jurisprudence of the UN's human rights treaty bodies, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination (CERD). Numerous indigenous representatives referred in particular to CERD's General Recommendation XXIII on the rights of indigenous peoples (Fifty-first session, 1997), which provides in part that:

4. The Committee calls in particular upon States' parties to:

- a. recognise and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;*

b. ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

c. provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

d. ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

e. ensure that indigenous communities can exercise their rights to practise and revitalise their cultural traditions and customs and to preserve and to practise their languages. (Emphasis added)

- The task of the working group is to contribute to the progressive evolution of international human rights standards as they apply to indigenous peoples.
- In their responses to the Draft Declaration, governments ought not be constrained by domestic constitutions, legislation or policy. Any such limitation conflicts with the purpose of international human rights setting.
- The Draft Declaration contains minimum standards for the survival of indigenous peoples, and for the protection and promotion of the fundamental rights and freedoms of indigenous peoples.

In his summary of the debate on general aspects, the Chairperson expressed his belief that positions were converging. He referred to agreement that the Declaration should be based upon the consensus of all participants, and on the principles of equality and non-discrimination. There were still several contentious issues among governments, such as the question of definition and the use of the term 'indigenous peoples'.

b. Self-determination

In their interventions on self-determination, indigenous representatives reaffirmed the right to self-determination, contained in article 3, as the funda-

mental principle underlying the Draft Declaration. The following themes emerged during their interventions:

- Without agreement on article 3, it would not be possible to reach consensus on other provisions of the Draft Declaration.
- The right of all peoples to self-determination is a fundamental norm of international law, recognised in the Charter of the United Nations, common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICESCR) and the 1993 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights. Accordingly, respect for the principles of universality, equality and non-discrimination requires recognition of the right of indigenous peoples to self-determination.
- The exercising by indigenous peoples of their right to self-determination provides a means for the peaceful settlement of disputes and strengthening national unity.
- Of particular relevance to the Draft Declaration's approach to self-determination are recent developments in the jurisprudence of the Human Rights Committee. That Committee's concluding observations in relation to the fourth periodic report of Canada pursuant to the ICCPR (UN Doc CCPR/C/79/Add 105), adopted on 7th of April 1999, provide in part that:

7. The Committee, while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, regrets that no explanation was given by the delegation concerning the elements that make up that concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report.

8. The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by the RCAP that without a greater share of lands and resources institutions of aboriginal

self-government will fail, the Committee emphasises that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.

- Similarly, in connection with its (then) upcoming examination of Norway's fourth periodic report, the Human Rights Committee requested information on Norway's position in respect of the Sámi people's right to self-determination (UN Doc CCPR/C/67/L/NOR). Referring to these developments, the Saami Council said that the Committee's observations and questions confirm that article 1 of the ICCPR applies to indigenous peoples, and that *"an interpretation of indigenous peoples' right to self-determination which excludes our land and resource rights is incompatible with existing international law."*
- Numerous indigenous representatives stated that the right of indigenous peoples to self-determination poses no threat to the territorial integrity and sovereignty of States. For example, the representative of the Metis National Council stated that international law protects the territorial integrity of States which adhere to international and human rights laws. The representative of the Lumad Mindanaw Peoples Federation stated that self-determination for his people meant self-governance of their territory within the sovereignty of the nation-state.
- Several indigenous representatives described the right to self-determination as an evolving concept, not limited to the context of decolonisation. In a wide-ranging and scholarly intervention, the Saámi Council described self-determination as *"an ongoing process of choice for the achievement of human security and fulfilment of human needs, with a broad scope of possible outcomes suited to specific situations."*

A clear majority of governments supported recognition in the Draft Declaration of the right of indigenous peoples to self-determination, either as currently formulated or subject to a more explicit guarantee of territorial integ-

ity. *Switzerland* supported the inclusion of article 3 as an essential right of indigenous peoples, and analogous with the principle of subsidiarity implemented in Switzerland in which local autonomy coexists with a federal system. *Canada* restated its position that the traditional view of self-determination as limited to the colonial context and equated with a right of statehood has evolved. Canada accepts the right to self-determination for indigenous peoples which respects the political, constitutional and territorial integrity of democratic States. *Finland* fully supported acceptance of the term self-determination in the Draft Declaration, provided that article 31 dealing with self-government or autonomy in internal and local affairs is retained in the declaration.

New Zealand accepts the inclusion of the right to self-determination in the Draft Declaration subject to it being consistent with the domestic understanding of the relationship between Maori and the Crown, and with respect for the territorial integrity of democratic States and their constitutional frameworks, where those met current international human rights standards. *Norway* supported the application of the right of self-determination to all peoples under international law, including indigenous peoples. Norway understands the right to self-determination in article 3 as a right to be exercised within existing, independent and democratic States. It includes the right of indigenous peoples to participate at all levels of decision-making in legislative and administrative matters and in the maintenance and development of their political and economic systems. *Guatemala* described the right to self-determination as a key component of the Draft Declaration, and reaffirmed its support for the right to self-determination within the framework of national unity and territorial integrity.

In a statement more flexible than those made at previous sessions, *Brazil* noted that the concept of self-determination is evolving and adapting to new circumstances. For Brazil, the concept can be translated as the right of indigenous peoples to participate fully in decisions affecting them. *Ecuador* stated that the concept of self-determination contained in the Draft was not equivalent to the principle of international self-determination and did not imply the territorial dismemberment of States. Ecuador noted that statements by indigenous peoples had confirmed that understanding. Self-determination is the means of preserving indigenous cultures and communities. *The Russian Federation* had no difficulties in accepting the right to self-determination, although exercise of the right must be subject to the territorial integrity of States.

Pakistan fully supported article 3 and opposed any dilution or change of the concept. *Venezuela* stated that a reference to self-determination should be in line with the principle of the sovereignty and integrity of the State, and called upon participants to continue co-operating to find an acceptable text.

Argentina emphasised the need for textual amendments to ensure that nothing in the declaration can be used to dismember totally or in part the territorial integrity or political unity of a State. *Mexico* understood the right to self-determination within the framework enunciated in article 1(3) of ILO Convention No 169. In Mexico self-determination is interpreted as requiring respect for territorial integrity and national unity. *France* stated that the notion of self-determination continues to raise serious difficulties for a number of delegations, in particular because of its links to questions of decolonisation and territorial integrity. The concept had been applied in New Caledonia and was being applied in French Polynesia. At the present time, deliberations are taking place at the highest level of the French Republic.

The *United States* regarded the continuing dialogue concerning article 3 and its proposed recognition of a right to self-determination for indigenous peoples as one of the most challenging aspects of the negotiations over the Draft Declaration. With regard to self-determination the US promotes tribal self-government and autonomy over a broad range of issues. However, whilst the US uses the term 'self-determination' in its domestic context, the scope and definition of the right to self-determination in the international context needs clarification. The US is aware of the view of some governments and scholars that the right to self-determination includes both external and internal aspects, with the latter applying to groups within existing States. Significantly, the US is "considering the evolving concepts of self-determination". Later during the session, US representatives confirmed that an *inter-agency* review of the US position on self-determination had been initiated (emphasis added). In the most uncompromising of all government interventions on self-determination, *Australia* reaffirmed its delegation's inability to accept the inclusion of the term 'self-determination' in the Draft Declaration because for many people it implies the establishment of separate nations and laws.

In his summary of the debate on the right to self-determination, the Chairperson noted that positions of participants had converged, and that there was agreement that the right to self-determination is the cornerstone of the Draft Declaration. The Chairperson recognised that the principle of self-determina-

tion is evolving, and that although some governments had linked the right to the colonial context, it could and should be adapted to current circumstances. In particular, the right to self-determination is exercised at both internal and external levels. The Chairperson proposed that future debate on self-determination be based on three premises:

- (a) recognition that the concerns expressed by some governments in relation to secession had been responded to by assurances from some indigenous delegations that they do not want to secede;
- (b) the need for conformity between the formulation of the right to self-determination in the Draft Declaration and the principles which guide the UN, that is the principles contained in the Charter and;
- (c) taking the universally accepted International Covenants, which contain the right to self-determination, as a basis for future discussion.

In an informal (!) meeting held on the 25th of October 1995, Malaysia reiterated its support for article 3, as drafted.

c. Land Rights and Natural Resources

The following themes were repeated during many interventions by indigenous representatives on articles 25-20 concerning land and natural resources:

- Articles 25 to 30 must be adopted in their current form. In response to a proposal by New Zealand to consolidate the five articles into a single provision, the representative of the Wellington Maori Legal Service stated that every article of the Draft Declaration is based upon known instances of violations of the human rights of indigenous peoples, and any suggestion that indispensable elements of the Declaration could be removed must be vigorously resisted.
- Numerous interventions referred to the absence of domestic recognition of indigenous rights to land, and cited specific experiences in land claims and resettlement processes. There was particular discussion of the experiences of the Maasai, Ogoni, Nama and Shor peoples, and the indigenous peoples of French Guyana.

- In response to government interventions referring to existing domestic regimes governing land rights and settlement processes, several indigenous representatives stated that it is inappropriate for domestic laws to limit and control the development of international standards.
- The CERD Committee's 1997 General Recommendation XXIII on the rights of indigenous peoples was also referred to as relevant to the Draft Declaration's approach to land and resource questions. Paragraph 5 of the General Recommendation states:

"The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories." (Emphasis added)

- Several indigenous representatives drew attention to the Concluding Observations adopted on the 12th of December 1998 by the Committee on Economic, Social and Cultural Rights in relation to Canada's third periodic report pursuant to the ICESCR (UN Doc E/C 12/1/Add 31). In those observations, the Committee emphasised the connection between the economic marginalisation of indigenous peoples and their dispossession:

"18. The Committee views with concern the direct connection between Aboriginal economic marginalisation and the ongoing dispossession of Aboriginal people from their lands, as recognised by RCAP [Royal Commission on Aboriginal Peoples], and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party."

- The representative of the Indian Law Resource Center referred to the 1995 Concluding Observations of the Human Rights Committee in rela-

tion to the first periodic report of the United States pursuant to the ICCPR (UN Doc CCPR/C/79/Add 50), in which the Committee recommended *"that steps be taken to ensure that previously recognised aboriginal Native American rights cannot be extinguished."* (Paragraph 302)

- Several indigenous representatives from Australia referred to the March 1999 finding by the CERD Committee that 1998 amendments to Australia's *Native Title Act 1993* (Cth) were in breach of Australia's international obligations as an illustration of the critical importance of international standards in protecting the rights of indigenous peoples.

Australia's representative noted that the spirit of many of the articles of the Draft Declaration relating to land were already being implemented in Australia. In contributing to the development of the parts of the Draft Declaration that deal with land and natural resources, Australia will be guided by domestic law and practice. *New Zealand* said that the language of the Draft Declaration needs to be clarified to ensure consistency with the Treaty of Waitangi settlement processes and policies, and with the domestic law of New Zealand. *New Zealand* could support a comprehensive article which consolidated all aspects of indigenous rights in relation to land. *Denmark* stressed the importance of addressing the question of land rights and natural resources in a manner satisfactory to indigenous peoples. A flexible approach is necessary because indigenous peoples often have perceptions which differ from those of the wider community.

Canada strongly supported the principle that indigenous peoples have the right to own, control, develop and use their lands and resources. However, to be universally applicable the Draft Declaration would have to take into account the many different land and resource arrangements between States and indigenous peoples. The current text needs to be amended and clarified, particularly in relation to the terms 'lands' and territories'. The Draft Declaration's restitution criteria are also unnecessarily limiting. Article 27 should be expanded to address processes for dealing with land claims. *Malaysia* considered the articles to have been drafted in too broad a language in view of the complexity of the issues, and proposed more precise language in order to strengthen the text. The *United States* supported the goals of articles 25 to 30, referring to an extensive history of addressing land claims and the recognition of a legally enforceable fiduciary duty. The US was concerned about the broad language of article 26, which seems to give indigenous peoples the

right to ownership of land they had "traditionally occupied or otherwise used". Guatemala stated that the term 'territories' should be given the same meaning as it was by the drafters of the original text. The representative referred in particular to the report of the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Erica-Irene Daes (UN Doc E/CN.4/Sub.2/1993/26/Add.1). Venezuela expressed concern at the use of the term 'territories' because of its connotations for the definition of States. Venezuela prefers the term 'land', which is compatible with domestic law.

In a somewhat optimistic summary, the Chairperson noted that growing goodwill and flexibility would make it possible to reach an understanding between participants in the working group. At the conclusion of the debate, it was clear that there remained considerable divergence in the participants' positions. With many - especially the Nordic - governments remaining silent on these provisions, it is too early to speak of emerging areas of consensus. However the debate was conducted with greater specificity and candour than it had been previously, with governments beginning to discuss particular perspectives and experiences in relation to the recognition of land and resource rights.

Articles 15 to 18 - Education, Information and Labour Rights: The Approaches of Governments

In 1998 at CHRWG4, the then Chairperson Urrutia received an informal paper setting out concrete proposals from a number of government delegations, especially those from Australia, Canada and the United States, in relation to articles 15 to 18. At the time, the indigenous caucus expressed grave concern that indigenous representatives had not participated in the elaboration of the non-consensual paper, and rejected any suggestion that the working group was engaged in a drafting or negotiating exercise. In response, Chairman Urrutia confirmed that the working group was not engaged in a drafting or negotiating exercise.

As noted above, at CHRWG5 the indigenous caucus successfully resisted efforts to 'formalise' the informal inter-governmental consultations in the official work plan. However, this did not prevent governments from continuing informal consultations on articles 15 to 18. The inter-governmental processes produced four papers which synthesised governments' attempts to reach consensus on alternate texts. The working group held nine informal plenary meetings to consider the governments' papers. The Chairperson's summary concluded that:

The frank and constructive discussion of the principles and substance of these four articles allowed Governments to produce alternative texts for each one of these articles which include some bracketed wording reflecting outstanding issues requiring further consideration. Some governmental representatives expressed the view that they could agree to the cluster as originally drafted, either in total or in part. Others expressed a preference for the current text as approved by the Sub-Commission. However, the emerging view of the participating governmental delegations was that the alternative texts could be considered as an acceptable basis for further work and could be presented to the working group in order to advance the discussion in plenary. (Paragraph 114)

According to the Chairperson's summary it was also the case that:

Governmental representatives also said that they were looking forward to pursuing discussions on other articles at the next session of the working group and would be pleased to consider including indigenous observers in informal meetings among Governments when discussions focused on specific articles of the declaration, if those meetings could be part of the work schedule of the next session. (Paragraph 117)

The Chairperson concluded that a fruitful debate had taken place and that there was growing consensus in regard to the underlying principles of the articles (paragraph 118). From the perspective of indigenous participants, the debate on articles 15 to 18 was anything but fruitful. Whilst governments might have narrowed their own differences, disagreement between governments and indigenous participants had, if anything, increased. Whilst at previous sessions, numerous governments had expressed an ability to live with some or all of articles 15 to 18 as drafted, as a result of their participation in the informal government consultations, previously supportive governments found themselves shifting to accommodate the most inflexible of government positions. During this process, consensus was built around the most extreme and obstructionist positions. Indigenous representatives watched with dismay as discussion of the articles in plenary sessions focused not upon the original text of the Declaration, as approved by the Sub-Commission, but upon the proposals produced by governments in their informal consultations.

This process represented a significant departure from the open dialogue and consensual working methods which had characterised previous sessions of the working group. On the basis of CHR resolution 1995/32, the agreed procedure had been to consider the original text as a basis for all discussion of the declaration's underlying principles as well as particular articles. Contrary to the concept of 'full and equal participation', CHRWG5 saw the institutionalisation of the practice, begun by previous Chairperson Urrutia and apparently encouraged by current Chairperson Chávez, of governments revising the text of the Declaration with a view to narrowing differences between themselves. The Chairperson's summary, quoted above, reveals an unmistakable intention on the part of governments to entrench informal governmental re-drafting in the future processes of the working group. The summary delivers an ultimatum to indigenous representatives - if they wish to attend the consultations, as observers, then the consultations must form part of the official work schedule.

Within the government camp, it was apparent that some delegations were troubled by aspects of the closed governmental meetings. In plenary meetings, a number of governments retreated from the positions reflected in the governments' proposals. After listening to indigenous comments on the proposals, these governments stated either that they could live with the original text of particular articles, or that they regarded the original text as superior. Such statements were made by Argentina, Brazil, Denmark, Ecuador, Finland, Guatemala, Mexico, New Zealand, Norway, the Russian Federation and Switzerland. The most vigorous defenders of the proposals were those governments who had led the exercise, Canada, Australia, the UK and the US.

Articles 15 to 18 - Education, Information and Labour Rights: The Responses of Indigenous Representatives

The government papers on articles 15-18 were generally made available to indigenous representatives only a short time before their discussion in plenary. This meant that there was insufficient time to analyse adequately the redrafts, to caucus and to respond to proposed textual changes. A particular difficulty arose as the anglophone instigators of the inter-governmental consultations had failed to make provision for translation of the papers into any other language. This placed many indigenous representatives at a considerable disadvantage. Notwithstanding difficulties in analysing and responding to the government texts, indigenous representatives were generally scathing in their assessment of the proposed changes. Three points were made repeatedly in the indigenous interventions:

1. The square bracketing of indigenous peoples.
2. The square bracketing of shall/should.
3. The lack of justification for many changes, with changes in some instances actually obfuscating the clarity of the existing text.

Square Bracketing of Indigenous Peoples

In response to the square bracketing of the term 'indigenous peoples', the indigenous caucus proposed an "Annexe on the term indigenous peoples" for inclusion in the final report. This consensus document set out the consistent position of indigenous peoples' representatives in relation to the term 'indigenous peoples':

There can be no doubt that we are peoples with distinct historical, political and cultural identities. We are united by our histories as distinct societies, by our languages, laws, traditions and unique spiritual and economic relationships with our lands and territories. Indigenous peoples are unquestionably peoples in every legal, political, social, cultural and ethnological meaning of the term. It is discriminatory, illogical and unscientific to identify us in the United Nations Draft Declaration on the Rights of Indigenous Peoples as anything less than peoples...

We continue to insist that the United Nations apply its own standards universally and equally, that it accord us the same rights as other peoples in the world, that it act without prejudice and without discrimination. We cannot agree, now or at any future time in consideration of the Draft Declaration on the Rights of Indigenous Peoples, to any qualification, explanation, definition, bracketing, parenthesis or footnoting of the term indigenous peoples.

The proposed annexe noted that the term 'indigenous peoples' is well-established in international legal practice, including in:

- the concluding observations of the Committee on the Elimination of Racial Discrimination, and General Recommendation XXIII(51) concerning Indigenous Peoples adopted on the 18th of August 1998;
- the views and concluding observations of the Human Rights Committee in relation to the implementation of the International Covenant on Civil and Political Rights;
- the observations of the Inter-American Commission on Human Rights;

- the resolutions of the European Parliament and the Council of Ministers of the European Union;
- the World Bank's Operational Directive 4.20 and;
- the Asian Development Bank's 1997 policy on indigenous peoples.

The proposed annexe identified numerous example of the use the terms 'indigenous peoples' and 'aboriginal peoples' in the practice of States, including in constitutional guarantees, legislative enactments, judicial decisions, negotiated treaties and agreements, and national and local policy. Examples given include:

- Australia's 1993 Native Title Act;
- the Constitution of Bolivia (Article 171), the Popular Participation Law of Bolivia, INRA Law of Bolivia, Educational Reform, Environment and Hydrocarbon of Bolivia;
- the 1999 Commission on Indigenous Peoples of the National Congress of Peru;
- the 1982 Canadian Constitution Act (section 35);
- the Constitution of Colombia (article 246);
- the 1994 Agreement on Identity and Rights of Indigenous Peoples of Guatemala;
- the Constitution of Malaysia (article 151);
- Denmark's 1994 strategy of support for indigenous peoples;
- the Political Constitution of the Republic of Ecuador (article 83);
- the Constitution of Mexico (article 4);
- the Constitution of Nicaragua (article 5);
- the Constitution of Paraguay (article 62);
- Germany's 1996 policy for indigenous peoples in Latin America;
- the Netherlands' 1993 policy on indigenous peoples;
- Panama's environmental law;
- the Philippines' 1997 Indigenous Peoples' Rights Act;
- the United Kingdom's 1995 Guidance on Ethnicity, Ethnic Minorities and Indigenous Peoples;
- Spain's 1997 strategy for co-operation with indigenous peoples;
- Switzerland's 1998 action for indigenous peoples and;
- the United States Code: 7 U.S.C. Section 1738k(d)(1); Title 22 (9 separate Sections), 42 U.S.C. Section 11701(17) and the United States S. Con. Res. 44, 103d Cong., 1st Sess. (1993).

Finally, the Annexe referred to the numerous States which have accepted use of the term indigenous peoples in the practice of the CHRWG. These include Angola, Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, Guatemala, Malaysia, Mexico, New Zealand, Norway, Pakistan, Peru, Philippines, Russian, Spain, Sweden, Switzerland and Venezuela. Apparently succumbing to the pressure from governments, the Chairperson rejected the 'Annexe on the term indigenous peoples' for inclusion in the report.

Square Bracketing of Shall/Should

In relation to the bracketing of shall/should, indigenous representatives noted, as they did at CHRWG4, that 'shall' is used in numerous UN declarations, including the Universal Declaration of Human Rights. In the ensuing debate, many governments supported the use of 'shall', including Canada, Finland, New Zealand and Switzerland (who did so "strongly"). Only the UK and Japan insisted on 'should' as more appropriate in an aspirational document such as the Draft Declaration. Australia and the US were conspicuously silent.

Other Proposed Changes

It is not proposed to analyse in detail the changes proposed to the text of articles 15 to 18. These are reproduced in full below. It can be seen that the 1999 inter-governmental consultations again failed to produce any consensus on the text. Generally speaking, as governments were at pains to emphasise, the 1999 proposals contain less square bracketing and fewer amendments than the informal paper submitted in 1998. For example, it is no longer proposed to insert in article 16 a reference to "the appropriate level of government" in order to reflect the federal systems of some countries. At the same time, however, it is clear that governments agreed to retain much of the language that indigenous representatives in 1998 thought qualified and weakened the original text, in their 1998 proposal. For example, in relation to *article 15 (education)*, the 1999 proposal again insists on the insertion in paragraph 1 of the words "on the same basis as other members of the society". The 1999 proposal again introduces in paragraph 1 references to "applicable education laws and standards" and to "consultation with competent authorities in the State". In relation to paragraph 2 the 1999 proposal retains the concept that children living outside their communities should have "access" to education in their own culture and language, rather than the "right to be provided access" to such education as in the original text.

In relation to *article 16 (public education and information)*, the 1999 proposal again deletes the reference in paragraph 1 to a "right" of indigenous peoples, substituting instead words stating that "the dignity and diversity of indigenous peoples' cultures, traditions, histories and aspirations should be appropriately reflected in education and public information". The reference to "all forms of" education and public information is similarly deleted.

In relation to *article 17 (media)*, the 1999 proposal again insists on inserting in paragraph 1 the words "on the same basis as the other members of the society". It is again proposed to broaden paragraph 2 beyond state owned media "without prejudice to ensuring full freedom of expression", thus reflecting a concern for the independence and freedom of the press. In relation to *article 18 (labour rights)*, the 1999 proposal again inserts "applicable" before "international labour law" in paragraph 1.

At CHRWG5 indigenous representatives were again faced with the dilemma that whilst most proposals could be easily refuted as inconsistent with the fundamental principles underlying the Draft Declaration or weakening the existing text, several potentially improved upon or strengthened the existing text. For example, the 1999 proposal in relation to article 15 retains the reference to "indigenous individuals" proposed in 1998, with the justification that the term 'individuals' broadens the right contained in article 15 to include post-secondary education. Similarly, the 1999 proposal in relation to article 18 introduces a new reference to the protection of children from the worst forms of child labour. This draws upon ILO Convention No 182 on the Worst Forms of Child Labour, unanimously adopted by the International Labour Conference in June 1999.

Throughout CHRWG5 there was much discussion within the indigenous caucus as to how to respond most effectively to the apparent redrafting exercise driven by a small group of governments. At CHRWG4 in 1998, Mick Dodson, as representative of the Aboriginal and Torres Strait Islander Commission, proposed basic criteria which would need to be met by proponents of any change to the existing text. The first of these was the very strong presumption that the current text should retain its integrity. The second was conformity with the principle of equality, the principle of non-discrimination, and the absolute prohibition of racial discrimination. During CHRWG5, a number of indigenous organisations supported a paper put forward by the Wellington Maori Legal Service which sought to build upon the criteria previously proposed by Mick Dodson.

First, the proposal noted the consistent emphasis placed by indigenous representatives on the use of the term 'indigenous peoples' in the work of the UN. Second, the proposal set out criteria to be met by proponents of any changes to the existing text:

The Draft Declaration must be approached on the basis of a very high presumption of the integrity of the existing text. In order to rebut this presumption, any proposal must satisfy the following criteria:

1. *It must be reasonable.*
2. *It must be necessary.*
3. *It must improve and strengthen the existing text.*

In addition, any proposal must be consistent with the fundamental principles of:

1. *Equality.*
2. *Non-discrimination.*
3. *The prohibition of racial discrimination.*

The proposal was signed by representatives of the Wellington Maori Legal Service, the Asia Indigenous Peoples' Pact, the Saami Council, the Mohawk Nation at Kahnawake, the Asian Indigenous and Tribal Peoples' Network, the Indian Law Resource Center, the Na Koa Ikaika o Ka Lahui Hawaii, the National Aboriginal and Islander Legal Services Secretariat, the National Secretariat of Torres Strait Islander Organisations, the Aboriginal and Torres Strait Islander Commission, the Indigenous Woman Aboriginal Group and the Foundation for Aboriginal and Islander Research Action. Some indigenous delegations were wary of the approach considering it to be tantamount to the tacit endorsement of textual change and to shifting power to those governments most actively seeking to dismember the existing declaration.

Annexes

The documents accepted by the Chairperson for annexure to the final report generated considerable controversy. Over the heads of the indigenous participants' vigorous opposition, the Chairperson accepted as Annexe I the texts proposed by governments and an explanatory note on the use of brackets around the term 'indigenous peoples'. This way governments were able to enhance the legitimacy of their own amended texts as the basis for future

discussion in the CHRWG. The inclusion of Annexe I also effectively formalises and legitimises the informal inter-governmental consultations as the appropriate forum for redrafting the Declaration.

Annexe II is entitled 'Proposals by Indigenous Representatives for Articles 15 to 18'. This notes the support of indigenous representatives and some government delegations for the current wording of articles 15, 16, 17 and 18, and reproduces the existing text. As noted above, the "Annexe on the term indigenous peoples" proposed by the indigenous caucus as a consensus document was not accepted by the Chairperson for inclusion in the final report.

Outcomes

At the commencement of CHRWG5, the Chairperson expressed the hope that some or all of articles 15 to 18 would be adopted. In the event, articles 15 to 18 were not adopted, and there was, if anything, an increasing divergence rather than narrowing of approaches. There was no discussion of articles 1, 2, 12, 13, 14, 44 and 45.

Questions of process, structure and participation have become increasingly complex, with indigenous representatives struggling to defend the consensual working methods previously agreed upon in relation to all aspects of the CHRWG's work. By stealth, a small group of governments has prepared the way for opening the text produced by the WGIP up for redrafting by governments. CHRWG5 saw the consensus which was nearly reached at CHRWG4 in relation to articles 15 to 18 fast receding. The session also saw some tension emerge within the government camp in relation to the redrafting exercise. It is clear that increased use of pressure and elements of brinkmanship are entering into at least some governments' approaches to the process.

In general, CHRWG5 saw consistent advocacy of the Draft Declaration by Costa Rica, Denmark, Guatemala, New Zealand and Norway; an absence of African governments; very little activity by the Asian group; silence on the part of Chile and Sweden; obstructionist interventions by the United Kingdom; intransigence by Japan on the question of collective rights; continuing positive shifts by Argentina, Brazil and France; a split in the CANZUS (Canada, Australia, New Zealand and US) group, with New Zealand emerging as a constructive broker, and Australia as a hard-liner.

Within the indigenous caucus, unanimity prevailed. However, there were some (muted) calls for new approaches to dialogue with governments. From the first meetings of the CHRWG, there have been differences of opinion as to

whether the Declaration, as drafted, ought be defended to the end, or whether changes which improve or strengthen the text might be countenanced. Which ever view prevails, there is recognition of the need for hard thinking about fresh strategies for engagement. At CHRWG5, the inequalities in resources available to indigenous representatives and governments in their preparation for and participation in the working group were more evident than at any previous session.

More positively, CHRWG5 saw increasing recognition of the synergy between the work of the UN's independent human rights treaty bodies and the Draft Declaration process, with the jurisprudence of the treaty bodies providing a valuable line of defence against governments' attempts to depart from international human rights standards relevant to indigenous peoples. Also encouragingly, CHRWG5 saw an increasing level of understanding by governments about the importance of maintaining a dialogue around the fundamental issues and concepts underlying the Declaration. Thus, despite ambiguities surrounding the governments' proposals in relation to articles 15 to 18, the session again saw real movement in the positions of several governments in the debate on self-determination. Finally, the announcement by the US of an inter-agency review of its approach to self-determination raised a glimmer of hope that a major obstacle to consensus building might possibly be removed.

Government Positions 1999

The position of governments at CHRWG5 can be tabulated as follows:

1. Those who *urged flexibility* and, whilst considering proposed amendments, could live with some or all of the articles under discussion as drafted: Denmark, Finland, Norway, New Zealand, Norway, Switzerland, Costa Rica, Ecuador, Guatemala, Venezuela, Pakistan and the Russian Federation.
2. Those who supported the principles contained in the articles but *insisted on amendments* to the current text. More flexible: Brazil, Colombia, Malaysia and Mexico. Less flexible: Argentina, Canada and France.
3. Those who *challenged fundamental principles* underlying the Draft Declaration, in particular the concept of self-determination, language

of indigenous peoples and/or the recognition of collective rights: Australia, Japan, the United Kingdom and the United States.

Government Activity 1999

The activity of governments at CHRWG5 can be evaluated as follows:

1. *Most active:* Argentina, Australia, Brazil, Canada, Costa Rica, Denmark, Finland, France, Guatemala, Mexico, New Zealand, Norway, Russian Federation, Switzerland, Venezuela, the UK and the United States.

2. *Largely silent:* Bolivia, Colombia, Cuba, Ecuador, Japan, Malaysia and Pakistan.

3. *Silent:* Bangladesh, Belgium, Chile, China, Estonia, Germany, Holy See, Honduras, India, Indonesia, Iraq, Italy, Morocco, Netherlands, Nicaragua, Peru, Philippines, Poland, Saudi Arabia, South Korea, Spain, Sudan, Sweden and Uruguay.

4. *Previously attended CHRWG but did not attend CHRWG5:* Algeria, Angola, Austria, El Salvador, Egypt, Ethiopia, Fiji, Iran, Kenya, Nepal, Nigeria, Panama, Paraguay, Portugal, South Africa, Thailand, Ukraine and Vietnam.

PERMANENT FORUM ON INDIGENOUS ISSUES: CHASING THE MIRAGE

By Suhas Chakma

On the 27th of April 2000, the 56th session of the Commission on Human Rights (CHR) resolved to establish the Permanent Forum on Indigenous Issues as a subsidiary body of the Economic and Social Council (ECOSOC). Resolution 2000/87 on the establishment of the Permanent Forum was adopted by a roll-call vote of 43 in favour to none against, with nine abstentions. That the resolution on the Permanent Forum on Indigenous Issues was adopted just prior to the end the 56th Session of the CHR after a lengthy debate on the draft resolution (E/CN.4/2000/L.68) indicates the unwillingness of a few mem-

ber States to establish the Permanent Forum. None of the Asian States sponsored the resolution. Cuba abstained from voting on the entire resolution.

The Permanent Forum is the most significant and concrete step taken so far by the United Nations to address indigenous peoples' issues. From the denial of entry to the League of Nations to the establishment of the Permanent Forum within the United Nations system, it has been an arduous journey for some of the world's most disadvantaged and oppressed peoples.

The idea of the Permanent Forum for Indigenous Peoples derived from the realisation amongst the indigenous representatives, members of the Sub-Commission's Working Group on Indigenous Populations and many member States of the UN that there is no permanent mechanism within the United Nations system to address the problems of indigenous peoples. The issue of the Permanent Forum was raised at the Vienna World Conference on Human Rights in June 1993. The 1993 Vienna Declaration and Programme of Action recommended the establishment of the Permanent Forum. The General Assembly (GA) in its resolution 50/157 identified the establishment of the Permanent Forum as one of the important objectives of the International Decade of the World's Indigenous Peoples.

Pursuant to the Commission on Human Rights resolution 1995/30 of the 3rd of March 1995, a workshop on the possible establishment of the Permanent Forum was held in Copenhagen in 1995. The Copenhagen workshop requested that the UN Secretary General conduct a study on a "Review of existing mechanisms, procedures, and programmes within the United Nations concerning indigenous people". The Secretary General in his report (A/51/493) noted in particular, the striking absence of a mechanism to ensure co-ordination and regular exchange of information among interested parties - Governments, the United Nations and indigenous people - on an ongoing basis. The Secretary General stated:

"...there exists no mechanism to ensure regular exchange of information between the concerned and interested parties - Governments, the United Nations system and indigenous people - on an ongoing basis. The information provided by the United Nations agencies does not indicate that adequate procedures are already in place to accommodate the effective involvement of indigenous people in the work of the United Nations".

In 1997, pursuant to CHR resolution 1997/30 of the 11th of April 1997, the Second Workshop on the Permanent Forum was held in Santiago, Chile. The

report of the Secretary General was considered. The workshop suggested that "the Commission on Human Rights at its 54th session should consider how to further the process of the establishment of a permanent forum for indigenous people within the United Nations system, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to ECOSOC for action."

First Open Ended Inter-Sessional Ad-hoc Working Group

The Commission on Human Rights in its resolution 1998/20 of the 9th of April 1998 decided to establish an Open Ended Inter-Sessional Ad Hoc Working Group to elaborate and consider further proposals for the possible establishment of a Permanent Forum for Indigenous People (PFIP) within the United Nations system.

Pursuant to the CHR resolution, the First Open Ended Inter-Sessional Ad Hoc Working Group chaired by Mr Richard van Rijssens was held from the 14th to the 19th of February 1999 in Geneva. Among other matters, it discussed the mandate, membership and participation and the UN body to which the PFIP should report and follow-up. The Declarations of various regional meetings of indigenous peoples were distributed.

During the First Ad Hoc Working Group Session, after an overall agreement on the basic parameters of the Permanent Forum was reached, the Chairman-Rapporteur proposed that the Conclusions and Recommendations should be adopted as the Working Group's Conclusions and Recommendations. This was however blocked by Indian representative, Mr R Venu, who sought numerous clarifications on procedural issues as a way of killing time. Despite repeated appeals of the Chairman-Rapporteur for co-operation, the Indian delegation refused to budge and raised similar procedural questions rather than engaging in debate on substantive issues. Finally, the Conclusions and Recommendations of the Working Group were adopted as "Annex I: Issues and suggestions for future work identified by the Chairman-Rapporteur on the basis of the discussion in the Working Group" and "Annex II: Chairman-Rapporteur's summary of the debate on: The mandate and terms of reference, membership and participation and the United Nations body to which the proposed forum would report." India was supported by the United States' delegation. A large number of government delegates did not state their positions on the issue.

After considering the report (E/CN.4/1999/83) of Chairman-Rapporteur Mr van Rijssens, the CHR decided, in its resolution 1999/52 of the 27th of April 1999, to re-establish the open-ended inter-sessional Ad Hoc Working

Group that had first been established in accordance with resolution 1998/20. The working group was to meet for eight working days prior to the 56th session of the Commission, and the report requested the working group to submit, with a view to completing its task, one or more concrete proposals on the establishment of a permanent forum, for consideration by the Commission at that session. In preparation for the next session of the Ad Hoc Working Group, the resolution also invited the Chairperson-Rapporteur of the Working Group, Mr Richard van Rijssens, to submit a working paper to the Member States and other participants in the Ad Hoc Working Group containing suggestions and possible alternatives on all aspects of this matter. The contents of this paper should be based on the result of the debate at the first session of the working group and subsequent informal consultations. The ECOSOC endorsed the CHR resolution in its decision 1999/242 of the 27th of July 1999.

Second Ad Hoc Working Group on the Permanent Forum

The second Session of the Ad Hoc Working Group on the establishment of the Permanent Forum was held from the 14th to the 23rd of February 2000. Mr Peter Wille of Norway was elected as the Chairman-Rapporteur of the second session of the Ad Hoc Working Group. The Chairperson-Rapporteur of the First Ad Hoc Working Group, Mr Richard van Rijssens submitted the "Report on consultations held by the Chairman/Rapporteur" (E/CN.4/AC.47/2000/2). It contained concrete recommendations on the establishment of the Permanent Forum.

Aware of the track records of those Asian governments in league with the United States on indigenous peoples' issues, the Asian Indigenous and Tribal Peoples Network (AITPN) undertook a study whose aim was to develop "possible indigenous positions" on all the issues pertaining to the Permanent Forum. They did this in co-operation with the Saami Council and the International Work Group on Indigenous Affairs (IWGIA). The study was intended to assist in the formulation of consensus positions by indigenous peoples so that they might effectively contribute to the second session of the Ad Hoc Working Group. A detailed study on '*The possible positions of the indigenous peoples*' was prepared for a workshop on the matter in Copenhagen on the 7th and 8th of January 2000 for a group of indigenous people. The Copenhagen workshop made concrete recommendations about the establishment of the Permanent Forum for the indigenous caucus to consider. On the 12th and 13th of February 2000, after two days of consultation based on the Copenhagen recommendations, the indigenous caucus unanimously adopted the "Recommendations of the indigenous caucus on the establishment of the perma-

nent forum for indigenous peoples in the United Nations system" contained in document E/CN.4/AC.47/2000/CRP.1.

An indigenous representative submitted the recommendations of the indigenous caucus and appealed to the government representatives to consider it as a basis for its work. The recommendations related to: the establishment of the Permanent Forum for indigenous people; the mandate and membership of the core group; nominations for the core group; participation of observers in the open assembly; placement of the Permanent Forum in the United Nations system; voting; the name of the forum; the number of members; rules of procedure; terms of reference, financing and location of the Permanent Forum and its secretariat. The recommendations of the Indigenous Caucus were accepted by government representatives as the basis for discussion of the Working Group.

Following the proposal of the Chairperson-Rapporteur, the Working Group decided to hold formal and informal meetings and appoint a governmental representative and an indigenous representative as facilitators for the following sub-items regarding the proposals for the establishment of a permanent forum for indigenous people: (a) the mandate and terms of reference for the activities to be undertaken by the forum; (b) membership; (c) financial and secretariat implications; (d) the United Nations body to which the proposed forum would report; (e) location of the forum; (f) name of the forum and; (g) other matters.

The facilitators held discussions with governmental and indigenous representatives in an attempt to reflect the common denominators on each sub-item. Yet there remained yawning gaps between the "elements of a permanent forum" which, in the words of the Chairman-Rapporteur, "was a reflection of various proposals that had been presented" and the reports of the facilitators on the issue of a mandate. A cursory glance reveals that the Chairman-Rapporteur either did not take into account the facilitators' observations, or that the facilitators simply failed to understand the participants' views correctly. But the proceedings of the Working Group sessions show that in order to reach a self-imposed consensus, the Chairman-Rapporteur evidently did not try to reflect the facilitators' observations in the mandate of the Permanent Forum. The facilitators' consultations over the issue of the mandate, only served to give indigenous representatives a false sense of participation, as the Chair negotiated directly with the governmental delegates. The following analysis of the debate on the mandate of the Permanent Forum at the second Ad Hoc Working Group is a clear testimony to this fact.

Mandate

In the elements of a permanent forum, the Chairman-Rapporteur provided the following for the mandate:

"The Forum shall be an advisory body with the members serving in their personal, independent capacity with the mandate to discuss indigenous issues within the mandate of the Economic and Social Council and the themes of the International Decade.

It was also proposed that specific reference should be made in the mandate to Articles 62 and 63 of the Charter of the United Nations.

In fulfilling its mandate, the Forum will:

- (a) Provide expert advice and recommendations on indigenous issues to the parent body, as well as to programmes and agencies within the United Nations through the Economic and Social Council;*
- (b) Promote co-ordination within the United Nations system of activities relating to indigenous issues;*
- (c) Prepare and disseminate information on indigenous issues".*

As the Chairman-Rapporteur's report also states, "The representative of Mexico introduced the joint facilitators' paper on the mandate and terms of reference for the activities to be undertaken by the forum. He stressed that the purpose of the paper was to help find a common denominator as a basis for agreement; however, in that process other more difficult points had arisen. The task of the facilitators was to look at both aspects. He was convinced that the paper would be a basis for a further constructive dialogue between Governments and indigenous representatives. The joint facilitators provided the following mandate after their discussion:

To examine all the issues of Indigenous Peoples [inter alia] [concerning]: [civil], [political], economic, social, cultural, education, human rights, health, environment, development, [treaties, agreements and other constructive arrangements], women, youth, children, [and other rights related to Indigenous Peoples];

To [review] [analyse] and promote a coherent policy, guidelines and a better co-ordination of the plans, programmes, instruments and activities related to Indigenous Peoples in the United Nations system;

As an advisory body to provide technical support services on the issues of Indigenous Peoples for members of the United Nations and, on

request, United Nations bodies, programmes, specialised agencies and Indigenous Peoples. It will provide advisory support to Governments that request it, especially for the elaboration of programmes and projects related to Indigenous Peoples;

To conduct studies and research, and issue reports on all those things related to its mandate; if required it will convene independent experts and establish ad hoc working groups in specialised fields of study;

To make recommendations to the Economic and Social Council on indigenous issues;

To recommend to the Economic and Social Council to [consider] convene[ing] international conferences, [and] to prepare draft standards [and to create working groups] on the issues of Indigenous Peoples;

To consult with Indigenous Peoples' organisations, Governments and non-governmental organisations concerned with matters falling within its competence;

To disseminate information on the concerns and needs of Indigenous Peoples, and on the approach of the United Nations system to Indigenous Peoples;

To promote the rationalisation, adaptation, strengthening and streamlining of the activities of the United Nations system in the field of Indigenous Peoples.

Issues that deserve to be discussed and debated:

1. The indigenous caucus wishes the following paragraphs to be incorporated:

As the mandate for the permanent forum is one of the most important aspects of the establishment of a permanent forum for Indigenous Peoples, and as this unique body will be within the United Nations system, it is recommended that the mandate be modelled on Articles 62 and 63 of the Charter of the United Nations;

The permanent forum will have a broad mandate, inter alia:

To promote peace and prosperity in accordance with the Charter of the United Nations, by developing friendly relations among nations and peoples based on respect for the principle of equal rights;¹

To make recommendations to the Economic and Social Council General Assembly, other United Nations bodies and specialised agencies on urgent problems requiring immediate attention with regard to Indigenous Peoples and to develop proposals to give effect to such recommendations;²

2. The governmental co-facilitator informed the indigenous co-facilitator that there are delegations that prefer the term indigenous issues rather than Indigenous Peoples in the text of the mandate. The indigenous co-facilitator equally informed the governmental co-facilitator that they prefer the term Indigenous Peoples rather than indigenous issues noting the opening statement of the High Commissioner for Human Rights.

The facilitators made the following recommendations:

"Explore the possibility of including the reference to Articles 62 and 63 of the Charter in the Preamble;

Explore the possibility of introducing a reference to peace and prosperity and friendly relations among nations and peoples in the preamble."

It is clear that some Government delegations had objections to (1) Article 62 and 63 of the Charter of the UN, (2) peace, prosperity and friendly relations, (3) urgent problems requiring immediate attention and (4) using the term Indigenous Peoples. The facilitators gave the impression that there was broad agreement on other recommendations provided in the joint facilitators' paper. One wonders as to why the facilitators' other recommendations on the mandate of the forum were neither debated in a formal session nor adequately reflected in the "elements of a permanent forum".

Some government representatives expressed concern about giving any mandate to the Permanent Forum on conflict resolution. The fear is unfounded and mostly arises because of ignorance and untenable fears about ensuing interference in domestic affairs. Indigenous representatives rightly stated that subsidiary bodies of the ECOSOC do not have any mandate on conflict resolution. Interventions in conflicts or in dispute situations are made by the Secretary General, the Security Council and the International Court of Justice. The subsidiary bodies of the ECOSOC only make recommendations to their superior bodies.

Membership

The Chairman-Rapporteur's report on the issue of membership reflected the views of the facilitators and of the Indigenous Caucus. It stated that there is agreement that the membership of the Forum should be equally divided between the governments and indigenous peoples and reflect equitable geographical distribution and give due respect to gender balance. The number of the members should be between 18 and 30.

From the outset, most government representatives objected to indigenous members of the Forum being nominated or appointed to represent their communities or peoples. Indigenous representatives consistently sought to represent their peoples and communities. In the spirit of compromise indigenous peoples' representatives accepted the nomination or appointment of indigenous members in their individual capacity. But the government representatives continued to raise questions about the representativeness of indigenous members. This is despite the fact that being a member of the Forum in an individual capacity makes the question of representativeness null and void. As the indigenous peoples failed to reach a consensus on the question of individual capacity during the Second Session of the Ad Hoc Working Group, indigenous representatives lost valuable time which they could have otherwise spent on negotiating other issues.

Selection of Members

The Chairman-Rapporteur's proposals for a permanent forum provide that:

"The experts nominated by Governments shall be elected by the Economic and Social Council.

One proposal is that the indigenous experts shall be appointed by the Chairperson of the Economic and Social Council following consultations with indigenous organisations and representatives.

Another proposal is that the nomination of indigenous experts should be confirmed by the Chairperson of the Economic and Social Council, based on consultations which take into account the indigenous processes in the different regions.

It was also emphasised that the selection of indigenous members, by whatever method, should take into account the principles of broad consultation, representativity, transparency, and equal opportunities for each community.

The appointment/election of experts shall be for a period of three years, with the possibility of reappointment for one further period".

The Chairman-Rapporteur rightly reflected the observations of the facilitators. However, many governments expressed concerns about the nomination procedures of the indigenous members.

The Chairman-Rapporteur's proposals for a permanent forum also reflected the views of the facilitators on the following sub-items: (a) the participation of observers; (b) meetings; (c) the Secretariat; (d) rules of procedure/decision making and; (e) a review clause.

The Issue of a Separate Secretariat: Wither the Office of the High Commissioner for Human Rights

In their various regional declarations, indigenous peoples' representatives consistently demanded that the Permanent Forum should have its own secretariat. Government representatives, especially the United States repeatedly sought to block the establishment of the Permanent Forum by raising the financial red-herring although the United States remains the biggest defaulter for non-payment of dues to the United Nations. Canada stated that financial information is essential to convince the Foreign Office about the need of the Permanent Forum. Indigenous representatives sought specific information about the financial implications of a separate secretariat with a minimum number of staff.

At the 16th meeting, held on the 22nd of February 2000, Mr Giuliano Comba, the representative of the Administration Section of the Office of the High Commissioner for Human Rights, made a statement on the financial implications of the establishment of the Permanent Forum. He provided further clarifications on the budgetary implications of different aspects of the Forum in response to questions raised by the participants.

He said that the information regarding the financial implications of the Forum was based on the request made by the Chairperson-Rapporteur, namely a Forum meeting in Geneva for two weeks using all official languages, requiring 100 pages of pre-sessional documentation and 50 pages of post-sessional documentation, with a membership of 18 persons. He also had taken into account that there might be a need for some strengthening of the secretariat to assist with the preparations and servicing of the Forum as well as incidentals. On this basis, the administration was able to make an approximate estimate of US\$470,000 which, if the legislative bodies approved the establishment of the Forum, would be absorbed by the regular budget. A

detailed PBI would be prepared when and if a draft resolution on the Forum was submitted to the Commission on Human Rights.

A number of participants requested further information about the possible costs of the Forum, in answer to which the administration's representative provided the following additional information. The average cost of the travel and daily subsistence allowance (DSA) of a single member of the Forum for a period of two weeks would be US\$7300. The conference service costs for the two weeks was estimated at about US\$254,000. The cost of servicing the Forum meeting in New York would be marginally higher than in Geneva as the DSA was higher. A separate secretariat with a staff of five persons would cost about US\$1.5 million. If the Forum met for only one week the conference costs would be approximately US\$157,000. And the costs of DSA for the five members of the Working Group on Indigenous Populations for the present biennium was US\$19,200. The representative added that the information provided was only a guide, but that, since costs were standard across the United Nations, he hoped that the figures would provide some guidance.

While participants sought information on financial matters, Mr Giuliano Comba went a step further bringing the discussion round to the subject of where the Secretariat of the Forum could be *attached* rather than located. Quoting unnamed UN authorities in New York, Mr Comba stated that UN Headquarters in New York had said that the Permanent Forum could not have a separate secretariat and that therefore the Permanent Forum has to be *attached* to the Office of the High Commissioner for Human Rights. Moreover, Mr Comba explained that a separate secretariat can only be established as a result of a convention or a treaty.

Mr Comba did not clarify who it was in New York who had provided such unsolicited advice about the location of the Secretariat of the Forum. As an indigenous representative stated in reply, it is the prerogative of the Working Group to make recommendations on all matters relating to the Permanent Forum including the establishment of a separate secretariat, and it is up to the ECOSOC to accept or reject any proposal. It does not fall within the ambit of any official of the OHCHR to transgress the mandate of a Working Group. Moreover, the assertion that a separate secretariat can be established only through a convention or treaty is simply false. The ECOSOC has established many specialised agencies such as the UNICEF, FAO and WHO, all of which have separate secretariats. Moreover, the Commission on Human Settlements, a Standing Committee of the ECOSOC, established through a resolution of the ECOSOC, has a separate secretariat based in Nairobi. In fact, the unsolicited advice given by Mr Comba raises serious questions about the role of the

High Commissioner's Office in the establishment of a separate secretariat of the Permanent Forum. There was also reluctance on the part of the Chairman-Rapporteur to make the unequivocal assertion that indigenous representatives were calling for the establishment of a separate secretariat for the Permanent Forum.

One Spaniard's Hurdle

In the elements of a permanent forum, the Chairman-Rapporteur states,

"Another proposal, as set out in this report, is that the Forum should be established as a subsidiary body of the Economic and Social Council with a State-based formula of mixed composition, governmental and indigenous, on the basis of equitable regional distribution. Thus, each Member State having indigenous populations on its territory should accredit two delegates, one representing the Government and the other designated by the indigenous populations themselves."

It has also been proposed that the Forum should be established as a subsidiary body of the Economic and Social Council as one of its functional commissions."

This alternative proposal came about as a result of the obdurate stand taken by the Spanish delegation at the Second Ad Hoc Working Group Session. During the First Ad Hoc Working Group Session, the same distinguished representative of Spain suggested that the core group of the Permanent Forum should consist of government and indigenous representatives on an equal footing, like the International Labour Organisation model where the government, employers' associations and employees' associations all have their representatives.

As the Chairperson of the First Ad Hoc Working Group rightly stated in his consultation report E/CN.4/AC.47/2000/2, "Although this idea certainly has merits, a number of government and indigenous representatives had serious reservations about it. It was put forward, that this could lead to the exclusion of persons and organisations (and peoples) that are not considered to be indigenous. Furthermore, governments - when deciding upon the composition of the delegation - could try to choose those individuals, that underwrite the views of the government".

In the ILO tripartite system, governments, employers' associations and employees' associations are clearly identified and represented. Moreover, in the ILO tripartite system, each state delegation consists of two government

representatives, one employers' association representative and one employees' association representative. In the voting, each government has two votes, the employers' association representative has one vote and the employees' association representative has one vote. But, there are no such clear demarcations of different groups of representatives in the case of the Permanent Forum.

Indigenous peoples consistently and unanimously opposed the Spanish delegation's position at the Second Ad Hoc Working Group session. Indigenous representatives stated that the Chairman-Rapporteur's elements of a permanent forum should contain only those elements where there was a minimum convergence of views. However, the Spanish delegation's proposal was unanimously rejected by the indigenous delegations. Yet the Chairman-Rapporteur had to retain the Spanish proposal because of the Spanish delegation's adamant position. The Spanish representative was publicly and privately told that under this proposal, genuine indigenous representatives would never be able to represent their people unless they underwrite the views of their governments. The representative was also told that the Spanish proposal would exclude indigenous peoples from Asia and Africa where many governments continue to raise questions about the existence of indigenous peoples despite the fact that they are recognised in their own countries' domestic laws. But the Spanish delegation, in collaboration with the Mexican representatives, sought to lull some Latin American indigenous representatives into a false sense of security, by stating that a joint delegation with governments would allow the Permanent Forum to be established as a functioning Commission. Although the Mexican delegation showed itself to be flexible in regard to its proposal for a functioning Commission, the Spanish delegation sought to use veiled threats in its dealings with indigenous delegates.

Since the Working Group on Indigenous Populations was established in 1982, the Spanish delegation has been largely inactive in the process of setting standards for the rights of indigenous peoples. In the last two years the Spanish delegation's active participation at the Working Group on the Permanent Forum was welcomed by indigenous peoples. However the recalcitrant stand taken by the Spanish delegation during the second session without any regard for either the sentiments or arguments of the indigenous delegations, tended to momentarily raise questions about the Spanish government's commitment to indigenous issues. The inflexible position of the Spanish representative at the second session of the Ad Hoc Working Group almost derailed the negotiation process. It goes without saying that if the Spanish representative had withdrawn his recommendation that the ILO model be adopted, the

cause of indigenous peoples at the Permanent Forum would have advanced further. However, the constructive role of the Spanish delegation at the 56th Session of the Commission on Human Rights seems to suggest that the views of the Spanish representative at the second Ad Hoc Working Group are not necessarily those of his government.

Cuba's Ritual Hypocrisy at the Commission on Human Rights

The Commission on Human Rights continues to bear witness to the last remnants of the Cold War in the conflict between the United States and Cuba. While Cuba complains about the US-sponsored ritual resolution on the human rights situation in Cuba, its own cause has not been advanced by the destructive role of its representatives at the Commission on Human Rights. Human rights NGOs have been seriously concerned about the role of the Cuban delegation which, through its use of rules and procedures, has systematically tried to destroy human rights mechanisms. Yet many indigenous peoples consider Cuba's opposition to the United States' position as support for indigenous peoples. Cuba's representative, Mr Miguel Alfonso Martinez, often says "*I can never be more Indian than the Indians*", as a way of expressing his concerns and support for Native Americans. That such a statement it is mere lip service and a way of keeping alive the dying embers of the Cold War, was exposed at the 56th Session of the Commission on Human Rights.

During the 56th Session of the Commission on Human Rights, the Danish delegation sponsored a resolution on the establishment of the Permanent Forum based on the 'elements of a permanent forum' proposed by the Chairman-Rapporteur of the second Ad Hoc Working Group on the Permanent Forum. The Danish proposal did not contain any new elements but agreements reached at the second session of the Ad Hoc Working Group in February 2000. The Commission on Human Rights adopted the following resolution 2000/87:

"The Commission on Human Rights...

- 1. Decides to establish as a subsidiary organ of the Council a permanent forum on indigenous issues consisting of 16 members, eight members to be nominated by Governments and elected by the Council and, eight members to be appointed by the President of the Council following formal consultation with the bureau and the regional groups through their co-ordinators [my italics], on the basis of broad consultations with indigenous organisations taking into account the diversity and*

geographical distribution of the indigenous people of the world as well as the principles of transparency, representativity and equal opportunity for all indigenous people, including internal processes, when appropriate, and local indigenous consultation processes [my italics]; all members serving in their personal capacity as independent experts on indigenous issues for a period of three years with the possibility of re-election or reappointment for one further period; States, United Nations bodies and organs, intergovernmental organisations and non-governmental organisations in consultative status with the Council may participate as observers; organisations of indigenous people may equally participate as observers in accordance with the procedures which have been applied in the Working Group on Indigenous Populations;

2. *Decides that the Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights; in so doing the Forum will:*

a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;

(b) Raise awareness and promote the integration and co-ordination of activities relating to indigenous issues within the United Nations system and;

(c) Prepare and disseminate information on indigenous issues;

3. *Decides that the Permanent Forum shall apply the rules of procedures established for subsidiary organs of the Council as applicable, unless otherwise decided by the Council; the principle of consensus shall govern the work of the Forum;*

4. *Also decides that the Permanent Forum shall hold an annual session of 10 working days at the United Nations Office at Geneva or at United Nations Headquarters or at such other place as the Permanent Forum may decide in accordance with existing financial rules and regulations of the United Nations;*

5. *Further decides that the Permanent Forum shall submit an annual report to the Council on its activities, including any recommendations for approval; the report shall be distributed to the relevant United Nations organs, funds, programmes and agencies as a means, inter*

alia, of furthering the dialogue on indigenous issues within the United Nations system;

6. *Decides that the financing of the Permanent Forum shall be provided from within existing resources through the regular budget of the United Nations and its specialised agencies and through such voluntary contributions as may be donated;*

7. *Also decides that five years after its establishment, an evaluation of the functioning of the Permanent Forum, including the method for selection of its members, shall be carried out by the Council in the light of the experience gained;*

8. *Further decides that once the Permanent Forum has been established and has held its first annual session, the Council will review, without prejudging any outcome, all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, with a view to rationalising activities, avoiding duplication and overlap and promoting effectiveness.*

When the draft resolution (E/CN.4/2000/L.68) on the Permanent Forum came up for debate in the afternoon session of the 25th of April 2000, Mr Miguel Alfonso Martinez of Cuba was the first one to make an intervention. He said that the creation of a Permanent Forum for indigenous people would present a number of problems. Cuba had problems with operative paragraphs 1 and 8. Amongst the other worries it had concerning these paragraphs, Cuba wondered how indigenous people would be able to agree on eight names, given the diversity of views on indigenous matters and the number of nations with indigenous populations. Cuba also expressed concerns about the abolition of the Working Group on Indigenous Populations and asked for separate votes on operative paragraph 1 and operative paragraph 8.

Cuba was fully supported by the United States. As soon as Cuba said that it had problems with operative paragraphs 1 and 8 and called for a separate vote on these paragraphs, the US delegation echoed that it also had trouble with the selection of indigenous members of the Permanent Forum and the cost of the Permanent Forum. The US delegation asked for a suspension of the debate.

Indonesian representative, Nugroho Wisnumurti, speaking on behalf of the Asian Group raised the ritual issue of definition and expressed concern about the mandate of the Permanent Forum. During the negotiations, Asian

governments expressed disagreement with operative paragraph 1 on the nomination of indigenous representatives. Asian Governments wanted the power of veto over the nomination of indigenous representatives.

The debate on the Permanent Forum on the 25th of April 2000 was suspended. When the draft resolution came up for voting on the 27th of April 2000, none of the Asian countries formally requested a vote on operative paragraph 1. It was Mr Miguel Alfonso Martinez of Cuba who once again called for a vote on operative paragraphs 1 and 8. At the insistence of Cuba, the United States and Asian governments, the following texts were inserted into the draft resolution: "*following formal consultation with the bureau and the regional groups through their co-ordinators*" and "*including internal processes, when appropriate, and local indigenous consultation processes*".

It is intriguing that Cuba abstained from voting on the entire resolution on the Permanent Forum after asking for a vote. Mr Martinez stated that the Cuban delegation abstained because the resolution left doubts about the treatment of indigenous issues by the United Nations. He went on to say that Cuba would reserve its position until the Forum had been properly evaluated.

Mr Martinez's assertion is not convincing. If the Cuban delegation is so concerned about the treatment of indigenous issues at the United Nations, it should not have asked for a vote on operative paragraph 1, supporting the United States' and Asian government positions that further watered down indigenous peoples' right to nominate their own representatives. While Cuba's position on the future of the Working Group on Indigenous Populations as contained in operative paragraph 8 is understandable as Mr Martinez is a member of the WGIP, the request for a vote on operative paragraph 1 raises serious questions about Cuba's self-proclaimed concerns about the United Nations' treatment of indigenous issues. Cuba asked for vote on paragraph 1 in order to gain support from the Asian States for its proposal on paragraph 8, at the expense of indigenous peoples all over the world. From the beginning, Cuba opposed the Permanent Forum although its representatives at the Ad Hoc Working Group provided different views from Mr Martinez. Cuba's statement at the Commission that it "*would reserve its position until the evaluation of the Forum had been undertaken*", is nothing but a veiled threat that Cuba would oppose the Permanent Forum after evaluation, if the WGIP is abolished in the meantime. It was also clear that if Cuba had supported the resolution by not asking for a vote, the final resolution would have been different.

On the 27th of April 2000, the resolution was adopted in its entirety by a roll call vote of 43 in favour to none against with nine abstentions, following

a roll call vote of 11 in favour to 21 against with 21 abstentions which rejected an amendment to the text. In a second roll call vote, a paragraph to amend the amendment of a preambulatory paragraph was accepted by a vote of 21 in favour to six against with 26 abstentions. The accepted paragraph reads: "Stressing that the establishment of the permanent forum should lead to a careful consideration of the future of the working group on indigenous populations", which was incorporated in the text of the resolution.

In a show of hands, it was decided to retain operative paragraph 1 of the text by a majority of 43 in favour to none against with nine abstentions. And in another show of hands vote the Commission decided to retain operative paragraph 8 by a majority of 35 in favour to none against with 16 abstentions.

Conclusions

Although, the Commission on Human Rights adopted resolution 2000/87 on the establishment of a permanent forum on indigenous issues, the establishment of the Permanent Forum is a classical case of so near, yet so far. The explanation given by the Secretariat of the Office of the High Commissioner for Human Rights on the issue of separate secretariat is '*DISTURBING*' to say the least. A separate secretariat for the Permanent Forum with five staff costing only US\$1.5 million per annum to be paid for by 185 member States of the UN is too little too late. So much opposition still remains, even from the Office of the High Commissioner for Human Rights. At the 56th Session of the CHR, the Indian delegation stated that it would raise its concerns at the Economic and Social Council. Moreover, indigenous peoples have yet to resolve the issue of the geographical division of the indigenous world. Given the fact that indigenous peoples recommended a division into 17 regions during the second Session of the Ad Hoc Working Group meeting, the appointment of eight members as provided for by the CHR resolution calls for pragmatism and a spirit of compromise. Ultimately, it is the unity of indigenous peoples, often expressed through the indigenous caucus, that can provide indigenous peoples with leverage they need.

Notes

- 1 Declaration on the Rights of Peoples to Peace.
- 2 The term 'Urgent problems' was used in respect of the establishment of the Sub-Commission for the Promotion and Protection of Human Rights.

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