





# THE INDIGENOUS WORLD 2007

Copenhagen 2007

# THE INDIGENOUS WORLD 2007

**Compilation and editing:** Sille Stidsen

**Regional editors:**

*The Circumpolar North & North America:* Sille Stidsen

*Central America and the Circum Caribbean:* Alejandro Parellada & Sille Stidsen

*South America:* Alejandro Parellada

*New Zealand, Australia and the Pacific:* Sille Stidsen and Christian Erni

*Asia:* Christian Erni

*Middle East:* Sille Stidsen

*Africa:* Marianne Wiben Jensen

*International Processes:* Lola García-Alix

**Cover, typesetting and maps:** Jorge Monrás

**English translation and proof reading:** Elaine Bolton

**Prepress and Print:** Eks-Skolens Trykkeri, Copenhagen, Denmark

ISSN 1024-0217 - ISBN 9788791563232

© The authors and IWGIA (The International Work Group for Indigenous Affairs), 2007 - All Rights Reserved

The reproduction and distribution of information contained in *The Indigenous World* is welcome as long as the source is cited. However, the reproduction of the whole BOOK should not occur without the consent of IWGIA. The opinions expressed in this publication do not necessarily reflect those of the International Work Group.

*The Indigenous World* is published annually in English and Spanish by The International Work Group for Indigenous Affairs.

Interim Director: Lola García-Alix

Administrator: Anni Hammerlund



Distribution in North America: Transaction Publishers  
390 Campus Drive / Somerset, New Jersey 08873  
[www.transactionpub.com](http://www.transactionpub.com)

This book has been produced with financial support from the Danish Ministry of Foreign Affairs, NORAD, Sida and the Ministry for Foreign Affairs of Finland.



## INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

Tel: (45) 35 27 05 00 - Fax: (45) 35 27 05 07

E-mail: [iwgia@iwgia.org](mailto:iwgia@iwgia.org) - Web: [www.iwgia.org](http://www.iwgia.org)

# CONTENTS

---

<b>Editorial .....</b>	<b>10</b>
------------------------	-----------

<b>About our contributors .....</b>	<b>18</b>
-------------------------------------	-----------

## PART I – COUNTRY REPORTS

### **The Circumpolar North**

Greenland .....	34
Sápmi	
Norway .....	38
Sweden .....	43
Russia .....	48
Alaska (USA) .....	57
Arctic Canada .....	63

### **North America**

Canada .....	70
United States of America .....	81

### **Mexico, Central America and the Circum-Caribbean**

Mexico .....	92
Guatemala .....	104
Nicaragua .....	114
Panama .....	125
Trinidad and Tobago and the Circum Caribbean .....	131
Suriname .....	137

### **South America**

Colombia .....	144
Venezuela .....	156
Ecuador .....	164
Peru .....	176
Bolivia .....	186
Brazil .....	197

Paraguay.....	210
Argentina.....	221
Chile .....	231

## **Australia, Nueva Zelanda and the Islands of the Pacific**

Australia .....	246
Aotearoa New Zealand .....	254
Kanaky - New Caledonia.....	263
Tokelau.....	271
Bougainville .....	273
West Papua.....	276

## **East and South East Asia**

Japan .....	286
China.....	293
Tibet.....	301
Taiwan.....	308
Philippines .....	314
Indonesia .....	322
Malaysia .....	330
Thailand.....	338
Cambodia .....	346
Laos .....	356
Birmania .....	366
Nagalim .....	374

## **South Asia**

Bangladesh.....	382
Nepal.....	390
India .....	398

## **Middle East**

The Marsh Dwellers of Iraq.....	420
The Arab Bedouins of Israel .....	425

## **North and West Africa**

Morocco .....	434
Algeria .....	443

Niger .....	448
Mali .....	455

### **The Horn of Africa and East Africa**

Ethiopia.....	462
Kenya .....	468
Uganda .....	477
Tanzania.....	482

### **Central Africa**

Rwanda.....	494
Burundi.....	500
The Democratic Republic of Congo (DRC) .....	505
Republic of Congo (Congo Brazaville) .....	513
Gabon.....	518
Cameroon.....	525
Central African Republic.....	530

### **Southern Africa**

Angola.....	536
Botswana .....	539
Southern Africa.....	546

## **PART II - INTERNATIONAL PROCESSES**

The Declaration on the Rights of Indigenous Peoples Report for Year 2006.....	554
The Permanent Forum on Indigenous Issues - 5 <sup>th</sup> session .....	563
The UN Working Group on Indigenous Populations - 24 <sup>th</sup> session .....	570
The Special Rapporteur – overview 2006 .....	574
The Arctic Council - 2006 .....	582
The African Commission on Human and Peoples' Rights - 2006 .....	586

## **PART III**

<b>General Information.....</b>	<b>592</b>
---------------------------------	------------

EDITORIAL

## EDITORIAL

2006 was an important year for the world's 350 million plus indigenous peoples. In June, the newly-established United Nations Human Rights Council made history as it adopted the UN Declaration on the Rights of Indigenous Peoples at its first session in Geneva. The adoption of this important document, which addresses the historical injustice and continuing discrimination of indigenous peoples' rights to self-government, cultural expression, the collective right to use of lands, territories and resources, etc., came after more than 20 years of intense negotiations and discussions that culminated in a final draft being presented to the Council in early 2006. With overwhelming support from the Human Rights Council, which is the main human rights body in the UN system following the reforms of 2005-2006, the Declaration made its way to the UN General Assembly, where it was set for its final adoption in late 2006. Expectations were high but procedural problems and fierce opposition from a few states blocked the final adoption. At the end of 2006, the fate of the Declaration remained uncertain.

Needles to say, indigenous peoples were highly disappointed and frustrated at the developments in the General Assembly. Country reports from Canada, New Zealand and other countries included in *The Indigenous World 2007* express indigenous peoples' dismay at seeing their governments "elevating national political agendas to the international arena" (see article on Aotearoa New Zealand) and opposing the Declaration. Other country reports once again testify to the extreme vulnerability of indigenous peoples' lives in all corners of the world. Readers of *The Indigenous World 2007* can hardly doubt the desperate need indigenous peoples have for special protection of their rights in the form of a Universal Declaration on the Rights of Indigenous Peoples.

## **Political killings and criminalization of indigenous protests**

The threats and abuses experienced by indigenous peoples in 2006 were manifold. *The Indigenous World 2007* bears witness to abuses ranging from oppression of indigenous cultures and practices to outright persecution of indigenous rights activists, criminalization of indigenous peoples' movements and protests, and even political killings. In the Philippines, in 2006 alone, at least 26 indigenous rights activists were killed, supposedly in an extra-judicial move by the government to suppress growing protest against the president. In India, a large number of tribals are killed by the security forces every year, often in connection with the forcible acquisition of their lands for industrial projects. In early January 2006, 14 tribals were killed by police in Orissa while protesting against a large steel plant taking over their land. The authorities in both countries failed to investigate the killings properly.

In his report to the Human Rights Council, the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Mr. Rodolfo Stavenhagen, pointed to the criminalization of indigenous movements as one of the particularly problematic trends in recent years. He also highlighted the fact that many of the indigenous protest movements that are facing criminal charges are focussed around defending their ancestral territories. With growing pressure on indigenous peoples' lands and territories, brought about by the global market's increased consumption of natural resources, indigenous peoples have no means of survival other than protesting and defending their livelihood base. States, on the other hand, respond with disproportionate force, justifying their actions with a rhetoric that criminalizes indigenous protest movements.

## **Lifestyles under pressure**

While the political killings are but the tip of the iceberg, indigenous lifestyles are under pressure in a broad sense in all parts of the world. National policies are failing to protect indigenous peoples' vulnerable situations, and government programmes of various sorts are even un-

dermining their socio-cultural survival as peoples. As in Laos, for example, where the resettling of indigenous hill villages to lowland areas and alongside roads continued in 2006 despite heavy criticism from NGOs and international agencies, who have documented the social disintegration this causes. Or in Africa, where indigenous pastoralist and hunter-gatherer lifestyles also fall outside the dominant paradigm of production and are thus largely ignored by government policies. In Tanzania, for example, a new Livestock Policy seeks to transform pastoralists into "modern", settled livestock keepers, in total disregard of the fundamental economic contribution of pastoralism to the Tanzanian economy and food production.

On another level, this ignorance and lack of protection opens the path for extractive industries such as oil and gas developers, mining industries, logging companies, agribusinesses, etc. to operate on indigenous peoples' territories as if they were no-man's land. In Central Africa, logging companies exploit forest resources to such an extent that the indigenous forest communities' survival is being threatened. The same is reported from Amazonas, where some indigenous organizations in Peru are now arguing that the forest would be better protected if areas currently designated as natural parks but, in reality, forming a basis for widespread illegal logging were instead included in the adjacent communal territories of indigenous peoples. The people in voluntary isolation are not the least to suffer increasingly from the presence of illegal loggers who undermine their livelihood base, driving them off their land and further into the interior. In South-east Asia, agribusinesses such as oil palm plantations pose a serious threat to indigenous communities' livelihood base, cultural integrity and survival.

### **Indigenous voices are being heard**

On a more positive note, it can also be seen that *The Indigenous World 2007* offers many positive examples of the way in which indigenous organizations' mobilization and coordination has had positive effects over the past year. While there is still a long way to go, as the above examples of very real threats to indigenous cultures and livelihoods

suggest, governments, state administrations, national and international courts, inter-governmental agencies and, in some cases, even business corporations operating on indigenous territories *are* becoming increasingly aware of the need to respect indigenous peoples' rights to existence and cultural integrity. Ever more policies promoting indigenous peoples' well-being and protecting their rights are being adopted by governments, inter-state agencies and business corporations. Ever more court cases are being won by indigenous organizations, who have taken state administrations or private companies to court for violating their fundamental rights. And ever more private corporations operating on indigenous territories are realizing that these lands are not no-man's land but living peoples' homes and livelihood bases. Examples of these trends are many in *The Indigenous World 2007*, and the following are just a few examples.

In Botswana, where a court case on the relocation of San hunter-gatherers from the Central Kalahari Game Reserve has been ongoing for a couple of years now, a High Court ruling in December 2006 stated that the removal of people and denial of their land and subsistence rights in the Central Kalahari was unlawful. This was a remarkable victory for the San and for the legal system of Botswana, which demonstrated the independence of the judiciary with this unexpected ruling. In Argentina, the Lhaka Honhat, who have fought for title to their traditional territory for years, had their case admitted by the Inter-American Commission on Human Rights, thus taking a great step forward in their struggle. And in terms of relations between the extractive industries and indigenous peoples, the reports from Sakhalin in Russia and the North West Territories of Arctic Canada are interesting: in both cases indigenous communities have managed to get a seat at the negotiating table and obtain some sort of compensation (Sakhalin) or profit sharing agreements (North West Territories) with oil companies operating on their territories.

At the level of national politics there is exciting news too. In Bolivia, in Evo Morales' first year since taking presidential office, discussions on the drafting of a new constitution have started. In 2006, indigenous and peasant organizations joined forces and mobilized support to provide input to the constitutional discussions, which seek to reform the monocultural state in the direction of a multicultural one. Nepal took

the first steps towards a similar process with the people's uprising in spring 2006, which resulted in the King's withdrawal from absolute power and the reinstatement of Parliament. In the ongoing political discussions on the future of the Nepali state, the issue of indigenous nationalities' self-determination is high on the agenda.

### **New feature of *The Indigenous World***

As a new feature, the country reports in this year's edition of *The Indigenous World* include introductory text boxes with basic information on who the indigenous peoples in each particular country are, and what their situation is (socio-economic and / or legal protection of their rights). Compiling this information has not been an easy task, and many authors have been frustrated at the lack of available data. This lack of data is, of course, an important message in itself, as it reflects the level of ignorance indigenous peoples are confronted with on the part of state administrations. Apart from the consequences for their livelihood, examples of which we have seen above, the fact that they are rendered so invisible has serious implications for their basic human rights. In some countries, this invisibility takes an extreme form, as in Thailand, where indigenous highland peoples are denied citizenship registration and thus deprived of access to social services, proper school certificates, and so on.

Apart from the new introductions, the format and style of the book remains much the same as in past editions. It is our hope that this continuity in our reporting makes the book a resource that readers will want to consult time and again.

We would also like to take this opportunity to mention that we have previously had comments from readers who find our geographical organization of the book's contents inappropriate. The aim of the book is to offer a space to indigenous writers and advocates to present developments and important events in 2006 as seen from an indigenous angle. A number of country reports presented here therefore take their point of departure as ethnographic regions rather than following strict state boundaries. This is in accordance with indigenous peoples'

world-view and cultural identification which, in many cases, cuts across state borders.

## Conclusion

Finally, we would like to use the few remaining lines to express our sincere hope that 2007 will be the year in which the indigenous peoples of the world finally achieve the adoption of the UN Declaration on their rights. This book bears resounding testimony to the fact that the world's indigenous peoples clearly need a Declaration that addresses their special and particularly vulnerable situation.

It is our hope that indigenous organizations and activists will find *The Indigenous World 2007* a source of inspiration for their continuing work and mobilization; that scholars and professionals working in one way or another on issues of concern to indigenous peoples will find it a useful tool for gaining an overview and insights into the developments and events of 2006 in particular countries and at the international level. And, last but not least, that governments will listen to the voices of the many, many writers who are here sharing their concerns about the situation indigenous peoples live in, and the pathetic level of protection of rights they enjoy, with the consequence of a loss of life and dignity. It is our sincere hope that governments will listen to these voices and make 2007 the year the UN Declaration on the Rights of Indigenous Peoples obtains its final adoption by the UN General Assembly. □

*Sille Stidsen*  
Editor

April 2007



CONTRIBUTORS

# ABOUT OUR CONTRIBUTORS

## PART I – COUNTRY REPORTS

### The Circumpolar North

This section has been compiled and edited by *Sille Stidsen*, Project Coordinator and Editor of *The Indigenous World*.

#### Greenland

*Jens Dahl* is an anthropologist and former director of IWGIA.

#### Sápmi

*Láilá Susanne Vars* is a lawyer, and has worked as the legal adviser on human rights and indigenous peoples' rights for the Sámi Parliament. She is a Ph.D. candidate at the Faculty of Law, University of Tromsø, working on the Sámi people's right to self-determination. She is also chairperson of the Nordic Sámi Lawyers association, SÁJUS. (Sápmi – Norway)

*Lars-Nila Lasko* is a Sami himself and trained as a lawyer and political scientist working on Sami law research. He is also the president of the Sami Rights Association (See also [www.lasko.has.it](http://www.lasko.has.it)). (Sápmi – Sweden)

#### Russia

*Olga Murashko* is an anthropologist and co-founder of the IWGIA local group in Moscow. She works for RAIPON as an expert on indigenous peoples' legal rights in Russia. *Maja Hojer* is a Danish anthropologist and currently Programme Coordinator for Russia at IWGIA.

#### Alaska (USA)

*Gordon L. Pullar (Tani'cak)*, a Kodiak Island Sugpiaq (Alutiiq), is Director of the Department of Alaska Native and Rural Development (DANRD) at the University of Alaska Fairbanks

(UAF) and President of the Leisnoi Village Tribal Council. *Dixie Masak Dayo*, an Inupiaq, is an Assistant Professor in DANRD at the UAF. She is the past president and current board member of the Bean Ridge Corporation, the indigenous corporation for her home village of Manley Hot Springs. *Miranda Wright (Tletenesyah)*, a Koyukon Athabascan from the village of Nulato, is an Assistant Professor and the Academic Program Head for DANRD at UAF. She also serves on the Board of Directors of Doyon, Ltd., the Native regional corporation for interior Alaska.

### **Arctic Canada**

*Mark Nuttall* is Henry Marshall Tory Professor of Anthropology at the University of Alberta (Canada). He was a Lead Author for the Arctic Council's Arctic Climate Impact Assessment (ACIA) and is currently working on a project examining the social impacts of oil and gas development in northern Canada.

## **North America**

This section has been compiled and edited by *Sille Stidsen*, Project Coordinator and Editor of *The Indigenous World*.

### **Canada**

*Lea Nicholas-MacKenzie* is a member of the W last kwewinowok (Maliseet) First Nation at Nekwotkok (Tobique), in New Brunswick, Canada. Lea has worked with First Nations organizations, international indigenous organizations and the federal government. She is a member of the International Indigenous Women's Forum and is currently a consultant, focusing on international policy and relations.

### **United States of America**

*Sebastian Felix Braun* is a Swiss cultural anthropologist. He is assistant professor with the Indian Studies Department and involved in the Graduate Program on Métis Identity at the University of North Dakota (USA). [sebastian.braun@und.edu](mailto:sebastian.braun@und.edu).

## **Mexico, Central America and the Circum Caribbean**

This section has been compiled and edited by *Alejandro Parellada*, Programme Coordinator for Central and South America, and *Sille Stidsen*, Project Coordinator and Editor of *The Indigenous World*.

### **Mexico**

*María Elena Martínez Torres* is a lecturer/researcher with the *Centro de Investigaciones y Estudios Superiores en Antropología Social*, CIESAS Unidad Sureste in San Cristóbal de las Casas, Mexico. *Mariana Mora*, a PhD candidate in anthropology at the University of Texas in Austin, is a visiting student at the CIESAS-Sureste.

### **Guatemala**

*Silvel Elías* is an agronomist and lecturer at the San Carlos University in Guatemala. He is currently conducting research into Social Geography at the University of Toulouse-Le Mirail. He works as a researcher in the Latin American Faculty of Social Sciences (FLACSO) in Guatemala

### **Nicaragua**

*Claus Kjaerby* has a Master's degree in International Development Studies and Civil Engineering and works as a consultant for the Danish NGO Ibis in Central America on indigenous issues.

### **Panama**

*Alexis Alvarado* is an indigenous lawyer and member of the *Fundación Dobbo Yala*. He has been a lawyer and legal adviser to various congresses and indigenous organisations in Panama. He is currently consultant to the National Programme for Land Administration, for the consolidation of the indigenous territories in Panama.

### **Trinidad and Tobago and the Circum Caribbean**

*Maximilian C. Forte* is an Assistant Professor in Anthropology at Concordia University, Montreal, Canada. He is the founding and current editor of Caribbean Amerindian Centrelink ([www.centrelink.org](http://www.centrelink.org)) and is currently working on a research project on

Indigenous Transnationalism in the Caribbean. His primary research has been with the Carib Community of Arima, Trinidad.

### Suriname

*Daniel Peplow* is an eco-toxicologist and an affiliate Professor at the University of Washington Department of Forestry. *Sarah Augustine* is a sociologist and grassroots organizer. Together they run the Suriname Indigenous Health Fund.

## South America

This section has been compiled and edited by *Alejandro Parellada*, Programme Coordinator for Central and South America.

### Colombia

*Edith Bastidas* is a lawyer from the indigenous Pasto people, in Nariño department. She is a specialist in constitutional and parliamentary rights and has supported indigenous organisations on issues of organisational strengthening, territory and advocacy work. She is currently Executive Director of the *Centro de Cooperación al Indígena* (CECOIN).

### Venezuela

*José Antonio Kelly* is an anthropologist. He is a specialist in the area of health among the Yanomami population. *Noly Fernández* is a Wuayuu doctor and director of the General Department for Indigenous Health of the Ministry of Health. She is a member of the national indigenous organisation, CONIVE. *Luis Jesús Bello* is a lawyer, and Ombudsman for Amazonas State. He is an expert in indigenous rights, with more than 20 years' experience in the issue. *María Teresa Quispe* is a sociologist and member of IWGIA's Board. She is coordinator of the *Organización para el Desarrollo Humano Multiétnico de la Amazonía "Wataniba"*.

### Ecuador

*Paulina Palacios Herrera* is an Ecuadorian lawyer, and the coordinator of Walir Ecuador (*Water Laws and Indigenous Rights*);

she works on women's issues, the environment and human rights in Ecuador.

### Peru

**Jorge Agurto** is a social communicator and president of the NGO *Servicios en Comunicación Intercultural Servindi*. He is promoter and head of Servindi's Indigenous Information Service, website: [www.servindi.org](http://www.servindi.org), e-mail: [jorgeagurto@servindi.org](mailto:jorgeagurto@servindi.org).

### Bolivia

**Claudia Montaña Suárez** is a sociologist and head of the CEJIS Programme for Political Advocacy. She is trained in Indigenous Law and Public International Law. **Elba Nilda Flores Gonzáles** is head of the CEJIS Research Programme. She is a social worker with training in Social Research, Analysis and Conflict Resolution.

### Brazil

**Maria de Lourdes Alcantara de Beldi** is an anthropologist, scientific coordinator of the "Imaginary and Memory Group" and editor of the *Revista Imaginário* of Sao Paulo University. For the last five years, she has been working with indigenous youth from the Dourados Reserve in Mato Grosso do Sul.

### Paraguay

**Rodrigo Villagra**, is a lawyer and anthropologist, director of the NGO Tierraviva. **Ricardo Morínigo**, is a journalist and sociology student, working in Tierraviva's communications department.

### Argentina

**Morita Carrasco** is an anthropologist working as a lecturer and researcher at Buenos Aires University and as a consultant with the *Centro de Estudios Legales y Sociales* (CELS).

### Chile

**Víctor Toledo Llancaqueo** is a historian and director of the *Centro de Políticas Públicas y Derechos Indígenas*, Santiago, Chile. The centre is an academic body made up of primarily indigenous researchers, the aim of which is to contribute to indigenous involvement in public policy decision-making and the enforceability of indigenous rights.

## New Zealand, Australia and the Pacific

This section has been compiled and edited by *Sille Stidsen*, Project Coordinator and Editor of *The Indigenous World*, and *Christian Erni*, Programme Coordinator for Asia.

### Aotearoa New Zealand

*Sacha McMeeking* is a Maori legal academic with tribal affiliations to Ngāi Tahu. She is currently a lecturer in law at the University of Canterbury (NZ), and completing a Ph.D on the reconciliation of indigenous legal traditions and state law in respect of cultural and intellectual properties.

### Australia

*Elizabeth Strakosch* is a postgraduate researcher in the areas of political rhetoric and indigenous policy at the Australian Centre for Peace and Conflict Studies, University of Queensland.

### Kanaky New Caledonia

*Sarimin J. Boengkih* is Kanak and head of the *Agence Kanak de Développement* (akd@autochtonie.org).

### Tokelau

*Ulla Hasager*, Ph.D., lives and works in Hawai'i where she teaches anthropology and ethnic studies with a Pacific focus. She is also program leader and faculty development coordinator for service-learning projects and particularly works with Pacific Islander immigrant communities in Hawai'i.

### Bougainville

*Ulla Hasager* – see above.

### West Papua

*Viktor Kaisiëpo*, is international representative of the *Dewan Adat Papua* – the Papua Customary Council, and director of Papua Lobby.

## East and South East Asia

This section has been compiled and edited by *Christian Erni*, Programme Coordinator for Asia.

### Japan

*Kanako Uzawa* is a graduate of the University of Tromsø's Program in Indigenous Studies in Norway. As a member of the Rera Association, she is active in cultural preservation and furthering the indigenous rights of her people, the Ainu. *Kelly Dietz* is a professor in the Department of Politics at Ithaca College in New York, and a board member of the Shimin Gaikou Centre. Her research and activism is focused on militarization, especially within minority and indigenous territories.

### China

*Huang Chi-ping* is a lecturer in Ethnology at the National Cheng-chi University in Taiwan, where she is currently also doing a Ph.D. Her article was translated from Chinese by *Jason Pan*.

### Tibet

*Charlotte Mathiassen* is a social anthropologist and development advisor. She has been an active member of the Danish Tibet Support Group since 1989 and is currently its chair woman and Nordic representative on the International Tibet Support Network.

### Taiwan

*Anthony Carlisle, Shun-ling Chen, Mag Chin, Rebecca C. Fan, Pasang Hsiao, Shu-ya Lin, Ciwang Teyra, Saiviq Kisasa* and *Siyat Ulon* are members of the Taiwan Indigenous Peoples' Alliance (TIPA) mailing list (tipa@googlegroups.com) (formerly AIPP-Taiwan mailing list), via which the report was developed and discussed. *Jason Pan* wrote the paragraphs on the Ping Pu aborigines. He is Director of TARA-Ping Pu and AIPP Executive Council member for East Asia Region.

## Philippines

*Anthropology Watch* is a non-governmental organization (NGO) composed of anthropologists and other social scientists who work with and for indigenous peoples in the Philippines. It engages in assistance to land titling, culturally appropriate community development planning, capacity-building and advocacy on indigenous peoples' issues.

## Indonesia

*Emilianus Ola Kleden* was until recently the Executive Secretary of the Aliansi Masyarakat Adat Nusantara (AMAN), the nationwide alliance of indigenous peoples of Indonesia. He continues working for AMAN at the local level.

## Malaysia

*Jannie Lasimbang*, is a Kadazan from Sabah, Malaysia. She is Vice-Chairperson of PACOS Trust, Sabah, since 1987. She has also been involved in the Indigenous Peoples Network of Malaysia (JOAS-IPNM) since its inception in 1992, and is currently the Secretary General of the Asia Indigenous Peoples Pact Foundation based in Chiang Mai, Thailand.

## Thailand

*Wiwat Tamee* is a Lisu from Chiangrai Province. He is currently working as Project Manager for the Highland Peoples' Taskforce (HPT), a secretariat office of a network of 12 indigenous and highland peoples in Thailand.

## Cambodia

*Peter Swift* is executive Director of Southeast Asia Development Program, an American NGO with activities in Cambodia. He has worked with indigenous communities in Cambodia since 1999.

## Laos

*Ian G. Baird*, originally from Canada, has been working on natural resource management and ethnicity issues in mainland South-east Asia for 19 years. He is Executive Director of the Global Association for People and the Environment, a Canadian NGO active in Laos.

## Burma

*Andrea Martini Rossi* is a human rights researcher from Italy. He has worked in Europe, Latin America and Asia and is currently Research Officer at ALTSEAN-Burma in Bangkok.

## Nagaland

*Dolly Kikon* is a Lotha Naga and at present a PhD student with the Department of Cultural and Social Anthropology, Stanford University, California. *Tungshang Ningreichon* is a Thangkhu Naga working as Project Coordinator with PANOS South Asia in New Delhi.

## South Asia

This section has been compiled and edited by *Christian Erni*, Programme Coordinator for Asia.

## Bangladesh

*Ina Hume* is a consultant on indigenous issues and a cultural recording artist. She established Vanishing Rites in 2004 to develop collaborative media and advocacy projects in the UK and internationally ([www.vanishingrites.com](http://www.vanishingrites.com)). She has written in cooperation with the *Jumma Peoples Network UK*, a human rights organisation, with the aim of promoting the rights of Jummas living in the Chittagong Hill Tracts and abroad. *Sanjeeb Drong* is a Garo from northern Bangladesh. He is a columnist and freelance journalist and currently editor of the indigenous magazine Solidarity ([sdrong@bangla.net](mailto:sdrong@bangla.net)).

## Nepal

*Shankar Limbu* is an Advocate, who acts as Secretary of the Lawyer's Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), as well as Campaign and Policy Advocacy Coordinator for the Asia Indigenous Peoples Pact (AIPP) Foundation.

## India

*Paritosh Chakma*, is Coordinator of AITPN, and *Suhas Chakma* the Consulting Editor of *The State of India's Indigenous/Tribal Peoples 2007*, being published by AITPN.

## Middle East

This section has been compiled and edited by *Sille Stidsen*, Project Coordinator and Editor of *The Indigenous World*.

### The Marsh Dwellers of Iraq

*Anna Sophia Bachmann* is based in Amman, Jordan and has worked on Iraqi environmental issues since 2004. She is currently with Nature Iraq ([www.natureiraq.org](http://www.natureiraq.org)), an Iraqi environmental non-governmental organization focused on the restoration of the Iraqi Marshlands and the sustainable development of Iraq's natural resources (Email: [bachmanna@gmail.com](mailto:bachmanna@gmail.com)).

### The Bedouins of Israel

*Faisal Sawalha* is an English high school teacher in Rahat, one of the seven townships in the Negev. He works with the Regional Council for the Unrecognized Villages in the Negev as their Resource Development and PR person. *Ariel Dloomy* is the coordinator of the Negev Co-existence Forum and the editor of their Newsletter (see [www.dukium.org](http://www.dukium.org)).

## North and West Africa

This section has been compiled and edited by *Marianne Wiben Jensen*, Africa Programme Coordinator.

**Morocco**

*Mohamed Handaine* is President of the *Coordination Autochtone Francophone* (CAF).

**Algeria**

*Mohamed Si Belkacem* is managing editor of the bimonthly RACINES (bilingual French - Tamazight). He is an active member of the Berber Cultural Movement, President of the Cultural Association ILES UMAZIGH, former Vice-president of the Amazigh World Congress and member of the executive of CAF (*Coordination Autochtone Francophone*).

**Niger**

*Dr Gandou Zakara* is President of the *Organisation de Défense des Droits et Libertés Humains* (ODLH) and Lecturer/Researcher at the Faculty of Economic and Legal Sciences at the University of Niamey, Niger

**Mali**

*Mohamed Khattali* is a lawyer. He is Secretary General of the *Association Synergie et Action* in Mali and independent expert member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights.

**The Horn of Africa and East Africa**

This section has been compiled and edited by *Marianne Wiben Jensen*, Africa Programme Coordinator.

**Kenya**

*Naomi Kipuri* is a Maasai from Kenya and an anthropologist by training. She is a human rights activist and director of the Arid Lands Institute.

**Uganda**

*Treva Braun* holds a Bachelor of Law (LL.B) from the University of British Columbia in Canada and a Masters in International

Human Rights Law (LL.M) from the University of Essex in the UK. She currently lives in London and works as Coordinator of the Africa Legal and Human Rights Programme at the Forest Peoples Project.

### **Tanzania**

*Benedict Ole Nangoro*, is a Maasai from Kiteto, in Tanzania. He is the Coordinator of CORDS, a local NGO that works with the indigenous Maasai peoples in collective land demarcation, mapping, registration and titling.

## **Central Africa**

This section has been compiled and edited by *Marianne Wiben Jensen*, Africa Programme Coordinator.

### **Rwanda**

*Lucy Mulvagh* (lucy@forestpeoples.org), is the Forest Peoples' Programme's Project Officer for the Great Lakes Region. [www.forestpeoples.org](http://www.forestpeoples.org).

### **Burundi**

*Treva Braun*, see above (Uganda).

### **The Democratic Republic of Congo (DRC)**

*Lucy Mulvagh*, see above (Rwanda)

### **Republic of Congo (Congo Brazzaville)**

*Moké Loamba* is President of the *Association pour les Droits de l'Homme et l'univers Carcéral* (ADHUC).

### **Gabon**

*Judy Knight*, is a consultant anthropologist based in Gabon. She has been working on various projects with Central African indigenous forest communities since 1992, and has worked in consultation with indigenous NGOs and major conservation organisations on indigenous peoples' rights and the safeguarding of traditional forest-related knowledge, in and around protected areas. Contact: [Judyknight@uuplus.com](mailto:Judyknight@uuplus.com)/[jkanthro@yahoo.co.uk](mailto:jkanthro@yahoo.co.uk).

**Cameroon**

*Albert K. Barume* is a lawyer by training, with a Ph.D. in human rights. For the last 15 years he has worked as a researcher and activist on issues of indigenous peoples, vulnerable communities and natural resources in the Congo Basin. He has worked in different capacities for a number of international agencies, including the African Commission on Human and Peoples' Rights

**Central African Republic**

*Albert K. Barume*, se above (Cameroon).

**Southern Africa**

This section has been compiled and edited by *Marianne Wiben Jensen*, Africa Programme Coordinator.

**Angola**

*Gaspar Daniel* is administrator of the Angolan NGO Christian Organization Supporting Community Development (OCADEC), which works to support the Angolan San communities.

**Botswana**

*Robert K. Hitchcock* at Michigan State University, East Lansing, Michigan, USA and a board member of IWGIA and the Kalahari Peoples' Fund.

**South Africa**

*Adele Wildschut* is a development practitioner and human rights activist. She serves on the Indigenous Peoples' of Africa Coordinating Committee (IPACC) Trust and has been an active member of the Indigenous Peoples' Global caucus for the Declaration on the Rights of Indigenous Peoples (UNDRIP), representing IPACC.

## PART II – INTERNATIONAL PROCESSES

This section has been compiled and edited by *Lola García-Alix*, Coordinator of Human Rights Activities and Interim Director.

### **The UN Declaration on the Rights of Indigenous Peoples**

*Les Malezer* is the Chairperson of the Foundation for Aboriginal and Islander Research Action (FAIRA), an Aboriginal and Torres Strait Islander organisation based in Australia. He is currently the chairperson of the International Indigenous peoples' caucus during United Nations sessions and plays a coordinating role in the Pacific region on other matters including CBD issues.

### **The UN Permanent Forum on Indigenous Issues - 5<sup>th</sup> session**

*Lola García-Alix* is Coordinator of IWGIA's Human Rights Activities and Interim Director of IWGIA.

### **The UN Working Group on Indigenous Populations**

*Lola García-Alix* – see above.

### **The Special Rapporteur – overview 2006**

*Lola García-Alix*, see above.

### **The Arctic Council - 2006**

*Rune Fjellheim* is Executive Secretary of the Arctic Council Indigenous Peoples' Secretariat in Copenhagen.

### **The African Commission on Human and Peoples' Rights - 2006**

*Dina Berenstein* is Project Coordinator of IWGIA's African Commission Programme.





# PART I

REGION AND  
COUNTRY REPORTS

THE CIRCUMPOLAR NORTH

## GREENLAND

The population inhabiting the vast east and west coast of the island of Greenland numbers 57,000, 88 per cent of whom are ethnic Greenlanders (Inuit). Greenland is a self-governing region within the Danish realm. The first Danish colonial settlement was established in 1721 close to the current capital, Nuuk, on the west coast. In 1953, Greenland became an integral part of Denmark by law and, in 1979, Home Rule was established following negotiations between Greenland and Denmark. Since then, Greenland has had its own parliament and government responsible for most internal matters. Since 2004, the Danish and Greenland governments have negotiated further self-government for Greenland.

### Negotiations on new self-government arrangement

For some years, Greenland and Denmark have been negotiating a new self-government arrangement to replace the existing Home Rule arrangement. A Danish-Greenlandic Self-Government Commission was established in 2004 but a final result is not expected before the end of 2007 or 2008. One of the cornerstones of the negotiations is the status of the sub-surface. This includes its ownership, claimed by Greenlanders, and it also includes the distribution of income from the exploitation of non-renewable resources. For the time being, only a small goldmine in South Greenland is in operation, but a number of small mines are expected to be opened in the years ahead. To this should be added the possible establishment of a large aluminium smelter in West Greenland. However, the potential existence of major oil and gas reserves in the sea surrounding Greenland has dominated



the debate, along with the distribution of such income, and the impact on the block grant that flows every year from Denmark to Greenland.

The negotiations on a new self-government arrangement are taking place in an atmosphere filled with demands from some Greenlanders for independence and outright rejection of a new self-government regime, and demands from some Danish politicians for sharing of future income relating to oil and gas developments. The tensions between Danish and Greenlandic viewpoints have been further reinforced by strong criticism from some Greenlandic politicians of the way the Danish government handled the formal abolition of colonial rule in 1953 and the subsequent inclusion of Greenland into the Danish realm. The issue might seem irrelevant today but it has been introduced into the ongoing negotiations and has also added to the division among the Greenlanders' views on self-government. Such issues have led the powerful Greenland Minister of Finance and Foreign Affairs, Joseph Motzfeldt, Tuusi, to warn against a kind of developing nationalism that might isolate Greenland, instead of developing a friendship between equal partners. As he said in a famous statement in 2004, "The future of a country depends upon the ability to set the past aside without forgetting it and look forward without being naïve".

## **The seal skin debate**

Seal hunting is an important activity for hunters and fishermen along the coast. The meat is a highly valued staple food, the skins are used for fur coats and exported, first and foremost, to countries in Europe. To this should be added the fact that seal hunting, seal meat and seal skin are key cultural symbols to all Greenlanders. For several decades, seal hunting in general has been under attack from animal rights movements, induced by the Canadian annual spring hunt on baby seals along the Canadian Atlantic Coast. Although this has nothing to do with the type of hunting in Greenland, and although seal hunting in Greenland is absolutely sustainable, the effect of the Canadian baby seal hunt has always had deleterious effects on the ability of the Greenlanders to market furs made from seal skins. Although the Greenland government makes great efforts to raise awareness around the Greenland aboriginal seal hunt, it is an issue that comes up every so often. In 2006, the importing of seal skins to Greenland from Canada was sud-

denly linked with the completely different hunt on baby seals. The importation from Canada was of the adult seals, of the same type as those hunted in Greenland, and primarily from the Inuit-controlled territory of Nunavut.

### **New partnership agreement with the European Union**

Public income in Greenland derives from local taxes, from block grants from Denmark and, to a minor but important extent, funding from the EU. In 2006, and valid as from 2007, Greenland (and Denmark) entered into a partnership agreement with the EU. Since Greenland voted itself out of the EU in 1982, the EU has paid an annual amount for fishing rights along the Greenland coast. These agreements have, in general, been considered favourable to Greenland but, from 2007, this type of agreement has been replaced by a specific partnership agreement and a fisheries agreement. The financial benefits for Greenland are expected to remain unchanged. □

## SÁPMI - NORWAY

The Sámi are the indigenous people of Norway. There is no available information on how many the Sámi people are. A 1999 linguistic survey found that 23,000 people speak the Sámi language but the actual number of Sámi is estimated to be many times higher than this.<sup>1</sup> Their status as a people is recognized by constitutional amendment 110a to the Norwegian constitution (Grunnloven).

The Sámi people's traditional territories cover large parts of the Norwegian mainland. Their lands, traditionally used for reindeer herding, hunting and gathering, are under constant pressure from international and national mining corporations, state energy enterprises, the Norwegian Armed Forces, and others.

The Sámediggi (the Sámi Parliament) is the democratically elected political body of the Sámi people; its representatives are elected by and amongst the Sámi themselves. The Sámediggi regulates its business within the framework laid down by an Act concerning the Sámediggi and other Sámi legal matters (the Sámi Act).

Norway has ratified all relevant international human rights instruments, including both 1966 Human Rights Covenants and ILO Convention 169.

### The Finnmark Act

The Finnmark Act came into force in January 2006, establishing a new regime for the management of the territories and natural resources of Finnmark county, territories which are approximately the



same size as Denmark. In inner Finnmark, the Sámi people constitute a majority but in the coastal areas they are a minority. Until 2006, a state company, Statskog SF, owned and managed the lands and resources in Finnmark without any guidelines or legislation that would ensure the Sámi people's representation in that management. In the newly established Finnmark Estate, which governs land use matters in the county,

Sámi participate on an equal level in the management of the lands. Three out of six board members of the Finnmark Estate (Finnmarkseiendommen) are chosen by the Sámi. A Sámi from Finnmark, Mr. Egil Olli, has been elected as the Finnmark Estate's first chairperson. Olli is a member of the Sámi Parliament, representing the Norwegian Labour party.

The Finnmark Act also states that the Sámi Parliament, which was established in 1989, can issue guidelines governing how different official institutions should consider Sámi interests when allowing competing use of lands in Finnmark. This has been criticised by the majority people of Finnmark, claiming that the guidelines are too bureaucratic. This criticism is, however, somewhat unreasonable given that guidelines are just that - non-legally binding instruments that should help non-Sámi officials understand the cultural differences between Sámi and Norwegian culture. Hence the Sámediggi claims that ILO Convention 169 has not been implemented, as it should give the Sámi a stronger right to protection against competing use of lands.

A crucial element in the Sámediggi's conditional consent to the Finnmark Act in 2005 was firstly that the Act should include the establishment of a Finnmark Land Rights Commission and a Finnmark Tribunal to decide on disputes concerning land rights. The Commission members will reportedly be appointed in January 2007. Secondly, the Sámediggi claimed that Sámi people's rights to the sea fishery off the Finnmark coast should be recognized and safeguarded. This led to the appointment of a new sea fisheries commission, led by former head of the Norwegian Supreme Court, Mr. Carsten Smith.

## **Justice for Sámi elders**

In 2006, 70 out of some 1,000 Sámi elders finally obtained compensation for lack of education caused by the Second World War and the strong government assimilation processes after the war. These processes included programs for "civilizing" the Sámi by, among other things, forbidding them from speaking their mother tongue in state schools. These processes have caused illiteracy among Sámi elders who were born in the 1930s, 40s and even early 50s. It is expected that the government will consider most of the applications in 2007.


## Oil and gas exploitation in the far north

The aim of the government's new High North policy is to protect the environment, maintain settlement patterns and promote business development in the north. Norway, as a coastal state, has the responsibility for managing resources in waters six times the size of its mainland territory. Establishing a common knowledge base for the management of the non-renewable resources, i.e. oil and gas, and taking proper account of the challenges faced by the indigenous Sámi people, is one of the complex challenges facing the government in 2007. The Minister of Foreign Affairs, Mr. Jonas Gahr Støre (Labour), has on many occasions ensured that the Sámi will still be able to preserve their unique traditions, languages and culture, even if there is more pressure and focus on their homelands than ever before. The minister has also ensured that the government must maintain good channels of communication and an effective exchange of views with the Sámi.<sup>2</sup> In spite of these assurances, the Ministry of Petroleum and Energy has stated that the Sámi people should not benefit from or receive any special percentage of the oil and gas drilling activities in their home areas. The Sámediggi has not accepted this, and has claimed rights to a fair share of the income from oil and gas drilling activities in northern Norway.<sup>3</sup>

## Revision of the 1978 Reindeer Herding Act

As a result of the 2005 consultation agreement<sup>4</sup> between the Sámediggi and the Norwegian government, the Sámediggi is now actively involved in many important law-making processes that will directly affect the Sámi. In 2006, the government proposed amendments to the 1978 Reindeer Herding Act. In Norway, the right to own and manage reindeer herds is an exclusive right for the Sámi. The government proposals include *inter alia* provisions that are aimed at increasing self-government for the reindeer herders.<sup>5</sup>

## The road to self-determination

In 2005, an expert group appointed by the government and the Sámi Parliament completed its proposal on a Nordic Sámi Convention, which includes a specific provision that acknowledges the Sámi people's right to self-determination within the Nordic countries. This proposal is still undergoing political procedures, including a ratification process that requires the signatures of not only the governments of Finland, Norway and Sweden but also of the three Sámi parliaments. The Norwegian government has, in principle, accepted a right to self-determination for the Sámi people but the ways and means for the incorporation of this right will continue to be disputed for years to come. The Nordic Sámi Convention will, if accepted by the Nordic countries, form the basis of a new way of communicating people-to-people in the north. Hence it is very important that the right to self-determination is not only a *de jure* right but that it will also be incorporated into domestic law and increase the *de facto* ability of the Sámi to influence matters that are important for the well-being of their people. <sup>6</sup> 

## Notes

- 1 Maps and more information about the Sámi in Norway can be found at the Sámi Parliament Norway website: [www.samediggi.no](http://www.samediggi.no).
- 2 <http://www.regjeringen.no/en/ministries/ud/Selected-topics/High-North.html?id=1154> (15.2.07)
- 3 The Vice-president of the Sámediggi, Mr. Johan Mikkel Sara, has repeatedly stated this in both Sámi and non-Sámi media. This claim can also be found in the Sámediggi programme of action for the period 2005-2009. The government's reply to this claim can be found in a white paper; St.meld. nr. 7 (2006-2007) Om Sametingets virksomhet i 2005.
- 4 Read more about this in *The Indigenous World* 2006, p.39.
- 5 The Website of Reindriftsforvaltningen, the government reindeer herding agency, includes information about reindeer herding programmes, policies and legislation. In Norwegian and Sámi only. [www.reindrift.no](http://www.reindrift.no)
- 6 Sources: Various Norwegian statements in the Working Group on the draft UN Declaration on the Rights of Indigenous Peoples and government white papers.

## SÁPMI - SWEDEN

There is at present no legally established general definition of who a Sámi is in any of the countries where the Sámi live, and figures on how many they number are thus uncertain. It is estimated that around 20,000 out of a total of 100,000 Sámi live in the northern part of present-day Sweden. The generally accepted definition of who a Sámi is in Sweden can be found in the Swedish Sámi Assembly Act: this definition states that anyone whose mother tongue is Sámi, or whose mother's or father's or grandparents' mother tongue was Sámi, and who regards him or herself as Sámi, has the right to vote in the Swedish Sámi Assembly and be elected.

There are three specific laws governing Sami rights in Sweden, namely the Sámi Parliament Act, the Sámi Language Act and the Reindeer Herding Act. Some rights of Sámi craftsmen and women and Sámi fishermen can be found in the Reindeer Herding Act. This regulation of Sámi rights has polarized the Sámi into reindeer herders and non-reindeer herders. During 2006, there were no developments in the legislative framework for the Sámi.

### **Sámi land and a new Sámi Convention**

The fact that the Sámi live in four separate states (the Russian Federation, Finland, Sweden and Norway) has affected the Sámi situation legally, organisationally, etc. In other words, the Sámi are subject to four separate legal systems and this entails a number of difficulties for them, including anything from moving reindeer across national boundaries to administration of issues which affect all Sámi. The entry

of Sweden and Finland into the EU also created a new legal system and boundaries.

However, a first Sámi Convention has been worked out between Sweden, Finland and Norway. The Sámi Convention will harmonize Sámi laws within the Scandinavian law systems. The convention was sent out to local administrations and organisations for consideration during autumn 2006. The response for the most part were rather negative because several Swedish organisations, local administrations and communities think that the Sámi will have better rights than the Swedish population in the Sámi area. The Sámi are still hoping that the convention will be ratified during 2007. It must be mentioned that the biggest party in the Sámi Parliament, the "Hunting and Fishing Sámi Party", is against the Sámi Convention, stating that it will provide only rights for reindeer herders and not for the Sámi People.

## **Court cases on land rights and hunting rights**

There were several court cases in Sweden during 2006 between Sámi reindeer herders and private landowners who claimed that the Sámi had no grazing rights for their reindeer on their land. The law states that the Sámi have to prove that they have traditional rights to the land. However, reindeer herding does not leave any trace and it has been nearly impossible for the Sámi to prove that they have used the land for several hundred years. The Sámi thus lost all cases except one: "the Nordmaling case" (settled on January 20, 2006). The landowners have, however, taken this case to appeal.

In November 2006, Sweden was - for the first time in history - brought before an international court of law with regard to Sámi land rights. The Sámi's request for a summons was submitted to the European Court of Human Rights in Strasbourg. Meanwhile all other court cases between Sámi persons and the State have been stalled, awaiting the verdict from this case.

For the last 600 years, and since the colonisation of the Sámi territory, the Swedish government has declared all land not owned by settlers as belonging to the Swedish Crown. This land was considered to be empty and unoccupied, thus belonging to the government. The

problem, then as now, is that the land is owned by thousands of Sámi families throughout the whole Sámi area (also called the Sámi tax land).<sup>1</sup> The Swedish government has so far denied the Sámi descendants their right of possession. During the trials, the Swedish government avoided addressing the issue of whether the land was owned by the Sámi people or not. At the moment, there are nine court cases in Sweden on land rights between Sámi and the state.

Another case against Sweden at the end of 2006, in the European Court of Human Rights in Strasbourg, concerned Sámi hunting rights (*Talma Sámi Village vs Sweden*). The Sámi claim to have more legitimate hunting rights than the state in areas traditionally used by reindeer herders.

## **The language of the Sámi and changes in the Sámi language act**

The language of the Sámi belongs to the Finno-Ugric family of languages. Sámi is often referred to as one language. In actual fact, Sámi is split into three languages or main dialects: Eastern Sámi, Central Sámi and Southern Sámi.

In Sweden, there are the Central Sámi and Southern Sámi languages. Today, the Sámi language has official status in parts of the central Sámi area. A state language committee suggested on February 26, 2006 that the Southern Sámi language should also be made official in 20 communities in southern Sámi areas.<sup>2</sup> The Southern Sámi language is currently only official in central Sámi areas. The government has not yet taken any decision to change the Sámi language act.

## **Committee on Sámi hunting and fishing rights**

This committee was formed to investigate Sámi hunting and fishing rights and find solutions as to how to practically solve hunting and fishing problems in the Sámi areas. According to the Reindeer Herding Act and the Swedish Hunting Act, both reindeer herders and land-owners have the right to hunt on the same land. However, there are no

regulations as to how to cooperate in practice. The committee presented a final report "Hunting and Fishing in Cooperation" on January 17, 2006.<sup>3</sup> The report concluded that the solution was to create cooperation associations between Sámi reindeer herders and landowners and give the associations decision-making power. The government has not yet taken any action on the recommendations.

## **The Boundary Demarcation Committee and ILO Convention 169**

Sweden has not yet ratified ILO Convention 169 on Indigenous and Tribal Peoples. Sweden established an ILO inquiry to establish what Sweden had to do to fulfil the requirements of Convention 169 and this inquiry presented its report in 1999.<sup>4</sup> The report proposed the establishment of a special boundary demarcation committee. The main remit of the committee has been to demarcate, primarily on the basis of archive material, the areas that the Sámi may use under the Reindeer Husbandry Act for reindeer grazing. The Boundary Demarcation Committee has also had the remit of identifying, in accordance with ILO Convention 169, the land the Sámi occupy and use together with other people. This has been in order to transpose the terms set out in article 14 of ILO Convention 169 into Swedish legislation. This particular article deals with lands that indigenous peoples traditionally occupy and land to which they have traditionally had access for their subsistence and traditional activities. During the year, the Boundary Demarcation Committee presented a final report "Sámi's customary land".<sup>5</sup> The government has not yet taken any decision about the report or ILO Convention 169.

## **Ombudsman critical of State's investigation of Sámi rights**

The government authority known as the Ombudsman of Discrimination provides advice in order to help people who are the victim of ethnic discrimination enforce their rights. The Ombudsman cannot change

verdicts or issue sentences. Nor does he become involved in ongoing legal proceedings.

In November 2006, the Ombudsman severely criticised two state investigations into Sámi rights: the hunting and fishing investigation and the investigation into Sámi's customary land. The Ombudsman said that the committees were investigating the wrong things and not what the Sámi People wanted. He concluded that the committees did not investigate Sámi rights. □

## Notes and references

- 1 Sámi tax land is a legal term for land belonging to Sámi and for which the Sámi pay tax.
- 2 **SOU (Swedish Government Official Reports), 2006:** *Om att återta sitt språk-åtgärder för att stärka det Samiska språket*. P. 19.
- 3 **SOU 2005:** *Hunting and Fishing in cooperation (Jakt och fiske I samverkan)*. p 116.
- 4 **SOU 1999:** *The ILO Inquiry report in 1999 (ILO konvention 169)*. p 25.
- 5 **SOU 2006:** *Sámi's customary land, (Samernas sedvanemarken)*. p 14.

## RUSSIA

In the Russian Federation, the term “numerically small indigenous peoples” is used for indigenous groups that number less than 50,000 individuals in order to distinguish them from larger ethnic groups. To date, 45 numerically small peoples have been recognized, 41 of which live in the Russian North, Siberia and the Far East.<sup>1</sup> In total, they number around 250,000 individuals. The largest groups, the Evenk and Nenets, number 35-45,000 individuals and the smallest groups, such as the Enets and Oroch, number only a few dozen or a few hundred.

“The territory of historical settlement” of the indigenous peoples (their subsistence area) covers 64% of the area of the Russian Federation. The numerically small indigenous peoples are protected by Article 69 of the Russian Constitution and three specific federal laws.<sup>2</sup> In addition, the indigenous peoples are governed by a number of administrative rules and legislations, depending on the province in which they live. The reality for the indigenous population in Russia is, however, often a far cry from the legislation and constitutional rights.

The year 2006 was marked by a new massive government-driven attack on the rights of the indigenous peoples in Russia: the implementation of the government’s program on expansion of the petroleum industry in Western and Eastern Siberia is an example of this. This began with active work on the development of new oil and gas fields, preparatory work for oil extraction (construction of roads, cutting of woods) as well as pipeline construction. Virtually all construction sites connected with the government program are located on territories traditionally inhabited by indigenous peoples.



The Russian Association of Indigenous Peoples of the North (RAIPON), the national umbrella organization for regional indigenous associations, works to protect indigenous peoples' rights to their territories and traditional way of life. RAIPON conducts monitoring of the construction and extraction activities and keeps "white" and "black" lists of the companies involved. In some regions, companies are entering into dialogue and negotiations with indigenous representatives. The indigenous peoples of Sakhalin Island who protested against pipeline constructions that ignored the interests of indigenous peoples are one example.

## **Oil and gas extraction on Sakhalin Island**

The Sakhalin II project is a large international consortium to locate and produce oil and gas on and offshore of Sakhalin Island in the Sea of Okhotsk in the Russian Far East. The projected pipelines and platforms have been met with massive criticism from environmental groups and indigenous peoples, who launched their first protest action in January 2005. The protest actions put pressure on Sakhalin Energy Investment Company Ltd. (Sakhalin Energy), which manages the Sakhalin II project. Sakhalin Energy is seeking funding from the European Bank for Reconstruction and Development (EBRD) and the project documentation and ensuing realization of the project therefore have to follow the World Bank's Revised Operational Policy on Indigenous Peoples (2004), which sets a certain standard for the protection of indigenous peoples' rights in the context of development projects.

The indigenous peoples of Sakhalin established a Council of Indigenous Representatives and commenced negotiations with Sakhalin Energy in 2005. On 25 May 2006, a tripartite agreement between the indigenous peoples, the regional authorities and Sakhalin Energy was signed. According to the "Sakhalin Indigenous Minorities Development Plan", an outcome of the agreement, Sakhalin Energy will finance this development plan with US\$300,000 over the five years from 1 June 2006 to 1 June 2011. A Supervisory Board including indigenous representatives and an Executive Committee headed by Aleksei Limanov,

President of the Association of Indigenous Peoples of Sakhalin, will be responsible for implementing it.

In December 2006, the results from the first half-year of the development plan were evaluated and found to be meagre: the components of the development plan that relate to health, education and social issues were more or less successful in their implementation. A range of concrete activities within these areas were already listed in the agreement. The plan's "Program for support to traditional economic activities" had been deferred, however. This part of the development plan was weakly defined from the beginning and it was later suggested that support to traditional economic activities should be provided on the basis of a call for project proposals from indigenous *obshinas* (communities or economic entities). *Obshina* leaders have time and again claimed that the rules and requirements for these project applications - such as business plans - are excessive and totally unacceptable. The indigenous leaders state that, "The company managers put forward too high criteria for the projects. It is very difficult for us to prove that traditional activities do not always have the creation of profit as their main goal but, very often, the activities of the indigenous *obshinas* are of a social nature."

The development plan includes a rather ineffective mechanism for submitting complaints to Sakhalin Energy. The management in the regional capital of Yuzhno-Sakhalinsk is thus not informed about the violations of the company's rules that are taking place on the construction sites, where the contractors do not live in the designated camps but in the indigenous communities where they fish, hunt and collect berries and mushrooms against the company's rules.

From 2003-2005, Sakhalin Energy conducted somewhat superficial research into the situation and problems of contemporary traditional nature use, based on questionnaires and consultations with indigenous peoples. In the two districts where the research was conducted, however, only 10% of the indigenous population was included. A detailed assessment of the influence of the Sakhalin II project was only conducted in one reindeer cooperative. The experts hired by Sakhalin Energy did not properly investigate the problems connected with traditional fishing on Sakhalin. These problems are not, as stated, connected with the illegal exploitation of natural resources that the indigenous

peoples are accused of, but derive from the violation of their right to priority access to renewable natural resources as guaranteed by the federal law "On the Animal World". No assessments were made of the risks and threats to fishing, hunting and collection of wild plants practised by the majority of indigenous people of Sakhalin. Neither did the study conducted by Sakhalin Energy pay any attention to the registration and protection of sacred sites and objects of cultural heritage. Experts from RAIPON strongly recommend conducting a new study that includes all relevant issues and the whole indigenous population.

In December 2006, Russian Gazprom took control of 50%-plus-one share in Sakhalin Energy Investment Company Ltd., whose biggest shareholder until then had been Shell. The European Bank for Reconstruction and Development now wants to reconsider its loan, because Gazprom's takeover of the majority of shares looks like a re-nationalization of the oil extraction industry.

The Russian government has reacted surprisingly negatively to the indigenous peoples', NGOs' and scientists' efforts to assist in developing responsible legislation. From the point of view of the Russian government, this is "not economically purposeful".

On a more positive side, some indigenous peoples of Sakhalin have bought computers through the social component of the "Sakhalin Indigenous Minorities Development Plan" and established a network of information centers in six districts that forms a basis for the indigenous movement on the island. In this sense, they are pioneers, and the development plan offers a model for other companies who want to initiate large industrial projects on traditional indigenous territories.

The Council of Indigenous Representatives of Sakhalin is currently directing its attention towards the other big projects prospecting and producing oil and gas on and offshore of Sakhalin Island (the Sakhalin I, III, IV and V projects) and the companies involved in these projects, both international (Royal Dutch Shell, Mitsui, Mitsubishi, Exxon, BP and others) and Russian (Rosneft, Gazprom, Sakhalinmorneftegaz and others). So far, only BP has responded to their demands. It was a small victory for the indigenous movement when the governor of Sakhalin, on 18 September 2006, signed an instruction to carry out an "ethnological impact assessment" in the districts of Sakhalin where the indigenous peoples live.

## **Federal legislation on indigenous peoples**

President Putin has divided the country into seven federal districts governed by plenipotentiaries of the president, appointed by him to represent him in the regions. They have the right to initiate federal legislation. In the Far Eastern Federal District, indigenous peoples have used this institution to promote their rights and participation in political decision-making. Through RAIPON vice-president Pavel Sul'yandziga, who is a member of the plenipotentiary's Advisory Council for Indigenous Peoples, RAIPON participates in the preparation of legal proposals on the improvement of federal laws pertaining to the protection of indigenous peoples' rights.

In August 2006, a RAIPON group of experts gathered together a range of proposals and passed them on to the plenipotentiary's working group in Khabarovsk, the capital of the Far Eastern Federal District. Most of the proposals were included in the bill on Introduction of Amendments to Certain Legislative Acts of the Russian Federation Concerning Protection of the Rights of Indigenous Peoples of the Russian Federation. As far as we know, the bill was promoted at the meeting of governors in Anadyr in September 2006 and submitted to the State Duma at the end of 2006.

With regard to the federal Law on Subsoil, the Forestry Code, the Land Code, the Law on Specially Protected Territories and other laws relating to natural resources that are of special interest to indigenous peoples, RAIPON has not succeeded in introducing new legal provisions protecting the interests of indigenous peoples. But, as many lawyers say, the important thing at the moment is to ensure that previously introduced provisions on civil rights and natural resources are defended, and already gained rights were safeguarded.

## **Land rights and land use**

Despite insistent demands from RAIPON, the land rights of indigenous peoples have still not been regulated. There remains an inconsistency between the Federal Law on Territories of Traditional Nature Use

and the Land Code. According to the Law on Territories of Traditional Nature Use, territories with the status of specially protected natural areas can be transferred to indigenous peoples for free use upon application to the government, governmental bodies or local authorities but the Land Code, however, does not stipulate such a provision. The government has not formed a territory of traditional nature use since 2001, and most land is federal property. Furthermore, the provisions relating to the rights of indigenous peoples to consent and compensation have been removed from the existing Federal Law on Subsoil. The present situation is thus paradoxical: extraction companies do not need to obtain the consent of actual land users for land allotment, as indigenous and local populations have no legal rights to own or use the lands they live, hunt, fish and tend reindeer on.

In response to this situation, regional indigenous organizations have intensified their efforts to protect their rights to traditional resources using the legal tools at their disposal: the rights of indigenous peoples comprised in the Federal Law on Guarantee of the Rights of the Indigenous Peoples of the Russian Federation and the opportunities to control the implementation of industrial projects granted to the public by the law on Environmental Impact Assessment. In 2006, regional indigenous organizations started participating in public discussions on industrial projects on Yamal, in Yakutia and Kamchatka. A network of regional indigenous information centers that publish important information about industrial projects and public discussions play an essential role in increasing awareness among the indigenous population.

At the same time, regional governments in Siberia have started to call for tenders for woodlot leases for hunting on the lands of former kolkhozes and sovkhoses (collective and state-owned farms) as the lease of these lands expired in 2006. However, there are still indigenous people living on these lands, who maintain traditional husbandry combining reindeer breeding, fishing and foraging. As a rule, commercial enterprises win such tenders and become the long-term tenants of lands, woodlots and hunting resources rather than the people who have lived there for centuries. Government executive bodies support the winners of tenders, reasoning that commercial organizations are more promising investors than indigenous peoples. The described

procedures are carried out without any expert assessments and have aroused protests from indigenous peoples and local populations, whose future depends on the goodwill of the new land tenants.

Indigenous organisations are trying to counteract the organization of tenders for woodlots on the basis of the Federal Law on Wildlife, according to which indigenous communities have the priority right of allotment. This was the way forward chosen by the Association of Indigenous Peoples of Amur Oblast north of the border with China in the Far East when it submitted a complaint regarding the unlawful actions of the regional administration to the Procurator General of the Russian Federation. Evenk in the north of Amur region have lost their reindeer herds and hunting rights and are being deprived of their livelihood and driven to despair because of illegal logging, railway construction and gold mining that is turning their pastures and hunting grounds into wasteland.

## **The Public Chamber**

A new institution began work in 2006: the Public Chamber, a kind of collective civil society ombudsman and advisory body to the Russian President created by the State Duma in 2005. This new Public Chamber held its first session on 22 January 2006 in the Kremlin in Moscow. Its role is to exercise civil control over draft legislation and the activities of the parliament, federal and regional administrative bodies, and to protect the democratic principles of the Russian Federation. Critics see the institution as the government's attempt to bring the non-governmental sector under government control and to create an illusion of an active independent civil society that belies the government's actual increasing centralisation of state power.

The Public Chamber's 126 members are NGO representatives, scientists, journalists, authors and artists, lawyers, businesspeople, religious leaders and other civil society actors. The president appointed one-third of the members, who then appointed another one-third. These 84 members chose the final one-third of the chamber from NGOs and civil society actors at regional level. Two of the Public Chamber's members are indigenous: Pavel Sulyandziga, vice-president of

RAIPON, and Yuri Tototto from the Association of Indigenous Peoples of Chukotka. The Public Chamber held two sessions in 2006 and established 17 working commissions. Pavel Sulyandziga is a member of the commission on international cooperation and public diplomacy.

What consequences and opportunities this new institution may offer the indigenous peoples in Russia remains to be seen. □

## Notes

- 1 The peoples are: Aleut, Alutor, Veps, Dolgan, Itelmen, Kamchadal, Kereki, Kety, Koryak, Kumandin, Mansi, Nanaisy, Nganasan, Negidaltzy, Nenets, Nivkhi, Oroch, Orochi, Saami, Selkup, Soioty, Tazy, Telengit, Teleut, Tofolar, Tubalar, Tuvvin-Todjin, Udege, Ulchi, Khanty, Chelkantsy, Chuvantsy, Chukchi, Chulymty, Shor, Evenk, Even, Enets, Eskimosy, Ukagir and Izhma-Komi.
- 2 These are the :
  - a) Law on Guarantees of the Rights of the Numerically Small Indigenous Peoples of the Russian Federation.
  - b) Law on General Principles of the Organisation of Communities [obshinas] of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of Russian Federation.
  - c) Law on Territories of Traditional Nature Use of the Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation (2001).

## ALASKA (USA)

According to U.S. Census Bureau 2005 estimates, Alaska Natives (as the indigenous peoples of Alaska are usually referred to) make up 16 percent of the Alaskan population of 663,661.<sup>1</sup> This is in contrast to the 2000 census when the Alaska Native population of 119,241 made up 19 percent of Alaska's population. The majority of Alaska Natives (58%) live in rural Alaska, often in remote villages where they live a predominantly subsistence lifestyle.<sup>2</sup>

There is great diversity among Alaska Native cultures. There are four major cultural groups. These are the Yup'ik (Eskimo) of western Alaska, the Inupiat (Eskimo) of north-west and northern Alaska, the Athabaskan Indians of interior Alaska, and the Tlingit and Haida Indians of south-east Alaska. Smaller groups include the Aleut, Alutiq (Sugpiat) and Tsimshian.

The Alaska Native Claims Settlement Act of 1971 (ANCSA) settled aboriginal land claims in Alaska by using business corporations as the vehicle through which to receive the settlement. There are 229 federally recognized tribal governments in Alaska that retain a special government-to-government relationship with the US government.

### Healing, wellness and education

Alaska Natives are looking for ways to balance resource development, subsistence and healthy lifestyles. It continues to be a challenge but, through education, communication and stricter environmental regulations, some progress is being made.

Community healing and wellness is an issue that is bringing indigenous communities together across Alaska to discuss critical health issues such as obesity, diabetes, and drug and alcohol abuse. As a part of developing healthy communities, villages are also concerned with education issues, environmental impacts and capacity building for employment opportunities. Alaska Native leaders are working together to raise awareness of these challenges by creating committees and drawing on the strengths of Alaska Native cultures to come up with solutions. In some instances, contemporary Western methods of community development are being replaced with talking circles similar to those used in the traditional *qasgiq* (men's house) of long ago.

With changes in diets away from traditional foods, and more sedentary lifestyles, obesity and type II diabetes are reaching epidemic proportions. Healthy eating and exercise programs are being re-introduced to meet the challenge of these two totally preventable conditions. Subsistence foods are emphasized for healthy diets, with new ways of food preservation being taught. For example, instead of preserving berries in sugar, some people are freezing them plain. Smoked fish are brined for shorter periods of time, resulting in less salt consumption. Many are eating less fried foods and using non-trans fat cooking oils. Communities are developing awareness programs around the health dangers of junk food and soda pop.

A dangerous drug known as methamphetamine ("crystal meth") is sweeping across America, including Alaska, at an alarming rate. Communities are banding together against this destructive drug. Addiction is instant and chances of total rehabilitation are slim. Communities are addressing these social problems by communicating with young people through formal education and encouraging them to engage in cultural activities.

The University of Alaska Fairbanks' Department of Alaska Native and Rural Development distance delivery program offers a course in Community Healing and Wellness that is provided across Alaska. This course covers a range of issues that Alaska Native people and communities need support with. Among these are the negative impacts of the government assimilation policies of the past, along with current issues such as ill-conceived development plans and environmental degradation. The class, taught by an indigenous faculty member, focuses on both traditional education and spirituality. Rural Development classes



regularly include traditional knowledge through the use of indigenous elder guest speakers. This knowledge has sustained Alaska Natives for over 10,000 years and greatly enhances modern university classes. Alaska Native Elders are once again being recognized as traditional teachers, bringing life to a past that helps to make sense of this rapidly changing world.

Traditional education is being recognized along with Western knowledge in state school classrooms as well. A culturally relevant curriculum is being developed by certified teachers and utilized by both Native and non-Native teachers. New advancements for Alaska Natives are taking place in the state school system as Alaska Natives are now serving as superintendents of several rural school districts. Traditional languages are being taught in immersion schools and incorporated into regular classrooms where it was once forbidden due to the former government policy of assimilation.

## Alaska Native business corporations

The Alaska Native Claims Settlement Act of 1971 (ANCSA) was landmark legislation that provided for the formation of 12 regional business corporations plus over 200 village corporations in Alaska. There are now roughly 170 village corporations due to mergers. While the corporations are involved in a wide range of activities, many of them are increasingly taking part in U.S. government contracting through a programme to promote tribal self-sufficiency (read more about this in *The Indigenous World 2006*).

In the first 35 years of their existence, the corporations had varying degrees of success. Some were consistently profitable while a few found themselves in bankruptcy. In 2006, all 12 of the regional corporations made a profit. Chugach Alaska Corporation, representing 2,200 indigenous shareholders of Prince William Sound and the lower Kenai Peninsula, was in bankruptcy in the early 1990s but showed a profit of US\$38.6 million in 2006. The Arctic Slope Regional Corporation, representing 9,000 indigenous shareholders of the oil rich North Slope, produced a 2006 profit of US\$127.5 million. In many cases, it is government contracting that is generating the new found wealth. Alaska Native corporations have entered into US\$3 billion of government contracts over the past six years. These contracts have enabled implementation of such far-reaching tasks as training security guards in Iraq to renovating the U.S. Consulate's offices in Sao Paulo, Brazil.<sup>3</sup>

## Oil development

The long-contested future of the Arctic National Wildlife Refuge (ANWR) took a different turn in 2006 due to the national elections. The opening up of the refuge to oil exploration and development rests in the hands of the U.S. Congress and the President of the United States. While there are Republicans and Democrats on both sides of the debate, it is generally accepted that it is the Republicans who want development and the Democrats who wish to protect the refuge from development. In 2005 and through most of 2006, the Republican Party held

control of both houses of the U.S. Congress as well as the White House. Despite this, they were unable to muster the votes necessary to open the refuge up. The November 2006 elections changed the balance of power as Democrats took control of both houses of Congress. It now seems unlikely that the refuge will be opened up to oil development in the near future. Several Alaska Native corporations maintain drilling rights within the refuge, should it be opened. There is no consensus among Alaska Natives, however, as to whether or not this opening should occur. The most support for opening up the refuge comes from the Inupiat corporations of the Arctic slope (although there are Inupiat that strongly oppose it) while the strongest opposition comes from the Gwich'in Athabaskan of the eastern interior of Alaska.

The trans-Alaska oil pipeline suffered its worst oil spill ever when 267,000 gallons of crude oil spilled onto the tundra near Prudhoe Bay in March 2006. Subsequent inspections of the pipeline revealed that 16 miles needed to be replaced and other sections refurbished due to corrosion.<sup>4</sup>

## **Alaska Natives deployed to Iraq war**

In the largest deployment of Alaska National Guard soldiers since World War II, nearly 600 Alaska Natives were sent to Iraq. They represent 81 different Alaskan communities and all of the indigenous cultures of Alaska.<sup>5</sup> These soldiers are primarily from small indigenous communities in rural Alaska. Coming from an Arctic climate, some soldiers seemed more concerned with surviving the intense heat of Iraq than with the dangers of combat. The National Guardsmen were first sent to Mississippi for special training before departing for the Middle East. There have been numerous other Alaska Natives already serving in Iraq as part of the regular U.S. military forces there. □

## **Notes**

- 1 The U.S. Census is available online at <http://quickfacts.census.gov/qfd/states/02000.html>

- 2 **Alaska Native Policy Center, First Alaskans Institute, 2004:** *Our Choices, Our Future: Analysis of the Status of Alaska Natives*. Report, 2004.
- 3 **Hopfinger, Tony, 2007:** Masters of the Game. *Alaska Magazine*. December/January 2007 (pp. 26-31 and 81-82).
- 4 *Alaska Daily News*. December 31, 2006.
- 5 *Alaska Daily News*. December 31, 2006.

## ARCTIC CANADA

### THE NORTHWEST TERRITORIES

Canada's Northwest Territories has a total population of some 42,000. Aboriginal people – mainly Inuvialuit, Dene and Métis – comprise approximately half of this figure. For many Aboriginal communities, hunting, trapping, fishing and gathering remain important social, cultural and economic activities. Over the last 25 years, land claims and self-government negotiations have meant the recognition of Aboriginal rights. The Inuvialuit reached a land claim in 1984, the Gwich'in in 1992 and the Sahtu Dene in 1994. Negotiations for land, resource and self-government rights continue with the Deh Cho First Nations, while negotiations for self-government are in progress with the Inuvialuit, Gwich'in and the Sahtu Dene community of Deline. Although traditional hunting and trapping practices remain vital to the daily lives of Aboriginal people in the Northwest Territories, commercial fishing, diamond mining and the oil and gas industries increasingly provide employment. The recognition of indigenous peoples' rights has meant that many Aboriginal communities have entered into resource development projects through joint ventures with industry and government, impact benefit agreements and environmental monitoring projects.

The Canadian North as a whole is on the verge of major developments in the oil and gas industries. In the Northwest Territories (NWT), the main events of 2006 were again dominated by discussion over the regulatory process and procedures for the environmental and technical assessment of the Mackenzie Gas Project, a Can\$7.5 billion

project proposed by Shell Canada Limited, Conoco Phillips Canada (North) Limited, ExxonMobil, Imperial Oil Resources Ventures Limited and the Aboriginal Pipeline Group (collectively referred to as the Proponents). If approved, this energy mega-project would develop natural gas from three anchor fields in the Mackenzie Delta area for delivery to markets in Canada and the United States, as well as to power further development in Alberta's rapidly growing oilsands industry. The oilsands of northern Alberta contain enormous deposits of bitumen – an estimated 1.7 to 2.5 trillion barrels of oil trapped in a viscous mixture of sand, water and clay that require heated water and hydrocarbons to extract them.

The Mackenzie Gas Project comprises several elements: three natural gas production facilities in the Mackenzie Delta; a gathering pipeline system; a gas processing facility near Inuvik; a natural gas liquids pipeline from Inuvik to Norman Wells; and a natural gas pipeline. The total length of the pipeline would be about 1,300 kilometres. Opinion in Aboriginal communities is divided on the impacts and benefits of the project – many people are concerned about irreversible negative social, economic and environmental impacts, while others see it as an important way to provide employment and prosperity to Northern communities.

Public hearings began in Inuvik in January 2006, comprising both technical hearings by Canada's National Energy Board along with parallel hearings on environmental, social and economic issues conducted by the federal government-appointed Joint Review Panel. The hearings were carried out in 26 communities in the Northwest Territories, along with communities in Alberta (including the provincial capital Edmonton). The National Energy Board hearings were concluded in December 2006, although the Joint Review Panel announced it was continuing hearings through to the spring of 2007. The Joint Review Panel is expected to release its report in August 2007, after which the National Energy Board will review the testimony and all information presented by the proponents, intervenors and communities and recommend a decision on the project to the Canadian federal government.

The hearings are being held thirty years after the Berger Inquiry, the original hearings process to determine whether a Mackenzie Valley



gas pipeline should be built following the discovery of gas in the Mackenzie Delta in the early 1970s. Justice Thomas Berger's principal recommendation in his 1977 report *Northern Frontier, Northern Homeland* was that a 10-year moratorium should be placed on pipeline construction until Aboriginal land claims had been settled. Berger was particularly concerned about the rights of Aboriginal people to have some say in development plans.

### **Aboriginal responses to the Mackenzie Gas Project**

The latest plan to build a pipeline sees Aboriginal peoples as major stakeholders in the project. With most Aboriginal groups having had land claims settled, and with optimism over high natural gas prices kickstarting talks in 2000 to get the pipeline built, the Inuvialuit, the Gwich'in and the Sahtu Dene will be one-third owners of the pipeline and currently form the Aboriginal Pipeline Group. Most Aboriginal leaders are key supporters of the project, arguing that oil and gas development is the only way Aboriginal communities – and the economy

of the Northwest Territories as a whole – can achieve jobs and prosperity. However, the public hearings have revealed that opinions on the project in Aboriginal communities are contested and divided. The hearings process has given Aboriginal peoples living in Mackenzie Delta and Valley communities an unprecedented opportunity to express their feelings, anxieties and concerns over the Mackenzie Gas Project. For Aboriginal peoples – and all residents of the NWT – the hearings have offered the opportunity and space for open conversation and debate, for the exchange of information and ideas and for a greater understanding of the scope of the project before a final decision is made and before the specific conditions are set out.

The unresolved land claim of the Deh Cho First Nations in the central Mackenzie Valley continues to prove a barrier to the project. The proposed pipeline route is approximately 40% in Deh Cho traditional territory. Although not opposed to the project, nor to membership of the Aboriginal Pipeline Group, for the Deh Cho a land claim settlement is a precondition before discussions can begin. On 23 May 2001, the Deh Cho First Nations signed two agreements with the governments of Canada and the NWT: 1) A Framework Agreement which sets out the objectives, agenda of topics and negotiating principles of the treaty-making process and 2) An Interim Measures Agreement which establishes land-use principles and procedures that are to be observed during the several years it will take to negotiate and ratify a Final Agreement. These two agreements are the first steps towards a comprehensive agreement on outstanding land and self-government issues, which in effect will be a modern treaty between the Deh Cho and Canada.

The Deh Cho argue that they are entitled to revenue from the Mackenzie gas pipeline paid to them directly as a separate level of government. The Deh Cho emphasize that they have never surrendered title to their lands and territories and that treaties made with the Crown confirm they are the governing authorities on their lands. They are asking for greater clarity around royalty sharing, better environmental assessment, greater understanding of the social impacts and a guaranteed voice on the Joint Review Panel. The Deh Cho have been criticized by the Aboriginal Pipeline Group for their position and have come under pressure to join the Aboriginal Pipeline Group. In turn, the Deh

Cho have criticized the APG as being a partner with the energy companies only in the construction and operation of the pipeline, not as a partner that would own the gas that will flow through it. Suspicious that the energy companies are only using the Aboriginal Pipeline Group to help finance the construction of the pipeline, the Deh Cho have agreed to consider joining the group only if they think it makes economic sense to do so.

In October 2006, Alternatives North, a Yellowknife-based coalition of environmental NGOs and social justice groups, released a financial and economic assessment of the Mackenzie Gas Project which shows that the project will generate huge revenues for the project proponents, while First Nations and northern governments will benefit very little under the current royalty regime in the NWT. The Deh Cho position is that, as the current royalty regime will benefit energy companies and not Aboriginal and local people in the NWT, and as Canada shows no willingness to consider reforming it, then the Deh Cho have to insist that Canada recognizes their jurisdiction over Deh Cho lands and resources. □





NORTH AMERICA

## CANADA

The term “Aboriginal people” is a collective name for the Indigenous Peoples of North America. The *Constitution Act, 1982* of Canada recognizes three groups of Aboriginal peoples: Indians, Métis and Inuit. According to the 2001 Canadian Census, there are 976,305 Aboriginal people in Canada, which would represent 3.3% of the population.<sup>1</sup> More current figures provided by Aboriginal organizations reflect the following:

*First Nations* (“Indians” in the Constitution) are generally those registered under Canada’s *Indian Act*. First Nations are a diverse group of 756,700 people, representing more than 52 nations and more than 60 languages. 62 percent (471,900) live on-reserve and 38 percent (284,800) reside off-reserve in urban, rural, special access and remote areas.”<sup>2</sup> The *Inuit* number 45,000 people, living in 53 Arctic communities in four geographic regions: Nunatsiavut (Labrador); Nunavik (Quebec); Nunavut; and the Inuvialuit Settlement Region of the Northwest Territories.<sup>3</sup> The *Métis* constitute a distinct Aboriginal nation, numbering 262,785 in 2001, two thirds of whom live in urban centers, mostly in western Canada. “The Métis people emerged out of the relations of Indian women and European men prior to Canada’s crystallization as a nation.”<sup>4</sup>

2006 proved to be a difficult year for Aboriginal peoples in Canada, partly as a result of political changes at the federal level. In less than a year, Aboriginal peoples have seen devastating results, including: the refusal to honour the Kelowna Accord (see below) to alleviate poverty; drastic cuts in funding for Aboriginal languages; and the reversal of



the positive approach to the United Nations Declaration on the Rights of Indigenous Peoples, a reversal which has impacted upon indigenous peoples worldwide. This year also saw the escalation of a First Nations land claim dispute in Caledonia, Ontario.

Despite the setbacks, there were a number of positive developments, as well as the announcement of initiatives that will require that proper consultations be undertaken by the federal government.

## 2006 federal elections

In early 2006, Canadians replaced the Liberal government which had been in power since 1993 with a minority Conservative government. This proved to be a watershed moment for Indigenous peoples in Canada, as the Conservative government wasted no time in reversing policies and agreements implemented by previous governments.

Unfortunately, it is not just Aboriginal people who are feeling the effects of this political shift. For example, the minority Conservative

government of Canada has also cut programs for women and stepped away from its obligations under the Kyoto Accord.

## **Kelowna Accord**

The Kelowna Accord was the result of more than a year and a half of work that led up to the First Ministers' Meeting in November 2005, in Kelowna, British Columbia. The Accord was a non-partisan agreement between the federal government, Canada's provinces and territories, and national Aboriginal leaders. The President of the Inuit Tapiriit Kanatami (ITK), Mary Simon, explained: "The First Ministers' Meeting culminated...in the government of Canada pledging to invest 5.1 billion dollars to begin, and I emphasize to begin, to deal with the profound gaps in health, education and housing that cripple Aboriginal peoples and that shame our country."<sup>5</sup>

The gap between the standard of living for Aboriginal peoples and Canadians generally is profound. According to the Assembly of First Nations (AFN): First Nations people live in Third World conditions; die earlier than other Canadians; face increased rates of suicide, diabetes, tuberculosis and HIV/AIDS; face a crisis in housing and living conditions; are not attaining education levels equal to other Canadians; lack jobs and economic opportunities; and receive less from all levels of government than non-Aboriginal Canadians. In fact, "The average Canadian gets services from the federal, provincial and municipal governments at an amount that is almost two-and-a-half times greater than that received by First Nations citizens".<sup>6</sup>

To date, the Conservative government has failed to honour the Accord, which was intended to close this gap and break the cycle of poverty over a 10-year period. This was a huge blow to the hopes and aspirations of Aboriginal peoples, and many efforts were made over the year to push the minority government to honour and implement the Accord. Efforts included endorsement of the agreement by the provincial and territorial premiers and Aboriginal leaders in July, as well as the introduction of a private members' bill in the House of Commons, *Bill C-292: an Act to Implement the Kelowna Accord*. The Bill passed its second reading in October with the unanimous support of

the federal opposition parties, and was referred to the parliamentary Standing Committee on Aboriginal Affairs.

## **United Nations Declaration on the Rights of Indigenous Peoples**

A further blow to the hopes and aspirations of Aboriginal peoples in Canada, indeed to Indigenous peoples around the world, was the new position of the minority government to actively oppose the United Nations Declaration on the Rights of Indigenous Peoples (hereafter the Declaration. *Read more about the Declaration in section II of this book*). The Declaration was adopted by the United Nations Human Rights Council (UNHRC) in June 2006, despite the objections of Canada and Russia. Prior to the change in government, Canada had previously taken an active and positive leadership role in this process. The Conservative government took this shocking reversal of position without consulting Aboriginal peoples, a “process [which] amounts to a breach of its fiduciary duty and a failure to fulfil its constitutional obligation to consult in a meaningful way with Indigenous Peoples and accommodate their interests. Canada has also failed to uphold its international obligations, particularly its human rights obligations.”<sup>7</sup>

“In 2004, there appeared to be an emerging consensus between States and Indigenous Peoples concerning provisional adoption of a...large number of articles...[and] in 2005, the Working Group redoubled its efforts to elaborate a Declaration. Canada played a critical role in building state support for the principles, and actively participated in the informal consultations. Canada was not only a supporter, but also a major proponent of a number of these key provisions, such as PP6, PP13, Article 22 bis, Article 36 and Article 45 (this latter Article the new Conservative Government now apparently finds is highly inadequate).”<sup>8</sup> Aboriginal peoples repeatedly tried to engage the Conservative government on this matter, both before and after the inaugural meeting of the UNHRC. Despite the unanimous objections of the federal opposition parties<sup>9</sup>, the minority government insisted that “...no previous government of the country has ever supported that draft declaration.”<sup>10</sup>

When Canada was elected as a member of the UNHRC, it agreed to “uphold the highest standards in the promotion and protection of human rights ... and is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”.<sup>11</sup> Its actions at the inaugural meeting of the UNHRC, as well as in the Third Committee of the General Assembly betray these obligations, and were roundly condemned by Aboriginal groups in Canada. “In fact, the Indigenous Caucus, representing Indigenous Peoples globally, called for the review of Canada’s membership on the Human Rights Council based on its attempts to block the adoption of the Declaration at the Council which were characterized as politically ‘self-serving’.”<sup>12</sup>

It is felt that the actions of the minority Conservative government of Canada with respect to the Declaration are a stain upon Canada’s international reputation as a leader in indigenous and human rights: “The Métis National Council deplors any actions that damage Canada’s international human rights record, and urges action by all parties in opposition to assist Indigenous peoples to obtain a just Declaration...within the 10 month deadline...”<sup>13</sup>

## **Significant cuts to funding for Aboriginal languages**

In September 2006, the Minister of Canadian Heritage announced that Can\$160 million dollars would be removed from the Can\$172 million budget set aside in 2002 for the preservation, revitalization and promotion of Aboriginal languages and cultures. At the same time, the Minister announced that she was retaining the “Aboriginal Language Initiative...for a total of Can\$50 million.”<sup>14</sup>

Aboriginal peoples in Canada reacted with outrage at this announcement. According to AFN National Chief, Phil Fontaine: “Preserving our languages, our way of life, is a sacred trust that must never be broken...We consider the loss of any language funding as a direct attack on First Nations. Language is the very foundation of our cultures and traditions, and it is the key to our identity as First Nations peoples.”<sup>15</sup>

Unfortunately, this situation remains unresolved to date, although the Minister has committed to work with Aboriginal Peoples to develop a plan of action.

## **Caledonia**

On February 28, 2006, Six Nations people and supporters reoccupied a 40-hectare tract of land located in Caledonia, Ontario, in order to block further construction by a developer on land that has been under dispute for more than 200 years. The British Crown gave the Six Nations property to Iroquois followers of Chief Joseph Brant in 1783.<sup>16</sup> Provincial and federal governments, however, maintain that the land in question was surrendered in 1841.

There has been some violence related to the reoccupation and accompanying road block, which has led to calls for a peaceful resolution in order to avoid another situation such as that in Oka, Quebec in 1990, when a violent clash pitted Aboriginal peoples against the provincial police and the Canadian army: The Assembly of First Nations maintains in a statement issued in June, that “respectful dialogue and negotiations is the right way to resolve these issues.”<sup>17</sup>

In response to such calls, talks have been ongoing between native leaders and federal and provincial officials. In addition, the Ontario provincial government purchased the land from the developers in June. Aboriginal peoples in Canada and their supporters are monitoring the situation closely, and expecting a fair and just settlement.

## **Repeal of Section 67 of the Canadian Human Rights Act**

Section 67 of the Canadian Human Rights Act (CHRA) states: “*Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.*”<sup>18</sup> According to the federal government: “[t]his exemption has the effect of shielding the provisions of the *Indian Act* and any decisions made or actions taken by band councils and the federal government, made under or pursuant to the *Indian Act*, from the application of the Canadian Human Rights Act...This means that

they don't have full access to human rights protection and are unable to file complaints with the Canadian Human Rights Commission..."<sup>19</sup> The Assembly of First Nations supports the repeal of section 67 of the CHRA; however, there are a number of issues that must be addressed first:

*"First Nations must be properly consulted on the proposed repeal of section 67 of the CHRA ...[they] must also be consulted with respect to any potential impacts on Aboriginal and Treaty rights...[and] an appropriate balance must also be struck between individual rights and values and the collective, constitutionally protected rights of First Nations Peoples. First Nations must also be consulted on any resultant amendments to the Indian Act..."*<sup>20</sup>

The AFN and the Native Women's Association of Canada (NWAC) are working together to ensure that government undertakes "an open, transparent process for assessing the impacts on individuals and First Nations communities, and to commit to an implementation that is collaboratively developed by government and the First Nation communities including the full and meaningful participation of Aboriginal women."<sup>21</sup>

## **Matrimonial Real Property on Reserve**

In the Canadian legal system, matrimonial property is generally defined as property owned by one or both spouses and used for a family purpose. Matrimonial real property (MRP) includes the land and anything permanently attached to the land, such as the *family home*. Provinces have jurisdiction over property and civil rights and have enacted laws protecting spousal interests in matrimonial property. However, because reserve lands fall under federal jurisdiction, case law has established that provincial legislation cannot apply to alter individual interests in MRP located on reserve lands.<sup>22</sup> Further, there are provisions in the *Indian Act* and the Canadian Constitution that protect reserve lands from alienation and ensure that they are preserved for the use and benefit of band members. What this means is that in the

event of a marriage breakdown, spouses on- reserve find themselves without legal protection or remedy to address the issue of the matrimonial home in the same way that Canadians can ask the courts to order a division of assets, or award the home to one of the parties.

The federal government has announced its intention to find legal and/or other remedies to close this legislative loophole. It is an issue which appears to disproportionately affect First Nations women and children.<sup>23</sup> However, the scope of the problem remains undefined, and more research needs to be done in this area. NWAC is undertaking consultations on this matter, while the AFN is holding Regional Dialogue Sessions, as it has taken the position that the federal government cannot delegate its responsibility to consult.

AFN Resolution No. 32/2006 calls for the development of options to recognize and implement First Nations jurisdiction over matrimonial real property on reserve lands,<sup>24</sup> rather than accept an imposed solution that would not address a broad range of First Nations concerns, such as protection of Aboriginal and treaty rights, First Nations jurisdiction over land use on reserves and over a range of family law matters, collective interests in lands on reserve, and the balancing of collective and individual rights.

The Conservative government has indicated that it intends to introduce legislation on this matter in the spring of 2007. While it remains to be seen whether this will happen, it is clear that this timeline would not allow for full consultation with Aboriginal peoples.

## **Positive Developments**

Despite the setbacks endured in 2006, there have been a number of positive advancements, including:

- confirmation of the 2005 Residential Schools Final Agreement to compensate approximately 78,000 survivors of the residential school system, including expedited payments for elderly survivors and the creation of a national “truth-telling” commission;

- a Supreme Court of Canada decision to uphold the First Nations right to access natural resources in their traditional territories;
- a Summit on Aboriginal Health which resulted in a reaffirmed commitment to close the health gap that exists between Aboriginal peoples and other Canadians within a decade, hopefully to be followed by implementation of some of the Kelowna Accord agreements;
- a forum to follow-up on the 2004 mission to Canada by the U.N. Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people;
- legislation to enable First Nations in British Columbia to assume greater control over education on-reserve; and
- significant ongoing Aboriginal involvement in the plans for the 2010 Olympic and Paralympic Winter Games, which will be held in Vancouver, British Columbia, with a view to achieving unprecedented Aboriginal participation in the games.

These achievements and others have restored some hope amongst Aboriginal peoples in Canada. Aboriginal peoples must continue to work with each other and their allies to address the challenges that 2007 will bring, and to achieve a satisfactory resolution of the challenges outlined above. □

## Notes and references

- 1 **Statistics Canada, 2007:** *Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories - 20% Sample Data.* <http://www12.statcan.ca/english/census01/products/highlight/Aboriginal/Page.cfm?Lang=E&Geo=PR&Code=0&View=1a&Table=1&StartRec=1&Sort=2&B1=Counts01&B2=Total>  
Note: these numbers are not thought to be entirely reliable for a number of reasons, including the age of the data and the fact that it is unclear how many Aboriginal people actually participated in the Census.
- 2 **Assembly of First Nations, 2007:** *Fact Sheet: First Nations Population* <http://www.afn.ca/article.asp?id=2918>
- 3 **Inuit Tapiriit Kanatami:** *Backgrounder, Inuit Tapiriit Kanatami* <http://www.itk.ca/media/background-itrk.php>
- 4 **Métis National Council:** *Who are the Métis?* <http://www.metisnation.ca/who/faq.html>

- 5 **Inuit Tapiriit Kanatami, 2006:** *Kelowna Accord One Year Later: Inuit Testify at Standing Committee on Vitality of Kelowna Accord for Inuit, Aboriginal Peoples, Canada, and Honour of the Crown* <http://www.itk.ca/media/2006/press-archive-20061127.php>. Press Archive.
- 6 **Assembly of First Nations, 2006:** *Submission to the [United Nations] Committee on Economic, Social And Cultural Rights Regarding the 5th Periodic Report of Canada. Appendix A: Fact Sheet: The Reality for First Nations in Canada.*
- 7 **Assembly of First Nations and Native Women's Association of Canada, 2006:** *United Nations Declaration on the Rights of Indigenous Peoples: Positions of Indigenous Peoples and the New Conservative Government of Canada.* Media Kit.
- 8 Ibid. For the full text of the Declaration on the Rights of Indigenous Peoples, please see the Report to the General Assembly of the First Session of the Human Rights Council available at <http://daccessdds.un.org/doc/UNDOC/LTD/G06/128/65/PDF/G0612865.pdf?OpenElement>
- 9 See, for example, a motion passed by the Standing Committee on Aboriginal Affairs, where the Bloc Quebecois, Liberal and New Democratic Party members of Parliament supported the Declaration and passed motions recommending that the full House of Commons support it as well. Frustrated with the response from the Conservative government, on November 23 the Standing Committee passed a motion to "...travel to the United Nations in New York in December 2006, to encourage Members of the General Assembly to vote in favour of the United Nations Declaration on the Rights of Indigenous People."
- 10 Minister of Indian Affairs, Jim Prentice, House of Commons, June 21, 2006.
- 11 **Human Rights Council, 2006:** A/RES/60/251, 15 March 2006, paragraphs 9 & 2.
- 12 **Assembly of First Nations and Native Women's Association of Canada, 2006:** *United Nations Declaration on the Rights of Indigenous Peoples: Positions of Indigenous Peoples and the New Conservative Government of Canada.* Media Kit. Refers to a letter dated June 19, 2006, sent to Canada's Minister of Foreign Affairs, Peter MacKay, by Les Malezer, on behalf of the Indigenous Caucus.
- 13 **Métis National Council, 2006:** *Métis National Council Statement on the decision of the General Assembly Third Committee on delaying adoption of the United Nations Declaration.* <http://www.metisnation.ca/press/2006.html#>. Media Release.
- 14 **First Peoples Heritage, Language and Culture Council, 2006:** *Urgent News - Department of Canadian Heritage Cuts Language Funding by 68%.* <http://www.fphlcc.ca/Home.aspx>
- 15 **Assembly of First Nations, 2006:** *First Nations Seek Clarification on Status of \$160 Million in Aboriginal Language Funding.* Press Release. <http://www.afn.ca/article.asp?id=3082>
- 16 **Mostly Water, 2006:** *History of the Land Claim.* <http://mostlywater.org/node/5718>. May 3, 2006.
- 17 **Assembly of First Nations, 2006:** *Statement by Assembly of First Nations on the Situation at Six Nations-Caledonia* <http://www.afn.ca/article.asp?id=2682>. June 15, 2006.
- 18 **Department of Justice Canada:** *Canadian Human Rights Act ( R.S., 1985, c. H-6 ).* [http://lois.justice.gc.ca/en/showdoc/cs/H-6/bo-ga:l\\_IV/en#anchorbo-ga:l\\_IV](http://lois.justice.gc.ca/en/showdoc/cs/H-6/bo-ga:l_IV/en#anchorbo-ga:l_IV)

- 19 **Indian and Northern Affairs Canada, 2006:** *Backgrounder: Repeal of Section 67 of the Canadian Human Rights Act* [http://www.ainc-inac.gc.ca/nr/prs/s-d2006/02831bk\\_e.html](http://www.ainc-inac.gc.ca/nr/prs/s-d2006/02831bk_e.html)
- 20 **Assembly of First Nations, 2006:** *Submission to the [United Nations] Committee on Economic, Social and Cultural Rights Regarding the 5th Periodic Report of Canada.* pp 11-15.
- 21 **Native Women's Association of Canada, 2006:** *Assembly of First Nations, Native Women's Association of Canada call for full consultation before the repeal of Section 67 of Canadian Human Rights Act.* Media Release. [http://www.nwac-hq.org/\\_includes/pdf.php?press\\_id=30](http://www.nwac-hq.org/_includes/pdf.php?press_id=30)
- 22 **Department of Indian Affairs and Northern Development, 2006:** *On-Reserve Matrimonial Real Property, Backgrounder* [http://www.ainc-inac.gc.ca/nr/prs/m-a2003/02329bk\\_e.html](http://www.ainc-inac.gc.ca/nr/prs/m-a2003/02329bk_e.html)
- 23 The Canadian government has been repeatedly reprimanded over this legislative loophole. See for example the *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*. 10/12/98. E/C.12/1/Add.31.
- 24 **Assembly of First Nations, 2006:** *Regional Dialogue Sessions Resource Handbook, Matrimonial Real Property on Reserves: Our Lands, Our Families, Our Solutions.* AFN, November 2006.

## UNITED STATES OF AMERICA

According to the 2000 United States Census, 2,377,913 people in the United States minus Alaska identified as Native American only, and 4,000,060 people identified as Native American in combination with another ethnic identity. These numbers add up to slightly less than 1% and around 1.5% of the total population respectively.

There are currently around 335 federally recognized tribes in the United States minus Alaska. More than half of American Indians live off-reservation, many in cities.

American Indian law includes individual treaties and federal Indian law, which is in flux and often dependent on individual U.S. Supreme Court decisions. Tribal governments' sovereignty is limited by plenary power of the U.S. Congress. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the federal government's trust responsibilities to Indian tribes.

As a whole, American Indians have a lower life expectancy and higher poverty rates, and have the highest rate of service in the U.S. armed forces. Some of the main challenges they face are related to trust lands and sovereignty, unemployment, housing shortages, health problems and youth suicides.

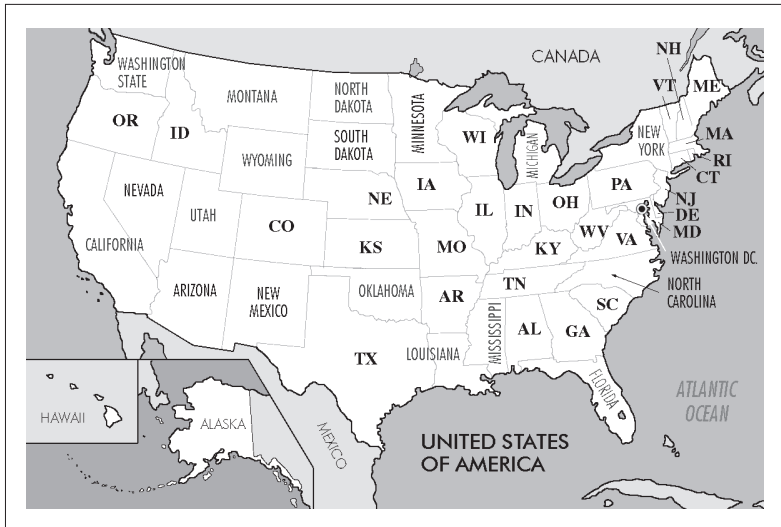
Once again, developments in the political, legislative, social and cultural context for indigenous peoples in the United States in 2006 took place against the backdrop of an emotionally, physically, and financially costly prolonged war in Iraq and Afghanistan. With the federal budget running record deficits, many sources of funding for

American Indians have been continuously cut back. In addition to this, the Bush administration cut the already strained budget for the Bureau of Indian Affairs (BIA) by US\$3 million. The money, the administration argued, was needed to pay legal fees in connection with the Cobell lawsuit over trust money irregularities (see below). This move was roundly rejected by the plaintiffs and key members of Congress as a conscious attempt to “divide and conquer” tribal governments.<sup>1</sup>

## **Trust responsibility**

After ten years, the Cobell lawsuit over the government’s mishandling of more than US\$100 billion of trust money was close to a settlement in 2006.<sup>2</sup> The Senate Committee on Indian Affairs had proposed a settlement of US\$8 billion. However, the White House failed to respond to the settlement proposal and asked for more time. In a related issue, the Bush administration proposed sweeping changes to the federal trust responsibility in general. In its adopted role as guardian of its Indian wards, the federal government holds some Native American lands in trust, i.e., it holds the title to the land and collects lease monies, which it is then responsible for paying out to the individual and collective Indian owners of the land. In return, these lands are freed from state taxation. The proposed trust reform would terminate federal liabilities for trust fund accounts, which are supposed to manage tribal income from oil, gas, and timber leases within ten years. The federal government has mismanaged these accounts for decades. A report on the years 1973 through 1992 found US\$2.3 billion in unaccounted transactions; the whole extent of federal mismanagement is impossible to reconstruct.<sup>3</sup>

In December 2006, the federal judge presiding over the Cobell lawsuit was replaced in an unprecedented move. Judge Lamberth had repeatedly found the government in contempt of court. An appeals court found that he had appeared biased against the government, and he was replaced by Judge Robertson. Robertson has also recently expressed dissatisfaction with the Bureau of Indian Affairs over inaction by the agency in the recognition process for the Mashpee Wampanoag Tribe. Lawyers for the Cobell side, representing over 500,000 individual trust fund holders, expressed hope that a settlement could be reached in 2007.<sup>4</sup>



In January 2006, a federal court handed four Chippewa tribes, the Chippewa Cree Tribe (Montana), the Little Shell Chippewa Tribe (Montana/North Dakota), the Turtle Mountain Band of Chippewa (North Dakota) and the White Earth Band of Ojibwe (Minnesota), a victory in a trust fund case. In 1981, the tribes had been awarded US\$52 million by the Indian Claims Commission for the loss of 20 million acres. The money, as is custom in such cases, had been given to the Treasury Department. However, investment records were either not kept or were lost, so that the tribes or tribal members never saw any of the money. The Bush administration tried to argue that the money had not been labeled explicitly as “trust” money by Congress when authorizing the acts that led to the award. U.S. Court of Federal Claims judge Hewitt refused this argument. The government is expected to pose more challenges to the case.<sup>5</sup>

## Elections

National elections in the United States in November 2006 handed over both the House of Representatives and the Senate to the Democrats. The results were in part based on a loss of trust in the political system

after the Abramoff scandal had unearthed a wide network of political corruption (see *The Indigenous World* 2006). President Bush (Republican) will stay in office for two more years. The change in political power in Congress gave American Indians hope that budget cuts in Native American-related government programs would be limited in the future.

Several tribes also held tribal elections in November. The race for tribal president on the Pine Ridge Sioux Reservation in South Dakota attracted the most attention. In May, President Cecilia Fire Thunder was suspended from office by the tribal council after arguing that an extremely strict South Dakota state law banning abortion procedures would not apply to the reservation. The council outlawed abortions and impeached Fire Thunder in late June. Alex White Plume was named President until elections in November, and then stood against John Yellow Bird Steele. Days before the elections, however, White Plume was taken off the ballot because of an old felony record. Steele won the vote but White Plume nullified it and called for new elections. He continued to occupy administrative office until the middle of December.<sup>6</sup> Of note also was the defeat of Tex Hall, a prominent political figure and previous leader of the National Congress of American Indians, in the race for Tribal Chairman on the Fort Berthold Reservation in North Dakota.

## **Cherokee Freedmen**

In March 2006, the Cherokee Nation's highest court ruled that the Cherokee Freedmen, descendants of African-American slaves of the Cherokee in Oklahoma, should retain citizenship rights and were entitled to voting rights. The 1975 Cherokee constitution has no "blood quantum" rule that would limit Cherokee tribal membership to those of "Indian blood". Instead, individuals need to show that their ancestors appeared on the so-called Dawes Rolls, census rolls from the 1890s. Freedmen were assigned citizenship of the Cherokee Nation after the Civil War, during which the United States passed legislation for the emancipation of all slaves. The dispute over the tribal membership of the Freedmen had been ongoing for at least twenty years. In response

to the court ruling, the Cherokee Nation council proposed a change in the constitution that would limit membership to those of Indian blood. The U.S. Department of the Interior has refused to recognize a new constitution approved in 2003 because Freedmen were prohibited from voting on it. The tribe has called for a referendum on the issue to take in place in March 2007.<sup>7</sup>

Besides raising questions over whether citizenship in Native societies should be defined culturally, historically or racially, this case marks a new test for tribal sovereignty when determining membership. Historically, U.S. courts have denied the government from interfering in tribal decisions over citizenship, even if those decisions went against the equal rights protection clauses of the U.S. Constitution (see *The Indigenous World* 2006). In this case, however, a federal judge ruled in December 2006 that the Freedmen could sue the Cherokee Nation's leadership over the proposed denial of citizenship. Judge Kennedy ruled that the Thirteenth Amendment of the U.S. Constitution, which abolished and prohibited slavery, applies to the Cherokee Nation as a private party although other parts of the constitution do not apply to tribal governments. Principal Chief Chad Smith, on the other hand, argued that the tribe did not need federal approval of its constitution. He sees the Freedmen as not belonging in an "Indian" nation.<sup>8</sup> The question of who qualifies as "Indian", and whether that decision should be based on cultural or biological criteria, has been an ongoing issue in the United States, where society in general classifies people according to "race". While historically, most Indian nations saw citizenship as defined by culture, the biological perspective of "blood quantum" has become a hegemonic criterion for defining identity.

## Spirit Cave Man

In a case related to the legal definition of indigenusness, in September 2006 a federal district court judge ordered the federal Bureau of Land Management (BLM) to reconsider its decision on the repatriation of human remains found in Nevada, the so-called Spirit Cave Man. The BLM refused to repatriate the 10,000-year-old remains to Nevada tribes under the Native American Graves Protection and Repatriation Act

(NAGPRA) because a cultural affiliation to existing tribes could not be shown. Judge Hicks called this decision “arbitrary and capricious”. The NAGPRA Review Committee also roundly criticized the BLM for the decision, having recommended repatriation of the remains in 2001.

The question of the cultural affiliation of remains to existing tribes was deemed fundamental in the more well-known Kennewick Man case (read more about this in *The Indigenous World* 2006). The definition of “Native American” in NAGPRA technically hinges upon such an affiliation. Although senators have repeatedly introduced amendments to NAGPRA that would extend the definition pertaining to historic and prehistoric groups, the Bush administration has opposed any such changes so far. The Interior Department testified in 2005 that, in their view, the intent of NAGPRA was “to give American Indians control over remains of their genetic and cultural forbears, not over the remains of people bearing no special and significant genetic or cultural relationship to some presently existing indigenous tribe, people, or culture”. By limiting the definition of “American Indian” to existing societies, the U.S. government has actually denied the fact that people in North America prior to 1492 are culturally related to contemporary groups, and has excluded pre-Columbian peoples from being indigenous. This could have disastrous consequences for NAGPRA, which applies in no small measure to archaeological findings on public lands in the United States.<sup>9</sup>

## Poverty and Justice

According to new census figures, Native Americans continue to have the highest poverty rate of any ethnic group in the United States. While the average household income for an American family was US\$ 46,326 between 2004 and 2005, that for American Indian households was US\$ 33,627. African American households earned even less, on average US\$ 31,140. The United States has a poverty rate of 12.6 percent: this translates into 7.7 million families officially living in poverty. The American Indian population, however, has a poverty rate of 25.3 percent.<sup>10</sup> These numbers are averages. Some Indian reservations have

made tremendous economic progress and, as a whole, the economy of Native Americans is looking up (see *The Indigenous World* 2006). However, some reservations have poverty rates of more than 50 percent, and unemployment rates of more than 80 percent. While some parts of the American Indian population have joined the mainstream, others remain in abject poverty. This raises the question as to whether a breakdown of economic figures by racial or ethnic category makes much sense.

Some of the poorest Indian reservations are in South Dakota, where a new report from the South Dakota Equal Justice Commission has found that there “is a strongly held perception among minority people in South Dakota, especially Native Americans, that the judicial system shows favoritism toward non-minorities”. In view of the over-representation of minorities in the criminal justice system, the report finds that the “perceptions we heard from many minority people have an undeniable basis in reality”.<sup>11</sup> This report thus confirms a 2001 report by the South Dakota Advisory Committee on Civil Rights.<sup>12</sup> What needs to be emphasized is that South Dakota does not stand alone on these issues; rather they can be seen as systemic.

## **Land and sovereignty**

In a landmark agreement, the Hopi and Navajo tribes in Arizona settled a land dispute that had afflicted their peoples for forty years. In 1966, U.S. Commissioner of Indian Affairs Bennett restricted all construction on 700,000 acres of the Navajo Reservation, which the neighboring Hopi claimed for themselves. In the so-called Bennett Freeze Area, water lines, electrical lines and even repairs of homes could only be carried out with the approval of the Hopi government. In December 2006, the ban was lifted after both tribes settled the dispute. The settlement recognizes the cultural ties of both tribes to the land and allows both tribes to cross onto the other’s land to carry out religious ceremonies.<sup>13</sup>

An agreement that shared management of the National Bison Range in Montana between the U.S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes of the Flathead Res-

ervation was unexpectedly ended by FWS in December 2006. The bison range is situated within the Reservation, and the tribes had planned a staged takeover of the range. FWS and the tribes had agreed on a shared management plan in 2004, and management responsibilities began to be shared in 2006. A report by the FWS, however, found that the tribes had neglected certain responsibilities. While the tribes denied the findings, some federal employees of the bison range also complained that the tribes created a hostile work environment.<sup>14</sup> This development comes as a sudden setback in a project that seemed destined to become a historic takeover of federal responsibilities by an Indian tribe. The shared management plan had been vehemently opposed by some interest groups ever since the idea was first circulated. That the government agreed to it marked a willingness to work with tribal natural resource agencies and pointed to an increase in ecological sovereignty. The tribes announced that they would continue to seek a role in the management of the bison range. What form this will take, and whether it will still be possible, remains to be seen.

In Washington State, the Lower Elwha Klallam tribe has settled a dispute with the state and the city of Port Angeles over land where the largest pre-conquest village in the state was excavated. The site of Tse-whit-zen was discovered in 2003 during construction work for a dry dock. In September 2006, the state agreed to transfer 17 acres and US\$ 5.5 million to the tribe, which will be used for the reburial of ancestors and site restoration. The tribe plans to build a museum on part of the land, and agreed to the development of the surrounding land for heavy maritime industrial use.<sup>15</sup> The agreement is seen as potentially being a national model for the settlement of such disputes over archaeological sites.

## **Federal recognition**

The Lumbee Tribe of North Carolina again saw their full recognition falter on the floor of Congress in 2006, despite the fact that the Senate Committee on Indian Affairs had submitted a favorable report on the Lumbee Recognition Bill. The Lumbee were recognized as an Indian tribe in 1956 but did not receive any benefits or privileges granted to

other tribes. They have been battling ever since to gain full recognition. The Recognition Bill would provide around US\$473 million over four years to the tribe, to be used for economic development, housing, education and health. Opposition to the Lumbee's full recognition has come from other tribes, among them the Eastern Band of Cherokee Indians.

In Oklahoma, the Delaware Tribe has been seeking to regain federal recognition. The tribe was removed from the list of federally recognized tribes in 2005 as a result of a lawsuit brought by the Cherokee Nation. The Delaware had signed an 1867 accord with the Cherokee relinquishing their tribal sovereignty but retaining their tribal institutions. In the twentieth century, the Cherokee included the Delaware as Cherokee citizens. The Delaware gained recognition in 1996, but the Cherokee appealed against that decision. After being de-recognized, some of the Delaware are now hoping to regain federal recognition under a deal with the Cherokee Nation: while the Delaware would gain federally recognized status, they would, however, lose their sovereignty to the Cherokee, especially in terms of lands and federal funding.

## **Native languages**

One of the very positive developments for Native peoples in the United States in 2006 was the entry into force of the Esther Martinez Native Languages Preservation Act in December. The bill, named after a Tewa elder and recipient of a National Heritage Fellowship days before she was killed in a car accident, amends the 1974 Native American Programs Act. It allows the Secretary of Health and Human Services to make three-year grants for Native language nests, i.e., immersion pre-schools, and other language immersion programs.<sup>16</sup> It is hoped that increased immersion programs from a very young age on will help more Native languages to survive. Current predictions estimate that only twenty Native languages, out of originally more than seven hundred, will survive to the year 2050. □

## Notes and references

- 1 Indian Trust: Cobell v. Kempthorne, <http://www.indiantrust.com>
- 2 The government, acting as the guardian of Indian landowners, has since 1887 collected lease money for grazing and mineral exploitation but never paid the individual Indian account holders. Read more about the case in *The Indigenous World* 2005, 2006.
- 3 Billions in Payouts to Indians in Jeopardy, *Arizona Republic*, 6 October 2006.
- 4 Indian Trust: Cobell v. Kempthorne, <http://www.indiantrust.com>
- 5 **United States Court of Federal Claims, 2006: Chippewa Cree Tribe v. United States.**
- 6 Tribal Election Strife Continues, *Argus Leader*, 23 December 2006.
- 7 **Judicial Appeals Tribunal of the Cherokee Nation, 2006: Lucy Allen v. Cherokee Nation Tribal Council ; "Chief Seeks Vote on 'Freedmen'"**, *The Oklahoman*, 7 October 2006.
- 8 **United States District Court for the District of Columbia, 2006: Marilyn Vann, et al. v. Dirk Kempthorne, et al.**
- 9 **United States District Court, District of Nevada, 2006: Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management.**
- 10 **U.S. Census Bureau, 2006: Income, Poverty, and Health Insurance Coverage in the United States: 2005.** <http://www.census.gov/prod/2006pubs/p60-231.pdf>.
- 11 **South Dakota Equal Justice Commission, 2006: Final Report and Recommendations.**
- 12 Native Americans in South Dakota: An Erosion of Confidence in the Justice System. Report of the South Dakota Advisory Committee on Civil Rights, 2001.
- 13 40 Years Too Late, *Gallup Independent*, 27 September 2006.
- 14 FWS Pulls National Bison Range Pact, *Missoulian*, 12 December 2006.
- 15 Tse-whit-zen Village Settlement: [http://www.governor.wa.gov/news/2006-08-14Final\\_PA\\_Agreement\\_summary.pdf](http://www.governor.wa.gov/news/2006-08-14Final_PA_Agreement_summary.pdf); Unearthing Tse-whit-zen, *Seattle Times*, 5/22 – 5/25/2005 <http://seattletimes.nwsource.com/news/local/klallam/>
- 16 Esther Martinez Native American Languages Preservation Act of 2006, H.R. 4766.



MEXICO,  
CENTRAL AMERICA AND  
THE CIRCUM CARIBBEAN

## MEXICO

Sixty-two different indigenous languages are spoken in Mexico. According to data from the National Commission for the Development of Indian Peoples (*Comisión Nacional para el Desarrollo de los Pueblos Indios* - CDI), there are approximately 12.7 million indigenous people in the country, representing 13% of the national population.

Mexico signed ILO Convention 169 in 1990. In 2001, as a result of indigenous protests demanding that the San Andrés Accords negotiated between the government and the Zapatista National Liberation Army in 1996 be transposed into legislation, articles 1, 2, 4, 18 and 115 of the Mexican Constitution were amended. However, according to the CDI, "This reform is considered insufficient; there is a need for continued work to obtain recognition of indigenous peoples and communities as subjects of public law with territorial rights and political representation".<sup>1</sup> The National Indigenist Institute (*Instituto Nacional Indigenista* - INI), created in 1949 to address the needs of the indigenous population, disappeared to be replaced by the National Commission for the Development of Indigenous Peoples (*Comisión Nacional por el Desarrollo de los Pueblos Indígenas* - CDI) in 2003.

2006 was a year marked by electoral rivalry. After 70 years in government on the part of the Institutional Revolutionary Party (*Partido Revolucionario Institucional* - PRI), the National Action Party (*Partido Acción Nacional* - PAN), led by Vicente Fox, won the elections in 2000. This was made possible by the awakening of the population that resulted from the civic protests following the 1988 earthquake and culminating



in the indigenous Zapatista uprising in Chiapas from 1994 on. Nonetheless, President Fox's government continued the neoliberal policies of the past, failing to respond to the citizens' and indigenous peoples' demands. It cut service and rural support budgets, approved laws allowing foreign capital to take over resources and privatised public resources and services. In the 2006 battle, the people were offered two possible solutions: one through the electoral process, via the Party of the Democratic Revolution (*Partido de la Revolución Democrática* - PRD) of Andrés Manuel López Obrador, a very popular figure during his period as Mayor of Mexico City, the other through long-term organisation without party political intervention, headed by the indigenous Zapatistas and called the "Other Campaign". After a fierce electoral process, the Federal Electoral Institute (*Instituto Federal Electoral*) declared the PAN candidate, Felipe Calderón, president although the opposition National Democratic Convention (*Convención Nacional Democrática*) asserted the legitimacy of the PRD candidate to be president on 20 November, a symbolic date commemorating the start of the 1910

Mexican Revolution. Meanwhile, outside the elections, the indigenous peoples were involved in the Other Campaign.

## The Other Campaign

The first stage of the Other Campaign began on 1 January 2006, a new phase of Zapatista struggle aimed at uniting the struggle of its grassroots supporters through their autonomous municipalities with the struggles of other national-level sectors and organisations. In this first phase, *Subcomandante Insurgente* Marcos, known as Delegate Zero, travelled the 32 states of the Republic to discover the reality of each region and talk with organisations and individuals interested in building a "national plan of struggle". During his tour, Delegate Zero was accompanied by delegates from the National Indigenous Congress (*Congreso Nacional Indígena*), the Peoples' Front for Defence of the Land (*Frente de Pueblos en Defensa de la Tierra*) and organisations from the Conference of Political Organisations of the Anti-Capitalist Left (*Conferencia de Organizaciones Políticas Anticapitalistas de Izquierda*). Anyone interested who did not belong to a political party and who had a grassroots and left-wing approach could "join" the Other Campaign.

Public meetings at which the different sectors of the population explained their situation and private meetings with organisations were organised by local members along the whole route of the Other Campaign. In this way, the profile of the living conditions of all the country's peoples was raised, particularly those living in the northern states, about whom there is less information than those living in the south. The Comca'ac people highlighted the threat of genocide hanging over them because of the Nautical Route, a gigantic project being promoted by the federal government and governments of Sonora, Baja California and Baja California Sur, along with private companies, which aims to privatize all the beaches of Sonora and the Baja Californias, including the sacred island of Tiburón. Mayo and Yaqui communities are threatened with eviction due to the construction of a highway that will enable businessmen to access an area of beach that belongs, by decree, to the Yaqui people. In Baja California,

the Kiliwa and Cucapá are being thrown off their ancestral territories, as are the Tohono o'odham people, who live across an area stretching from Arizona to Puerto Peñasco, in Sonora. Forced labour camps in Empalme and Guaymas were also denounced. The Pima offered testimonies on acts of ethnocide being committed by the police force, drugs traffickers and ranch owners, who rob them of their land and then, under threat of death, force them to work for nothing growing illicit crops. In Baja California Sur, Triqui and Mixtec migrants, day workers from Oaxaca state, are fighting the exploitation of the bosses in the tomato and other fields where they are forced, by need, to work under appalling conditions. During the tour, the histories and resistance stories of all the country's indigenous peoples were gathered.<sup>2</sup>

## Guardians of the water

Control over territory and natural resources is an issue that continues to be disputed between indigenous peoples, the state and private companies. Mazahua women from Mexico state, grouped into the Mazahua Women's Army in Defence of Water (*Ejército de Mujeres Mazahuas por la Defensa del Agua*), have demanded their rights to water with sticks and machetes. In March, they made their presence felt in the context of the World Water Forum in Mexico City and, in December, they took over the facilities of a water treatment plant<sup>3</sup> on the Cutzamala water system that supplies Mexico City. The Mazahua movement are demanding a halt to the fourth stage of its construction.

Alongside this, the Concá from Sonora, the Tenek from San Luis Potosí and the Yaqui have been engaged in fierce struggles over water. Aldo González, a Zapotec leader, stated that the indigenous peoples were the guardians of the water found on their territories, and of the biodiversity existing within it. "We are clear that it is the intention of big business to take over the water and its biodiversity, and will not tire in its efforts to destroy indigenous unity. This is why this struggle can no longer be an isolated one, community by community, but must be conducted as a people."<sup>4</sup>

## IV National Indigenous Congress

The IV National Indigenous Congress was held in Ocoyoacac, Mexico state, from 3 to 6 May, with 800 delegates coming from 25 of the country's states. Thirty-one peoples were represented, including the Amuzgo, Chol, Kumaiai, Nahuatl, Níhañu, Maya peninsular, Mayo, Mazahua, Mixtec, Paipai, Purepecha, Raramuri, Tapehua, Tenek, Tlahuica, Totonac, Wixárik and Zapotec. The opening ceremony stated that big business, the transnationals, international financial institutions and all parts of the Mexican government, as well as the political parties, were conducting a war of extermination against indigenous peoples, and that this had intensified since they had begun to organise.

With an enthusiastic participation on the part of young people, the Other Campaign was vindicated as a space for coordinating these struggles with those of other sectors who are also resisting capitalism. The final declaration of the Congress established that, "Given the subjection of the Mexican state to the interests of big business, we have come to the conclusion that we cannot demand recognition of our rights from a state that has, in our eyes, lost all legitimacy. Here, now, we emphatically call out to the Mexican state, challenging its corruption. Its whole party political system and its legislation are not representative of the interests of the people. We question its whole development model, its racist and discriminatory system, and we reject its policy of extermination and repression of the peoples, communities and individuals whose only crime has been to defend life".

During the congress, delegates voiced ways of exercising their autonomy: through workshops, meetings and gatherings; strengthening the assemblies, traditional and agrarian authorities; by defending their territories and forests; imparting their own education; fighting the logging and mining companies and those who are stockpiling food, water and land.<sup>5</sup> They ended their final declaration with a "loud call to companies, the political class, that we are going to win. Our light is alive!"

## Media, art and culture

One important demand has been the struggle for indigenous means of communication, backed up by a constitutional guarantee that government bodies “will establish the conditions for the indigenous peoples and communities to be able to acquire, run and manage their own means of communication”. This year, the Federal Telecommunications Law and Federal Law on Radio and Television were amended. Access to concessions for communications frequencies will now be by public auction, placing the peoples and communities at a serious disadvantage in terms of competing with large private companies who tend to monopolise the airwaves. Adelfo Regino, Mixe ombudsman, highlighted the danger now being run by broadcasting companies that were set up by many indigenous communities and organisations despite adverse conditions.<sup>6</sup>

The important work of raising awareness of and promoting the different cultures that exist in Mexico, as a multicultural state, continued. In the area of video, there is a nascent movement of indigenous video makers, and Nahua, Mayo and Seri women have produced works that “catch the spirit that remains here, alive for always.”<sup>7</sup> In addition, a group of female Tseltal and Tsotsil photographers from Chiapas state achieved national and international-level exhibitions. The Chamula women photographers Xunca López, Maruch Santis, Juana López and Dolores Santis are some of the exponents of this genre who this year showed works at a number of the country’s exhibitions. During the fifth Meeting of Dream and Reality Creators: Indigenous Women in Art, poetry<sup>8</sup> in indigenous languages flowed from the Mayan voice of Briceida Cuevas Cob, the Zapotec Irma Pineda, the Tzotzil Enriqueta Lunez, the Purepecha Elizabeth Pérez and the Hñahñú Leonarda Contreras. This was combined with increasing publications of books of poetry, stories and literature by indigenous authors, who demanded the opportunity and possibility of publishing at the now famous International Book Fair held in Guadalajara.<sup>9</sup>

## Repression in San Salvador Atenco

On 3 and 4 May, people descended from the Chichimec and Toltec peoples of San Salvador Atenco suffered a violent clash between 300 unarmed civilians who were members of the Peoples' Front for Defence of the Land and 3,000 police officers. What began as an act of solidarity with eight travelling flower sellers evicted from the neighbouring village of Texcoco turned into a violent clash justified, by most of the mass media, as a necessary measure to re-establish the rule of law. In the operations, the police used firearms, tear gas and electric batons. Two young people were murdered by officers of the Federal Prevention Force (*Policía Federal Preventiva*). More than 200 people were arrested without warrants, and savagely beaten. Most of the 47 women prisoners complained of sexual abuse and rape.<sup>10</sup> Five foreigners were illegally expelled from the country, after suffering mistreatment.

A significant proportion of the Atenco population are rural workers; they form part of the National Indigenous Congress and are organised in the Peoples' Front for Defence of the Land. In 2001, Atenco became the symbol of a triumph of people power over private interests when, machetes waving in the air, they managed to put a halt to the plans to build an airport on their lands. This is why many say they were severely punished five years later.

The journalist Luis Hernández Navarro placed the date of 4 May 2006 on the "shameful calendar of government impunity".<sup>11</sup> It epitomised the continuing impunity, repression and authoritarianism that defined the state terrorism of the 1960s and 70s. In turn, the events established a pattern of state conduct that was to continue throughout the year, in the violent response to the Sicarta miners' strike in June and the events in Oaxaca in the second half of the year.

In October 2006, the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos - CNDH*) issued a recommendation on the case, addressed to the Minister for Federal Public Security, the Mexico State Governor and the commissioner of the National Migration Institute. This recommendation was in addition to the reports and complaints already produced by the Miguel Agustín Pro Juárez Human Rights Centre (*Centro de Derechos Humanos Miguel Agustín Pro Juárez*

rez), Christian Action against Torture (*Acción de los Cristianos contra la Tortura*), Amnesty International and the International Civil Commission for Human Rights Observation (*Comisión Civil Internacional de Observación por los Derechos Humanos* - CCIODH), who rightly highlighted the abuses, excesses and violations committed by the Mexican government. In February 2006, the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación* - SCJN) agreed to investigate the serious human rights violations in order to establish whether the actions were isolated incidents or formed part of the wider orders of public officials at municipal and state level.

### **Popular Assembly of Peoples of Oaxaca**

The Popular Assembly of Peoples of Oaxaca (*Asamblea Popular de los Pueblos de Oaxaca* - APPO) was set up in June in response to the generalised repression that the State Governor had ordered against the traditional demonstration of teachers who, every May, call for salary increases and respect for their rights as education workers. The APPO's main demand was the resignation of the PRI governor, Ulises Ruiz Ortiz, who, they stated, had come to power fraudulently and who was conducting a highly repressive policy against the social organisations. The conflict between the APPO and the state authorities throughout the whole of the second half of the year was characterized by a number of occasions when the APPO took control of Oaxaca city, particularly when the governor fled to Mexico City for several months. The state finally approved the entry of the security forces and, in November, they took the centre of the city and the premises of the Autonomous University of Oaxaca, last stronghold of APPO control, by force. Nevertheless, the APPO is continuing its work and, at its last Congress, Zapotec and Mixe peoples formally joined the assembly to seek the reconstitution and autonomy of the Indian peoples.<sup>12</sup>

One of the APPO's successful strategies was their use of radio. They took over a number of public and private stations from where they broadcast programmes on the situation in Oaxaca and the clashes with the police. The last station to remain under their control was *Radio Universidad*, which broadcast until the end of the conflict. The valiant peo-

ple of Oaxaca were characterised by huge marches from all sectors, in a region where almost half the population are indigenous and where the traditional power of the PRI is now breaking down. The clashes with state and federal police left 17 dead, including one international journalist, and hundreds of people disappeared or wounded. On 22 December, mass actions of solidarity organised by the Zapatistas took place throughout the length and breadth of the country.<sup>13</sup> In addition, the Oaxaca Indigenous Peoples' Forum (*Foro de Pueblos Indígenas de Oaxaca*), with representatives from 14 peoples, demanded the resignation of the governor and condemned the cruel treatment, arbitrary detentions, threats and incommunicado holding of detainees, and demanded their release, the re-appearance of the disappeared and an immediate end to the repression.<sup>14</sup>

## Offensive against agrarian reform in Chiapas

This year, in the state of Chiapas, an offensive against the Zapatista people who had recovered their lands was unleashed by members of the OPPDDIC (Organization for the Defence of Indigenous and Rural Workers' Rights/*Organización para la Defensa de los Derechos Indígenas y Campesinos*) and URCI (Regional Indigenous Rural Worker Union/*Unión Regional Campesina Indígena*), paramilitary organisations linked to defunct paramilitary groups and the Mexican army. In wide areas of the municipalities of Ocosingo, including the villages of Nuevo Rosario, Pancho Villa and Emiliano Zapata, and in Montes Azules in the settlements of Viejo Velazco and Busilja, a number of deaths, injuries and displacements were recorded. The attacks increased as the year progressed as part of the low intensity war in Chiapas state caused by the Zapatista uprising.<sup>15</sup>

## Meeting with the Peoples of the World

The year ended with the Meeting of Zapatista Peoples and Peoples of the World (*Encuentro de los Pueblos Zapatistas y los Pueblos del Mundo*) in the Zapatista Caracol (regional centre) of Oventic from 30 Decem-

ber to 2 January 2007, with the participation of 4,000 Zapatista grassroots supporters from the Los Altos region of Chiapas state, most of them Tzotzil, and more than 2,000 delegates from 47 countries. This was the first time that the Zapatista autonomous governments, through their representatives in the Good Government Committees and autonomous health, education and production committees, had organised a meeting that included members of civil society. At previous events in Zapatista territory, such as the Inter-galactic Meeting against Neoliberalism and for Humanity (*Encuentro Intergaláctico Contra el Neoliberalismo y por la Humanidad*), held at the end of July 1996, or the Meeting with Civil Society in November 1998, the participants were members of the General Command or the Indigenous Revolutionary Clandestine Committee (*Comité Clandestino Revolucionario Indígena*).

During the meeting, a detailed account of the experiences of government in the Zapatista communities was given. Members of the autonomous governments and councils reflected on what autonomous government meant and how it was understood in Zapatista territory. "We want to be different from the bad governments, whose decisions are taken to the benefit of themselves," said Jesús, from the La Realidad Good Government Committee but, at the same time, he recognised that it was difficult because, "The people support us and take responsibility for our families when we go to work" for the three years that their term in office lasts. Beto, from the Arcoiris de la Esperanza Good Government Committee, said that this autonomy was not to be found in the dictionaries or in the Constitution. "We are living it, at home, in the community and throughout all society." At the same time, some examples were offered of how conflicts are resolved, whether over land, of a political nature with other organisations, or with regard to domestic violence. The autonomous justice system was contrasted with the official system stating that, "We seek dialogue and agreement between the parties, and we do not confuse dialogue with negotiation". Over the course of the year, more and more non-Zapatista people and communities were attracted to the system of justice imparted by the Good Government Committees as their conflict resolution service is free, in one's own language and impartial.

Lieut. Colonel “*insurgente*” Moisés, with a group of *comandantes*, presented a list of tasks to be completed following the meeting, including the organising of a meeting between the National Indigenous Council and other peoples and organisations from across the whole continent. At the same time, a commitment to continue to defend “our rights and our culture as indigenous peoples” was reiterated, along with the building and strengthening of autonomy “at all levels of life”, and the work of the Other Campaign, which will embark on a second phase in 2007 with a nationwide tour by members of the Indigenous Revolutionary Clandestine Committee. □

## Notes and references

- 1 *Comisión Nacional para el Desarrollo de los Pueblos Indios* (CDI): [http://cdi.gob.mx/index.php?id\\_seccion=12](http://cdi.gob.mx/index.php?id_seccion=12)
- 2 Videos and texts covering most of the tour’s activities can be found on the Zapatista Liaison page at <http://enlacezapatista.ezln.org.mx/>
- 3 **Matilde Perez U., 2006:** Toman mazahuas planta potabilizadora; demandan servicios básicos. *La Jornada*, 13 December 2006.
- 4 **Matilde Perez U., 2006:** En los territorios donde residen se genera y capta 12 por ciento del volumen nacional. Reconocer a los pueblos indígenas como guardianes del recurso, piden. *La Jornada*, 16 March 2006.
- 5 **Gilberto López y Rivas, 2006:** El cuarto Congreso Nacional Indígena y la otra campaña. *La Jornada*, 19 May 2006.
- 6 **Adelfo Regino Montes, 2006:** Agresión a los medios de comunicación indígenas. *La Jornada*, 31 March 2006.
- 7 **Arturo Jiménez, 2006:** Comienza a surgir un movimiento de videastas indígenas en México. *La Jornada*, 15 March 2006.
- 8 **Arturo Jiménez, 2006:** La poesía de cinco mujeres indígenas sacude Chiapa de Corzo. *La Jornada*, 12 March 2006.
- 9 **Cecilia Duran, 2006:** La discriminación de esta literatura, muestra de marginación, señalan autores. Escritores indígenas reclaman en la FIL mayores apoyos en difusión. *La Jornada Jalisco*, 4 December 2006.
- 10 The Amnesty International report documents in detail the acts against women in Atenco at <http://www.amnistia.org.mx/informe2006/violencia-mexico-05102006.php>.
- 11 **Luis Hernández Navarro, 2006:** Opinion, *La Jornada*, 5 Mayo 2006.
- 12 **Blanche Petrich, 2006:** Comunidades indígenas se suman a la lucha por la caída de Ulises Ruiz. *La Jornada*, 14 November 2006.
- 13 Details of events in Oaxaca can be found in the *La Jornada* archives, and the Indimedia web page <http://mexico.indymedia.org/oaxac>

- 14 **Alonso Urrutia, Gustavo Castillo, Octavio Velez, 2006:** Los pueblos indígenas insisten en la salida de Ulises Ruiz. *La Jornada*, 30 November 2006.
- 15 For details of these events, see the Fray Bartolomé de las Casas Human Rights Centre web site at <http://www.frayba.org.mx>

## GUATEMALA

There are 23 indigenous peoples in Guatemala totalling approximately 6 million individuals, and constituting 60% of the country's population. These peoples are: the Achi', Akateco, Awakateco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, Uspanteko, Xinka and Garifuna. The highest concentration of indigenous peoples is to be found in the west and north of the country.

In relation to Guatemalan society as a whole, indigenous peoples present lower human development indicators. 87% of the poor are indigenous and 24% live in extreme poverty; infant mortality is 49 per thousand among the indigenous people and 40 per thousand among the non-indigenous; child malnutrition is 34% among the indigenous and 11% among the non-indigenous; average primary school education is 3.38 years among the indigenous and 5.47 years among the non-indigenous; illiteracy affects 41.7% of the indigenous population and only 17.7% of the non-indigenous.

According to the Political Constitution of the Republic, the country considers itself to be multiethnic and multicultural.

### Ten years since the signing of the Peace Accords

The year 2006 commemorated the tenth anniversary of the signing of the Peace Accords that brought 36 years of internal armed conflict to an end, and was a year full of important events that have given new direction to the demands and proposals of the indigenous peoples. These events can be grouped into five areas. Firstly, the impact on indigenous areas of the disastrous storms at the end of 2005 and the



state's sluggish response in terms of reconstruction programmes. Secondly, the indigenous peoples' campaign against the entry into force of the Free Trade Agreement with North America, as well as against natural resource exploitation projects such as open cast mining and the construction of hydroelectric power stations on indigenous territories. Thirdly, the official recognition of the situation of social exclusion and discrimination in which most indigenous people live in comparison with the rest of the Guatemalan population and which, although public knowledge, has never been demonstrated with sufficient arguments

and, far less, accepted by the state. Fourthly, the indigenous and rural struggle to achieve changes in the unequal land tenure and distribution structure, considered to be the main cause of inequality and social exclusion in the country. Finally, the consolidation of their own political project, headed by the indigenous movement's organisations. This had been fermenting for a long time but had not achieved sufficient maturity to be proposed as a political option for the country.

Despite the progress that has gradually led to the consolidation of a renewed position for indigenous struggles, however, ten years on from the signing of the Peace Accords, it is felt that promises to put an end to the discrimination and exclusion of indigenous peoples, as well as to overcome the social and economic causes of the conflict, continue to remain outstanding issues on the national public agenda.

### **Rehabilitation after “Hurricane Stan” - delays and politicization**

The passage of tropical storm Stan across Guatemala at the end of 2005 left a trail of material and personal destruction that had a direct impact on the country's economy and the living conditions of thousands of families, particularly indigenous communities from the country's western *altiplano*, exacerbating their situation of poverty and social exclusion yet more. Faced with such consequences, the government undertook to head up a broad reconstruction process using its own resources and those of international donors. However, a number of situations quickly became apparent which delayed investment in the affected areas, particularly the sluggishness in dealing with local requests for support, given that the government prioritised the reconstruction of infrastructural works in areas of interest to the dominant economic sector. The government's politicization of the reconstruction process also became clear, meaning that one year on from Stan, many communities are still awaiting the promised support. A number of indigenous organisations proposed establishing a national agreement among all social players involved in order to reduce the likelihood of similar events recurring in the future, using risk management to reduce levels of social and economic vulnerability and, hence, the impact of disas-

ters. However, over the course of the year, there was virtually no significant progress made in facing up to the process of reconstruction, such that the communities are now facing the same risks as they were a year ago.

## **Intensification of the campaign against the Free Trade Agreement**

The entry into force of the Free Trade Agreement between Central America/Dominican Republic and the United States/Canada (CAFTA – DR), fiercely challenged by the social organisations, formed part of the indigenous organisations' protest agenda and, through strikes, road blockades, marches and other forms of social protest, they made their rejection of the treaty clear and raised doubts as to the alleged benefits being so insistently promoted by the government and economic power groups. During March, different popular protests were undertaken against the agreements, culminating in a national strike called for 16 March which enjoyed the wide support of indigenous organisations throughout the whole country.

During the year, there was also extensive mobilisation against mining projects in areas under concession from the government to transnational companies. In the departments of Huehuetenango and San Marcos, six municipalities made use of their right to community consultations to ascertain the people's opinions of the projects, in accordance with the rights contained in ILO Convention 169. Despite the fact that the consultations showed broad opposition to these projects, the government has denied their validity with the argument that they are not binding and hence do not form a parameter by which to halt project implementation.<sup>1</sup> Even so, the government and mining companies launched an aggressive advertising campaign indicating that subsoil resources belonged to the state and that their exploitation was considered to be in the national interest.

The anti-mining protests were violently suppressed by the security forces. Farmers from the Maya q'eqchi' people who had occupied the land of the *Compañía Guatemalteca del Níquel* (Guatemalan Nickel Company - CGN) in Izabal department were violently evicted by the police.

On 17 April 2006, the government granted this company a licence to extract nickel, iron, chromium and magnesium in an area which – during the 1960s and 70s – was operated by Exmibal. This was a company with a sad history in Guatemala given the abuses it committed against its employees' labour rights, in addition to the fact it did not pay the country sufficient royalties for the 14,000 tonnes of nickel it exported and which, instead, left an enormously negative impact on the environment. This company stopped operating in 1980 following its refusal to negotiate collective agreements with the workers. The mineral potential in the area is sufficiently attractive for CGN, which justifies the fact that it has invested 530 million dollars in exploration activities alone, in addition to the costs of buying the assets and rights previously owned by Exmibal. According to the Maya Ombudsman, an entity that provides legal support to the indigenous organisations, 16 Q'eqchi communities feel threatened by the negative impacts the mines may have on territories that have belonged to them since time immemorial.

Similarly, the hydro-electric projects granted by the government in concessions to private companies were widely rejected by the communities, as they felt their rights were being threatened. In various of the country's villages where these projects were planned, community consultations were conducted and, in all cases, the result was a resounding rejection. However, both the companies and the government have insisted, through the different media, on the benefits of hydroelectric power stations and, at the same time, have minimised the value of the consultations and the communities' opposition.

### **The land issue: postponed indefinitely**

The efforts to negotiate the problem of land distribution, which had finally been institutionalized on 30 March 2005 with the formation of the so-called Intersectoral Committee for Dialogue and Participation in Integrated Rural Development Policy (*Mesa Intersectorial de Diálogo y Participación de Política de Desarrollo Rural Integral* - MDPDRI), were indefinitely suspended during the year due to a lack of political will on the part of the government and private sector, who were opposed to

aspects relating to the regulation of idle land and expropriation being included. The Committee of Commercial, Industrial and Financial Associations (*Comité de Asociaciones Comerciales, Industriales y Financieras* - CACIF), the highest body representing the country's private sector, rejected the inclusion of measures which, in its opinion, threatened private property. Consequently, they withdrew from the negotiations on 8 August, demanding that discussions on the Agrarian Code within the Supreme Court of Justice and Congress of the Republic be suspended.

Given the summons the rural organisations issued to the government to get it to explain its agrarian policy as a condition for continuing the work of the Committee, the government suspended the Committee and hurried to publish its own version of the agrarian policy and integral rural development policy in September, brushing aside the indigenous and rural sectors' proposals to include rural development, inequality, land tenure and land distribution as central themes. In terms of land, the policy explicitly contains the objective of "*Creating mechanisms for accessing productive assets, particularly land, via lease and control, excluding the confiscation of lands*".<sup>2</sup>

In addition, implementation of the Law on National Land Registry, approved at the end of 2005, began this year. In this regard, in October 2006 the government obtained approval of a 62- million-dollar loan from the World Bank to implement a registration project in seven departments of the north and east of the country. The negotiation process included holding a series of community consultations with the indigenous peoples to find out their reactions and views on this project. The results of the consultations showed that the indigenous peoples had uncertainties regarding the land registry process and considered that it could negatively affect them if their legitimate and ancestral rights to land were not recognised. Moreover, they felt that it could risk legitimising the evictions they have historically suffered from. The Land Information Registry (*Registro de Información Catastral* - RIC), the official body responsible for land registration, produced what was known as the Indigenous Participation Plan (PPI), containing a proposal to mitigate the risks and threats of the registry.<sup>3</sup> However, no indigenous organisations have expressed an opinion on this Plan.

## **Official recognition of the exclusion and racism suffered by indigenous peoples**

In a momentous action, the government this year recognised that the indigenous peoples were the object of social exclusion and different manifestations of racism. First was the publication, in March, of the Human Development Report 2005, produced by the United Nations Development Programme (UNDP),<sup>4</sup> which addressed the issue of ethnic diversity and demonstrated, with sufficient data and arguments, the situation of backwardness suffered by the indigenous population in relation to the rest of the country. The publication captured the attention of the different social sectors, particularly because it was the first time that the two areas of structural differentiation that exist in the country had been presented: firstly, the ethnic relationship, which creates cultural differentiation and which leads to racism and discrimination; and, secondly, the socio-economic relationship, which leads to inequalities and exclusion. The combination of these two issues, the ethnic and the socio-economic, demonstrates the double situation of domination weighing on the indigenous peoples and reaffirms the way in which power relations have historically been constructed on the basis of discrimination and exclusion, explaining the persistence of racism and inequality.

Faced with pressure from the indigenous organisations, the President of the Republic officially recognised the existence of racism within Guatemalan society and undertook to make greater efforts to combat it. In this regard, an agreement of the Congress of the Republic declared 9 August to be National Indigenous Peoples' Day. It is the opinion of a number of indigenous organisations, however, that this declaration does nothing to solve the problem of discrimination. *"It is possible that many indigenous peoples do not even know that today is our day because they do not have the time for such trifles as glitz, champagne and food in their honour, when they are dying of hunger"*.<sup>5</sup> Nevertheless, this declaration stimulated a variety of reactions in the mass media, such that two of the country's main daily newspapers devoted their leading articles and special supplements to the issue, giving space to different reactions in this regard. One of them indicated that public investment

demonstrated that there was less investment in the largely indigenous departments and a wide gap between the higher education of *ladinos* (non-indigenous) and indigenous, concluding that, "The delay in the country's development has its roots in racism", and that this "is a violation of human rights".<sup>6</sup> Another indicated that, "*The indigenous peoples' day serves as a wake up call to reflect on the conditions of discrimination and exclusion of the Maya people and their right to a better life*", and that it was crucial to reconcile inter-ethnic relations in order to ensure social harmony in the country.<sup>7</sup>

Alongside this, the government officially announced an anti-racism policy on the basis of the proposal produced by the Presidential Commission against Discrimination and Racism. At the same time, the Office of the Human Rights Ombudsman has promoted discussions around a draft law against racism, with the aim of preventing indigenous people from continuing to be a majority treated as a minority. In addition, work began this year on establishing the "Tinamit" project to combat exclusion which, with support from the European Union, is focusing on departments with an indigenous majority.

Consequently, the Latin American Indigenous Forum (*Foro Indígena Latinoamericano*) held in Guatemala in September enjoyed the presence of important indigenous leaders from across the continent, and attracted international attention to the indigenous movement's proposals. In its final declaration, the forum called for policies of development with cultural identity to be defined and the channelling of economic resources to finance these. It also demanded the institutionalization of a policy of development with identity, a guarantee of food, legal and territorial security, leadership training, solutions to the migration problem and the creation of specific records and statistics on the situation of indigenous peoples.<sup>8</sup>

## **Progress in recognising the indigenous justice system**

During the year, the issue of the application of indigenous justice systems and exercise of customary law was also extensively discussed. Various events were held to discuss the extent to and way in, which formal systems and indigenous systems for justice application could

be reconciled, such as an event held in November that brought together different bodies and experts involved in the issue and which concluded that the state needs to recognise and reconcile the indigenous legal system with the formal justice system. At the same time, the Supreme Court of Justice set a precedent in terms of establishing that a person could not be tried through both systems for the same offence. This was based on a case whereby an indigenous individual had been tried and sentenced under the indigenous system for a crime committed and yet the Office of the Attorney-General had not accepted this trial and had instigated new proceedings through the courts. In the face of protests from the indigenous organisations, the Supreme Court ruled that the initial trial should be respected, and this is considered a precedent in terms of increasing the validity of the indigenous justice system.

### **Formulation of the indigenous movement's political proposal**

The most important event in the indigenous struggle was undoubtedly the achievement of an indigenous political proposal, under the leadership of the indigenous organisations. This aspiration arose several years ago but failed to come to fruition for various reasons, including the co-opting of indigenous leaders by the traditional parties. However, the traditional political parties are now in a deep crisis, as illustrated by a lack of leadership and internal struggles that have led to their fragmentation, to the extent that no party has been able to overcome the damage caused by their participation in the electoral processes. The crisis of credibility among the traditional political parties, which have been unable to come up with convincing proposals to respond to the country's most serious problems, and far less adequately include an indigenous perspective, has forced a reflection around the search for more inclusive and participatory options.

The emergence of indigenous political proposals in the Latin American context has increased the possibility of an initiative of this kind in Guatemala. In fact, Evo Morales' triumph and his visit to Guatemala in September 2006 aroused great expectations for a political proposal

headed by the indigenous organisations. At the end of the year, an indigenous political movement known as “Winaq” was thus founded. This movement seeks to position itself as an inclusive option, not limited to the indigenous people but led by them. It aims to overcome the traditional situation whereby all parties have indigenous supporters but no indigenous protagonists.

At the end of the year, Winaq managed to decide on the idea that Rigoberta Menchú, 1992 Nobel Peace Prize Winner, should stand as candidate for President of the Republic. This news has been received enthusiastically by the indigenous organisations, who see a possibility of accessing power. In addition, someone will be standing for the first time who is both a woman and indigenous. However, judging by the opinions that regularly appear in the media, it gives the *ladinos* nightmares just thinking about the possibility of an indigenous-led government. □

## Notes and references

- 1 *Inforpress Centroamericana*. No. 1686. 5 January 2006.
- 2 **Gobierno de Guatemala, 2006:** *Política de Desarrollo Rural Integral*. September 2006.
- 3 **Gobierno de Guatemala, 2006:** *Plan de Participación Indígena del Proyecto de Administración de Tierras, Fase II. Registro de Información Catastral*. 2006. ([www.catastro.gob.gt](http://www.catastro.gob.gt))
- 4 **UNDP - Guatemala, 2006:** *Informe Nacional de Desarrollo Humano 2005. Diversidad étnico – cultural: la ciudadanía en un Estado Plural*. Guatemala. 2006.
- 5 **Haroldo Shetemul, 2006:** Un día para los indígenas. *Prensa Libre*, 9 August 2006.
- 6 Guatemala: un país que se niega a si mismo y a su pasado. *El Periódico*, 9 August 2006.
- 7 Mayas piden cambio del modelo económico. *El Periódico*, 8 August 2006.
- 8 Declaración de la Antigua: Declaración final del Foro Indígena Latinoamericano. Antigua Guatemala, 16 September 2006.

## NICARAGUA

The seven indigenous peoples of Nicaragua live in two main regions: firstly, the Pacific Coast and Centre North of the country (or simply the Pacific), which is home to four indigenous peoples: the Chorotega (82,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu (40,500) and the Nahoia or Náhuatl (19,000); and secondly, the Caribbean (or Atlantic) Coast where the Miskitu (150,000), the Sumu-mayangna (13,500) and the Rama (2,000) live.<sup>1</sup> Other peoples enjoying collective rights in accordance with the Political Constitution of Nicaragua (1987) are those of African descent, who are known in national legislation by the name of ethnic communities. These include the Kriol or Afro-Caribbeans (43,000) and the Garifuna (2,000).

It is only in recent years that initiatives have been taken to establish regulations for and improve regional autonomy, such as the 1993 Languages Law; the 2003 General Health Law, which requires respect for community health models; Law 445 on the System of Communal Ownership of Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco and Indo Maíz River Basins, which came into force at the start of 2003; and the 2006 General Education Law, which recognises a Regional Autonomous Education System (*Sistema Educativo Autonomico Regional* - SEAR).

The Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional* - FSLN) came to power in Nicaragua in 1979, soon after having to face an armed force supported by the United States. The indigenous peoples of the Caribbean Coast, particularly the Mis-



kitu, formed a part of this force. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS) in 1987, on the basis of a New Political Constitution and Statute of Autonomy (Law 28). Three years later, the FSLN lost the first national democratic elections in Nicaragua to the Constituent Liberal Party (*Partido Liberal Constituyente* - PLC) and a land reform was implemented that promoted the settlement and individual titling of indigenous territories, also commencing the establishment of protected areas over these territories, without consultation.

Sixteen years after the defeat of the FSLN, the Sandinistas returned to power once more on 5 November 2006, with Daniel Ortega as President of the Republic. The result is partly the consequence of an electoral reform agreed between the Sandinistas and the Liberal Party that

enables a candidate to win the presidency at the first round, with only 35% of the vote.

It has not been possible to discern a clear political leaning among the indigenous peoples in the Pacific but, in the RAAN, a majority faction of YATAMA (*Yabti Tasba Masraka Nanih Asia Takanka*), the Miskitu political party, signed a commitment agreement with the FSLN. In exchange for indigenous support at the polls, an undertaking was sought from the FSLN on the following points: containment of the advance of the agricultural and fishing frontier, including revival of the titling and demarcation process based on Law 445; reform of the Statute of Autonomy; and reform of the Electoral Law (Law 331 of 2000), in accordance with the ruling of the Inter-American Court of Human Rights. "The IACHR considered that the State of Nicaragua had violated the rights of indigenous peoples by failing to respect their right to own the lands they have traditionally occupied and by granting forestry concessions without the consent of the community; and ordered the state to create a law and establish administrative procedures to demarcate and title the lands of the indigenous peoples of Nicaragua's Caribbean Coast". The commitment also sought: the restructuring of state institutions, taking into particular consideration the inclusion of indigenous individuals in the judiciary; the post-war reconstruction of Wangki communities (Río Coco);<sup>2</sup> the promotion of regional production around subsistence production and self-sufficiency; the channelling of social projects with international funds to the most marginalised groups; the channelling of public funds for the regional authorities and allocation of posts of responsibility to members of YATAMA within government institutions, from regional level up to the embassies, the Central American Parliament (*Parlamento de Centroamérica* - PARLACEN) and the national government cabinet.

In the RAAN, Daniel Ortega's FSLN obtained 41% of the vote, above the national average. His inauguration, planned for 10 January 2007, has been preceded by indigenous expectations regarding fulfilment of the agreement with the FSLN, including the appointment of a number of indigenous leaders to the agreed posts.

Prior to this, in March 2006, regional elections were held in the RAAN and RAAS. Unfortunately, this process was taken over by the national political parties as a rehearsal for the national elections in No-

vember. The result was an invasion of the RAAN/S by candidates for parliamentary members and president, sidelining the regional process. In addition, the political agendas, of a national nature, were filled with the barely credible promises.

### **The demarcation and titling of the indigenous territories and territories of peoples of African descent**

It is well-known that Miskitu authorities that were previously opposed to titling, in line with Law 445, are now lobbying in favour of this. The argument against titling and demarcation has always been, in accordance with the treaties that annexed the Mosquitía to Nicaragua, that the state of Nicaragua could not issue titles over something that had never belonged to it, and that the Mosquitía territory was already titled.

With or without the support of the Miskito, the process suffered serious setbacks in 2006 on the basis of “the surprise” that the first five titles issued by President Bolaños on the basis of Law 445 over the past year were still scarcely in draft form. In addition, the presidential office argued that it was impossible to register them accurately given the absence of a state law over those lands. In actual fact, this was a fallacious argument as there is no need to register communal titles in the same way as non-communal ones because Law 445 states that it is not a question of issuing new titles but of establishing recognition of a right that has always prevailed.

In addition, shortly after the National Demarcation and Titling Commission (*Comisión Nacional de Demarcación y Titulación* - CONADETI) had been revived, with its presidency passing from the RAAN to the RAAS, Sumu-mayangna leaders handed over ownership of an indigenous territory (Mayanga Sauni As) to the Nicaraguan state for the first time in history in order to facilitate the subsequent official registry of the communal title to this territory. Between the handover of ownership to the state and the subsequent registration of the title on behalf of the communities, however, government representatives unilaterally drew up a title deed that was detrimental to the Sumu-mayangna people as it envisaged the joint administration of a core area of

the territory with the state. This whole process created turbulence within the organisational structure of the Sumu-mayangna nation.

Members of the Secretariat of the Presidency for Atlantic Coast Affairs (*Secretaría de la Presidencia para Asuntos de la Costa Atlántica* - SEP-CA) which, in fact, lacks any legal basis on which to act in the titling and demarcation process according to Law 445, intervened against the Rama and Kriol Territorial Government (*Gobierno Territorial Rama y Kriol* - GTR) in the RAAS to demand involvement in conducting this titling process as a condition for accepting a transfer of funds from the Royal Danish Embassy to the GTR.

In October 2006, the Mayangna community of Awas Tingni<sup>3</sup> participated in a mediation session organised by the Demarcation Commission of the Regional Autonomous Council of the North Atlantic (CRAAN). It was hoped to be able to resolve and overcome the conflict over boundaries with the neighbouring Miskitu territory of Tasba Raya, as this had been an obstacle to the final titling of the territory as ordered by the IACHR. The attempted mediation was a failure, however. Given that the Miskitu have shown little flexibility in this process, the Mayangna authorities for their part now realise that this position is a consequence of a policy of domination that goes beyond Tasba Raya, bearing in mind that the Miskitu have greater influence within the CRAAS, to whom it falls to issue a final resolution in this respect.

Because of this situation, the Atlantic Coast Centre for Justice and Human Rights (*Centro por la Justicia y Derechos Humanos de la Costa Atlántica*) this year took the State of Nicaragua to the IACHR for the continuing violation of indigenous rights, particularly the failure to demarcate their communal lands and the lack of decisive and coordinated action on the part of the state to fulfil Law 445. More than 150 communities have formally requested demarcation of their lands and only the case Mayangna Sauni As has obtained official validity. The case of Awas Tingni is the only one at a standstill because of internal conflicts related to the overlapping of common boundaries. Another four have been registered in a purely preventive and provisional manner, awaiting a solution better than that of Sauni As.

## New legislative initiatives

Given its apparent political complexity, in 2004 the Ethnic Committee of the National Assembly stated that the votes necessary to obtain ratification of ILO Convention 169 in Nicaragua did not exist within the Assembly. The indigenous peoples of the Pacific and Centre-North, in coordination with the Ethnic Committee of the National Assembly, decided to propose an indigenous law which, during 2006, underwent a series of grassroots consultations within this region. There was an initial proposal that involved indigenous peoples from the whole country but the proposal only finally obtained a consensus in the Pacific and has been introduced onto the National Assembly's agenda (no decision thus far).

It was not possible to coordinate this initiative with the peoples of the Atlantic, where the dominant indigenous political player, YATAMA, considered the proposal a retrograde step in relation to the rights its people had already acquired through the system of regional autonomy. YATAMA instead opted to lobby for a reform of the Statute of Autonomy (Law 28 and its regulations) in order to institutionalise an autonomous model that is not of a clearly regional nature but which highlights historic indigenous rights in relation to the immigrant *mes-tizo* population. Some among the Sumu-mayangna authorities fear that such a reform, prompted by YATAMA, would largely benefit the Miskitu people at the cost of others. Neither the Sumu-mayangna nor the Rama seriously analysed the proposed Indigenous Law, probably because of the lack of a multi-ethnic indigenous structure in Nicaragua that has the capacity and interest to coordinate legislative proposals at this level.

With regard to autonomy, in a Supervisory Resolution to its ruling of 2005, dated November 2006, the IACHR continued to demand a reform of the electoral law so that members of indigenous and ethnic communities could participate in electoral processes effectively, in accordance with their customs, through their traditional organisations and not only through political parties.<sup>4</sup>

In addition, for the first time in history Nicaragua promulgated integral legislation on education, the General Education Law. Given the

attention paid by the Regional Autonomous Education System (SEAR) to national multi-ethnicity through its core themes (autonomy, interculturality, equity, belonging, quality and solidarity), there was hope among civil society organisations that the spirit of the SEAR would be wholly included into this law. In the end, its existence was re-affirmed at least formally in one chapter of the law. There is still much lacking in the implementation of educational autonomy, however, as the national government was unwilling throughout the whole year to work in favour of the agreed decentralisation towards the regional governments but showed its preference for administrative and budgetary coordination directly with the municipal authorities in the RAAN/S, where it had been able to observe greater acceptance of the monocultural education policy. Indigenous education from primary to university level thus largely remained a responsibility of the communities themselves, the regional universities and international cooperation.

In May, President Bolaños decreed a "State of Economic Emergency" in the RAAN/RAAS, the San Juan River and Nueva Segovia department in relation to the felling, transport, export and illegal marketing of forest resources. A series of constitutional guarantees were suspended and the presence of the police force and army was ordered, confiscating large volumes of timber. In the few indigenous communities that were operating along commercial lines, with approved management plans in accordance with current legislation, the emergency proved problematic, preventing them from being able to remove already cut wood from the forest, for example. A few months after the emergency, the Law on a Forest Closed Season was promulgated with the aim of regulating and easing the sectoral paralysation. However, a large number of contradictions have been observed within it by public institutions, the environmental ombudsman and conservation organisations and indigenous communities, including lack of clarity over the continuing validity of the State of Emergency itself. Given that, shortly afterwards, a Law on Crimes against the Environment and Natural Resources was also issued, it is clear that logging, at least in legal terms, has entered a new era. Nevertheless, logging and the creation of pastures on indigenous territories continues without any further control.

## **International cooperation**

During the electoral process, the international financial institutions, particularly those from the United States, intervened heavily against the election of Daniel Ortega. Once his election was confirmed, however, their rhetoric changed, indicating that Nicaragua was still too important for their macro-political and economic interests to withdraw from the scene.

A change of direction could be noted towards the indigenous peoples in 2006, and growing attention towards the Atlantic Coast.

Funding from the Danish International Cooperation Agency (DANIDA), for example, has encouraged the institutionalisation of ministries of education within the regional governments, aimed at implementing the SEAR. The Swedish International Development Cooperation Agency (SIDA) has also planned a new five-year programme focussing on the regional governments and the process of titling and demarcation being revived in the RAAS. The European Union funded an education and human rights programme on the coast, and Finnish cooperation began support for bilingual intercultural education through the UNDP programme. For its part, Japan financed the completion of the first surfaced highway to the Caribbean Coast in the RAAS (Kukra Hill). Germany and the UN Industrial Development Organisation (UNIDO) promoted production initiatives in the RAAN/S to satisfy the international cocoa market. These are just some of the programmes on a list which, in reality, is far longer and much more diversified. But, in general, donors claim to be favouring the decentralisation of public administration and regional financial management on behalf of the indigenous and ethnic population.

## **Changes in the indigenous movement's institutionality**

2006 was a year of reaffirmation of indigenous identity in the Pacific and Centre-North. Some new indigenous councillors and mayors took office, communities spoke out in the press about conflicts and injus-

tices on their communal lands and a coordination was initiated between the peoples around the proposals for an Indigenous Law.

One indirect consequence of the process of consultation on this law, and in part promoted by the main donor, USAID, was the establishment of an Indigenous Coalition during the year, comprising the umbrella organisations of the four indigenous peoples of the country's Pacific and Centre-North.

The Indigenous Movement of Nicaragua (*Movimiento Indígena de Nicaragua* - MIN), for its part, lost its influence as spokesperson for the indigenous peoples at national level, to such an extent that some peoples no longer consider that the MIN exists. Some of the reasons for this are a duplication of leadership posts, both in the new Coalition in the Pacific and in the MIN coordination; its low organisational capacity; the death of its acting coordinator in the RAAS and a prolonged period without any assemblies by which to legitimise its leaders.

While the national-level indigenous movement has suffered instability, promising processes have arisen at community level. Law 445 permits the recognition and accreditation of communal and territorial authorities in order to identify the legal subject to be titled. This has led to communal institutionalisation and the regional certification of virtually all indigenous and ethnic authorities of the Atlantic Coast. In some cases, territorial associations recognised within the Civil Code did previously exist, and these are now also taking on the formal role of territorial authorities, recognised as public institutions. This duplicity of functions is particularly the case in nine Sumu-mayangna communities in the RAAN and in Jinotega department. Initially, the authorities of these associations did not pay much attention to the powers and rights that Law 445 granted these authorities beyond obtaining recognition of their territorial rights. For their part, the communities of the Rama territory and the communities of Laguna de Perlas have entered into multi-ethnic territorial alliances. In the case of the Rama territory, an alliance was agreed with Kriol communities historically located on their territory. In only a short time, they had together managed to get national and regional institutions to recognise their territorial authority as the Rama-Kriol Territorial Government (GTR), as provided by Law 445. They began,

like other communities in the RAAS, to claim their territorial rights, recovering their legitimate share of taxes charged by the national government with regard to concessions for natural resource exploitation on their communal lands. One specific requirement that the GTR made to the World Bank, DANIDA and the Ministry of Transport was that their territory should be titled before commencing the prior consultation with their people regarding the planned highway between Nueva Guinea and Bluefields that would cross through their traditional territory.

### **“Development” projects**

Before leaving office, President Bolaños put a plan for five large infrastructure projects on the agenda, including an oil pipeline from the Kriol community of Monkey Point – where a refinery was also to be located -, an interoceanic canal, an interoceanic highway and a hydro-electric power station on the Great Matagalpa River in the RAAS (promoted by the Mexican Federal Energy Commission, *Comisión Federal de Energía* - CFE) under the name of “Copalar” with a potential production far greater than the maximum national demand. Shortly before this, the Nicaraguan Energy Institute had, without prior consultation of the regional governments or indigenous communities, signed oil exploration and exploitation contracts in the Caribbean with US companies Infinity Inc. and MKJ Exploraciones Internacionales S.A. The four first projects have the fact that they will affect the north of the Rama Territory in common where, moreover, settlement is continuing and individual titles are still being issued that are “doubly illegal” because they are located not only in an indigenous territory but also in the Cerro Silva and Punta Gorda protected areas. All the projects mentioned reflect international economic interests aimed at promoting an explosive growth in global marketing and transport between the East Coast of the USA and Asia. Another feature of national concern is the apparent absence of national actions in favour of transnational capital in these projects. □

## Notes and references

- 1 Source: University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN, 2000) and the Rama-Kriol Territorial Government (GTR, 2006). Field studies undertaken jointly between URACAAN and the GTR in December 2005, with funds from the Danish development cooperation agency, DANIDA, as a contribution to the Rama Territorial Assessment. The study has not yet been concluded.
- 2 In June 2006, Daniel Ortega, along with other Sandinista leaders, were accused by the Permanent Human Rights Commission (CPDH) of allegedly having evicted 8,500 indigenous people from the Río Coco in the 1980s in order to prevent their logistical support to the Contreras in the so-called "Red Christmas" operations.
- 3 It was the IACHR ruling in 2001 on forest concessions in this community and against the state of Nicaragua that finally led to promulgation of Law 445.
- 4 Reason for YATAMA's conversion to a political party.

## PANAMA

The Ngöbe, Kuna, Emberá, Bugle, Wounaan, Naso and Bribri peoples form the indigenous population of Panama, with a population of approximately 200,000 inhabitants, representing 8.4% of the national total.

Indigenous rights in Panama are enshrined in the country's constitution, as well as in a series of laws and regulations. One of the clearest illustrations of these rights has been the creation of indigenous *comarcas*, and the constitutional laws governing these indigenous territories recognise their traditional political and administrative structure.

The territories legalised by means of *comarcas* are the following: the *Kuna Yala comarca*, established in 1938 and largely inhabited by Kuna; the *Emberá-Wounaan de Darién comarca*, inhabited by the Emberá-Wounaan people; the *Kuna de Madungandi comarca*, a second Kuna comarca; the *Ngöbe-Bugle comarca*, inhabited by the Ngöbe and Bugle, and the *Kuna de Wargandi comarca*, a third Kuna comarca. Regulations still have to be established for this latter.

Despite the fact that there are five legally recognised territories, other indigenous peoples have not yet achieved this status. Such is the case of Naso, the Bribri, part of the Emberá-Wounaan people and two Kuna populations.

Article 2 of the law establishing the Ngöbe-Bugle *comarca* defines the boundaries of its territory and, on the basis of the National Agrarian Reform Department's maps, it has a territorial boundary of 1,226 kms.

In this regard, in association with the National Commission for Political Administrative Boundaries (*Comisión Nacional de Límites Políticos Administrativos*) and the National Indigenist Policy Department (*Dirección Nacional de Política Indigenista*), and with the consent and approval of the *comarca's* traditional indigenous authorities and leaders, the National Lands Administration Programme (*Programa Nacional de Administración de Tierras* - PRONAT) is conducting the physical demarcation of these boundaries. The demarcation work has been divided into three stages: the first stage aims to demarcate 509 kms; the second 490 kms. By the end of 2006, they had completed 100 kms, with a view to completing the second stage of demarcation by mid-2007. The plan is to have started the third stage for the demarcation of 227 kms bordering with Bocas del Toro Province by the end of 2007.

These demarcations have been undertaken using methodologies appropriate to the cultural and geographical reality of the area. In addition, land conflicts are being dealt with as they arise throughout the process.

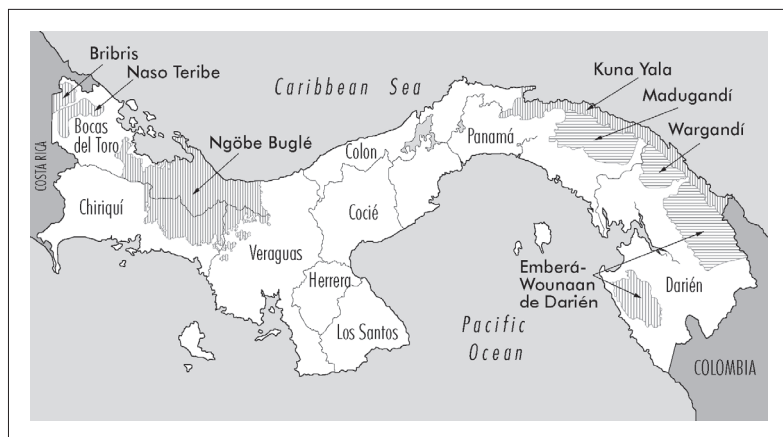
Violent conflicts over land tenure have been occurring between indigenous peoples and non-indigenous immigrants in the Embera-Wounaan de Darién *comarca*.

The conflicts, which have been occurring for the last ten years, are focused around the fact that the settlers change the *comarca's* borders during the night in order to invade the protected lands and use them for pasture.

## Health

In terms of health, basic services are scarce in indigenous areas, and the few health centres that are within walking distance are largely unsanitary places lacking in medicines. This has been recognised by the Minister for Health, Camilo Alleyne, who told the media that one of his priorities was to provide a true health service for the indigenous people (TVN 15/8/2004).

The start of the year saw an outbreak of malaria, something thought to have been eradicated in the country. At least 200 cases were reported, 90% of them among indigenous groups and the remaining 10% among people who had been in contact with them.



## Refugees

According to the Office of the United Nations High Commissioner for Refugees, UNHCR, in April and May hundreds of indigenous Wounaan fled their ancestral territories in the Chocó, western Colombia, after two leaders were murdered and others threatened by Colombian armed groups. The people took refuge in the small village of Istmina. In December, Panama for the first time granted refugee status to 42 of these people. Up until then, the Panamanian government had only been providing temporary humanitarian protection to Colombians seeking asylum on its territory.

## Justice administration

The national government has established a commission to codify a new Criminal Code and Code of Criminal Procedure. A group of indigenous lawyers has therefore come up with the proposal that both codes should include the issue of indigenous rights. These lawyers presented their proposal to the Codifying Commission, with the suggestion that the following issues, among others, should be included:

- Recognition of special indigenous jurisdiction.
- Recognition of indigenous traditional authorities as justice administrators.
- Culturality as a principle to be adopted by judges when imposing sentences or security measures.
- Exemption from responsibility in cases of conduct that is culturally and traditionally accepted and practised.
- The cultural values of the subject as mitigating factors when sentencing.
- Recognition of indigenous interpreters in the courts.

The proposed Criminal Code and Code of Criminal Procedure will be submitted to the government before being sent on to the National Assembly, where they will be finally approved.

## **Kuna General Congress**

The Kuna people held two general congresses during 2006, the first from 22 to 26 June and the second from 16 to 19 November. The Congress is the highest political and administrative authority for decision-making and deliberation in the Kuna Yala comarca, and it is here that the future of the Kuna people is debated in terms of cultural, social, political, economic and legal issues, and in terms of their relations with the state of Panama.

### **The following were some of the noteworthy consequences:**

- The formation of the *comarca's* Environmental Consultative Committee, which will advise and make recommendations to the Kuna Yala comarca with regard to environmental projects that people may wish to implement within the Kuna territory.
- To ask the national environmental authorities to declare the part of the boundary of the Kuna Yala territory that is in conflict with

Santa Isabel District, Colón Province, and which historically belongs to the Kuna, a Protected Area .

- Support was stated for President Evo Morales Ayma, President of the Republic of Bolivia, in demonstration of the satisfaction and solidarity of other indigenous peoples of Abya Yala, in this case, the Kuna people.
- To establish an Agricultural Production Committee for the *comarca*, to study and seek alternatives by which to increase food production.
- To support any Kuna NGO that may submit its project proposal to the Kuna General Congress. These will be evaluated and endorsed by the Governing Board of the Kuna Yala Institute. Any project proposal from a Kuna NGO that is approved or endorsed by the Kuna General Congress, and approved by a donor, will be coordinated and/or administered and implemented by the NGO that presented the proposal to the General Congress.
- As of 5 November, the Kuna General Congress established a five-year moratorium on the hunting of 4 turtle species existing within the Kuna Yala *comarca*: *yauk suer sueret* or the leather-back turtle (*Dermochelys coriacea*); *moro* or the green turtle (*Chelonia mydas*); *yauk* or the hawksbill or Carey turtle (*Eretmochelys imbricata*); and *moro non dummad* or the loggerhead turtle (*Caretta caretta*).
- To request that the national state respect and recognise our ancestral rights to the land that has been passed down to us by our ancestors and which we also wish to pass on to our future children, grandchildren and great-grandchildren, and to a healthy environment with sustainable and environmentally-friendly development.

## **Draft law to legalise indigenous lands**

The Naso and Embera-Wounaan peoples have both presented proposals for the law to legalise their ancestral lands. These two proposals were undergoing their second reading in the National Assembly when

the bureau of the Assembly issued both proposals again for another first reading, thus delaying the debate on the law and its approval.

Given this situation, the Ministry of Government and Justice set up an inter-institutional commission to review the proposal submitted by the indigenous leadership. The government's proposal in this regard is to consolidate just one proposal for all indigenous territories not yet legalised. The indigenous authorities do not agree with such a proposition, however, and have issued resolutions in this regard. The relevant discussions are planned for 2007 with the aim of reaching a consensus. □

## TRINIDAD AND TOBAGO AND THE CIRCUM-CARIBBEAN

The total population of Trinidad and Tobago is 1.1 million but there is no official census category for indigenous people of Amerindian descent. Estimates range from as few as 12,000 in north-east Trinidad, to as many as 400,000 nationwide.<sup>1</sup>

Around half of those who self-identify as being of Amerindian descent belong to the Santa Rosa Carib Community (SRCC) in the Borough of Arima. The community was the first to get official recognition as indigenous by the state in May 1990.<sup>2</sup> The Santa Rosa Carib Community maintains certain distinctive traditions in horticulture, cassava processing, herbal knowledge, hunting practices, house building and weaving traditions, as well as holding the annual Santa Rosa Festival in honor of their patron saint.

Trinidad and Tobago has no specific legislation on indigenous peoples' rights and has not signed any international conventions of direct relevance to the Caribs.

In the wider Circum-Caribbean region, there are an estimated 100,000 self-identified indigenous persons. According to government censuses, this number includes: 41,000 in Guyana, out of a national population of 756,000; 26,000 in Belize, out of a population of 146,000; 6,000 in St. Vincent, out of a population of 113,000; and, 3,000 Caribs in Dominica, out of a national population of 74,000.<sup>3</sup>

2006 was an especially successful year in many regards for Trinidad's Santa Rosa Carib Community (SRCC). The government of the Repub-

lic formally re-instituted an "Amerindian Project Committee", by means of Cabinet Minute No. 444 dated February 23, 2006, with the stated purpose of advising the government on matters pertaining to the Amerindian community of Trinidad and Tobago. The Committee consists of 12 people, headed by the curator of the National Museum and including several officers from government ministries (culture, education, agriculture, public works), from the University of the West Indies, and three members from the SRCC. The Committee will discuss a long-standing promise of a land "grant" for the SRCC, which dates back to 1973, when the community was made to register as a limited liability company in order to receive profitable lands from the state. The lands were never transferred, so the Committee will now finally discuss the issue, with special concern for how the land would be owned, used and distributed.

In the meantime, the SRCC has been awarded a lucrative contract by the state to oversee a reforestation project on 500 acres of land in the Aripo valley, east of Arima. This employs a large number of members of the SRCC in regular work, while drawing in many more potential members of the SRCC from the Aripo area.

Amerindian Heritage Day, a national day of recognition marked each October 14 (instituted by the state in 2000), was very poorly observed this year. No organized events took place, apart from a small gathering at the Carib Centre in Arima. Unlike past years, there was no media attention.

In July 2006, the President of the SRCC was appointed Deputy Mayor of Arima for a second consecutive term, having won his fourth consecutive three-year term on the Arima Borough Council. With respect to national politics, the SRCC stayed outside of the growing national debate on the projected opening of two very controversial aluminium smelters, the focus of heated and widespread opposition on environmental grounds. Given the strategic political ties of the SRCC to the ruling party, it has effectively remained silent on the issue, as noted at least in private by some leading environmental activists in Trinidad. The smelters are to be built in south-western Trinidad.



## Reconstitution of the Caribbean Organization of Indigenous Peoples

The SRCC was funded by the national government to host the Arima section of activities, specifically the Amerindian ones, for the Caribbean Festival of the Arts (CARIFESTA) in September 2006. As a result, the SRCC was able to host delegates of the renewed Caribbean Organization of Indigenous Peoples (COIP), which was formally reconstituted after having been dormant for a decade.<sup>4</sup>

Among the primary aims of the first incarnation of COIP were: (1) cultural retrieval: language and folklore research and revival; (2) symbolic activities within nation-states to attract media attention: identifying indigenous heroes; mounting indigenous displays at the Caribbean Festival of the Arts (CARIFESTA), the regional arts celebration; declaring Caribbean Indigenous Peoples Day on August 14, to commemorate the founding conference, and holding a contest to select an indigenous queen of the Caribbean region; (3) regional exchange: to have persons/groups from different countries visit each other; and, (4) promoting opportunities for education and training in technical skills.

COIP also became a member of the World Council of Indigenous Peoples in 1990 and benefited from the ongoing support of several Canadian First Nations federations. In addition, COIP was recognized by the secretariat of the Caribbean Community and Common Market (CARICOM) and built development-oriented linkages with several regional non-governmental organizations (see Palacio 2006). By 1993, COIP membership consisted of Carib representatives from Dominica, St. Vincent, Trinidad and Tobago; Garifuna from Belize; and various Amerindian tribes from Guyana.

By 1996, however, COIP had essentially vanished as an organization while in the hands of the Guyanese Organization of Indigenous People. Among the factors undermining the existence of COIP were: "racial" divisions between member communities (some were deemed "too black", such as the Garifuna of Belize); inadequate and irregular communication among member groups; and the lack of a sound financial base on which to sustain activities.

The renewal of COIP happened by way of transfer of the chair of the organization from Guyana (where it had been in the hands of the Guyanese Organization of Indigenous People) to Ricardo Bharath Hernandez, President of the Santa Rosa Carib Community of Arima, Trinidad, who has been largely responsible for resuscitating the organization. Trinidad will have the chair for three years. The formal transfer of the chair was marked by an elaborate ritual that was staged by the Surinamese delegates. Surrounded by burning incense, song and dance, the Arima Carib leader was symbolically crowned with a large feather headdress and made to sit while a Surinamese female elder blew cigar smoke on him and circled him while rattling a *marac*. Each COIP delegate was then invited on stage to present Bharath with gifts from their home communities.

Three government ministers impressed upon the audience of roughly 80 persons and COIP delegates the central role that should be played by government, not just in the functioning of COIP but in terms of the development of indigenous communities in the region. The effect was a little chilling, especially as this followed the very critical remarks of Alan Leow from the Guyanese Organization of Indigenous People (who took the opportunity of his address to confront the Minister for Amerindian Affairs, seated in the first row in front of him,

about the Guyanese government's continued refusal to admit that "indigenous" refers to the aboriginal peoples of Guyana and not, as the government insists, to all persons born in Guyana). Even the remarks of the Trinidadian host, Ricardo Bharath Hernandez, were partly critical of the Trinidadian government, when he claimed that his community was treated like a beggar by that same government. Nevertheless, the fact remains that governments in the region played a key role in making the COIP gathering possible, which took place under the aegis of the Caribbean Festival of the Arts, and with funding allocated for CARIFESTA. Previous COIP gatherings of the 1990s had been funded by the Trinidadian government in select instances, and governments of COIP member territories committed themselves to funding half of the future costs of private COIP meetings. Given that the new COIP leadership is committing itself to a meeting in each of the member states every six months, and a full assembly every year, and given the extent of government involvement, questions regarding COIP's independence and its sustainability remain open.

At a private meeting held on September 24, 2006, the COIP delegates discussed a new plan of action and broader membership. The previous incarnation of COIP included Belize, Dominica, Guyana, St. Vincent and, later, Trinidad. It has now widened to include Suriname and, potentially, Grenada, St. Lucia and Puerto Rican Taínos based in New York. What remains largely undecided is how COIP will have a meaningful presence on the ground in the various indigenous communities nominally represented by the newly reformulated organization. Even with delegates present as guests of the Arima Caribs, there was little spontaneous, informal, interpersonal interaction between the COIP delegates and ordinary members of the local Carib community. In addition, the question of how COIP would be represented at the United Nations' Permanent Forum on Indigenous Issues was also discussed, especially given the new Trinidadian chair's reluctance to travel to New York for UN events.

COIP delegates also discussed plans for building a regular communication network, given that most of the delegates have access to email. There are also plans to revive the old COIP newsletter, *Indigi-Notes*. While it is decidedly premature to offer any conclusive statements on the prospects for COIP's future, little was in evidence to sug-

gest that key lessons from the past had been studied or learned and, indeed, key actors from the past were absent from the gathering. □

## Notes

- 1 This depends upon how ancestry is calculated, and whether descent is actively chosen or ascribed by analysts.
- 2 **News Release No. 360, Information Division, Office of the Prime Minister, 1990 May 08:** *Recognition of Santa Rosa Carib Community and award of annual subvention*; "Cabinet has decided that the Santa Rosa Carib Community be recognized as representative of the indigenous Amerindians of Trinidad and Tobago, and that an annual subvention of \$30,000 be granted to them from 1990. Cabinet also agreed that an Amerindian Project Committee be appointed to advise government on the development of the Community."
- 3 **Palacio, 1995**, p. 25-40.
- 4 The organization was first founded in 1988, after a regional conference in St. Vincent in 1987, the first such gathering in modern Caribbean history.

## References

- Palacio, Joseph O., 2006:** Looking at Ourselves in the Mirror: The Caribbean Organization of Indigenous Peoples (COIP). In Maximilian C. Forte (Ed.), *Indigenous Resurgence in the Contemporary Caribbean: Amerindian Survival and Revival*, pp. 215-233. New York: Peter Lang Publishing.
- Palacio, Joseph O., 1995:** Aboriginal Peoples – Their Struggle with Cultural Identity in the CARICOM Region. In *Bulletin of Eastern Caribbean Affairs*, 20 (4): 25-40.

## SURINAME

The indigenous Amerindian and Maroon people living in Suriname's southern rainforest region (the interior, covering about 80% of the country's land area) number approximately 50,000 people, representing 8% of the population. The Amerindian people are descendents of the original inhabitants of the Amazon. Maroons are descendents of African slaves who escaped from coastal plantations, fought a war of liberation, and today live in the rainforest far removed from the areas that are economically developed. Amerindian and Maroon communities live in more than 50 riverside villages and rely on subsistence agriculture, hunting and fishing. Maroons, having a tradition of trade with the Dutch coastal colony, are more integrated into the cash economy than are indigenous communities.

The key legislation and policies governing Amerindian and Maroon peoples' affairs are the 1982 L-Decree on Principles of Land Policy, the 1986 Mining Decree, the 1992 Forestry Management Act, the 1992 Accord for National Reconciliation and Development (Peace Accords) and the 2006 Suriname Land Management Project (SLMP).

### **The Suriname Land Management Project**

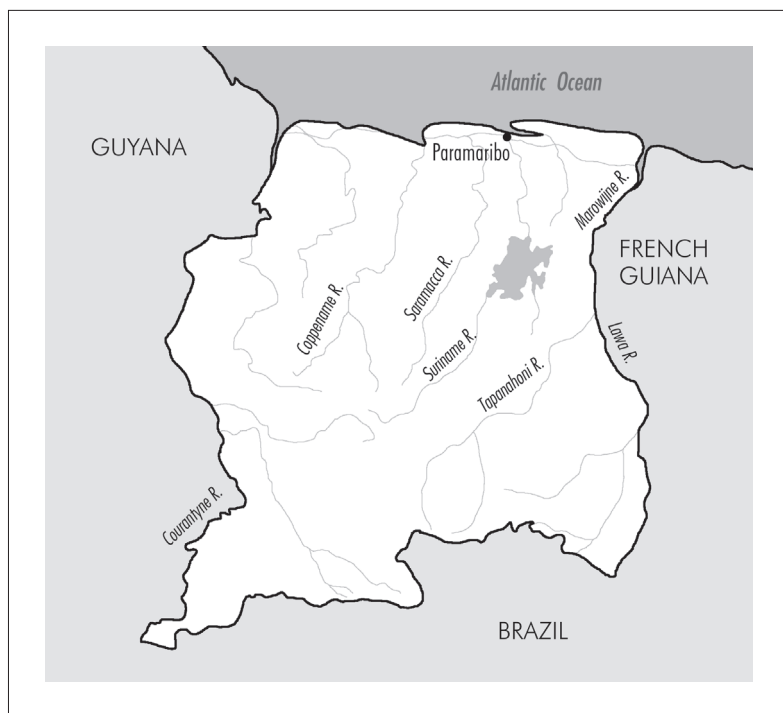
A project developed by the Inter-American Development Bank (IDB) will replace traditional land tenure systems in Amerindian and Maroon areas with an "active market system for land". An assumption underlying this open land market system is that it will provide equal access to land to all market competitors because anyone can buy or lease at the market rate. Not everybody, however, is a market

competitor. Since Amerindian and Maroon people in the interior are not recognized as having a legal claim to their traditional territories and because they do not have the financial or social capital to compete with foreigners for title of their traditional lands, this project will result in the transfer of land to foreign investors and IDB donors. Traditional land tenure systems based on principles of social organization and kinship relations rather than on principles of market economy and transactions will be eradicated in favor of a global market system.

On 23 February 2006, the IDB presented the Suriname Land Management Project (SLMP) to the Government of Suriname. In a separate meeting that same day, an IDB operations specialist told staff from the US non-profit Suriname Indigenous Health Fund (SIHF), "The SLMP is a final solution that will settle all land disputes in Suriname, including indigenous lands in the southern interior region where gold and timber resources are concentrated". This revelation conflicted directly with the IDB's earlier statements that the project did not have a component related to land rights in the interior but simply aimed to create a land market in Suriname by removing legal and institutional constraints to free alienation of title. Publicly, the IDB claimed that the SLMP would only include a policy note stressing the importance of resolving land issues in the interior but that these issues would be kept separate from the SLMP.

According to the operations specialist speaking to the SIHF, the SLMP (which is not available to the public for review or comment) "does in fact define policy for Maroon and Amerindian groups in Suriname. In addition to policy, the SLMP will also draft legislation and regulations necessary for the government to implement the land policy for the interior groups. Once the legislation has been approved by parliament, the policy can be implemented. However, implementation of the policy will not take place in the first phase of the SLMP. The reason is that the legislation needs to be drafted and placed into law first. This will take three years, depending on how fast the government moves".

Since 1982, when the military government reformed the land tenure system with the intention of eliminating speculation, the government has resisted the capitalist principle of private ownership. At a land rights conference held in May 2006 in Kwamalasemutu, an indigenous village near the border with Brazil, representatives from the IDB



responded to the government's reluctance to adopt the SLMP policies with a threat saying, "a the government does not adopt the policies regarding the land rights of the indigenous people as defined in the SLMP, the country cannot borrow money from the Bank".

Chris Healy, a Surinamese anthropologist commenting on land tenure for the Ministry of Natural Resources in Suriname, argues that the government should respect the rights of the indigenous and Maroon peoples to remain who they are and to live the way they want to live, even if it means they will remain outside the cash economy because they cannot make their assets fungible. "I think it would be wise to adopt a more accommodative land tenure policy towards the interior of Suriname," says Healy. This vision is shared by the Ministry of Regional Development, which believes the Peace Accord leaves room for both advocates of preserving the traditional way of life and those who wish to assimilate into the mainstream Suriname economy. Ac-

cording to Healy, the open-ended language of the Peace Accord was “consciously adopted in order to accommodate the aspirations of both factions”.

## **A threat to all indigenous peoples in Suriname**

While all land in the interior of Suriname is considered to be the property of the government (domain land) the primary laws currently in place in Suriname, which are known as the L-Decrees, give the indigenous and tribal people “entitlements” to their villages and agricultural plots, “as much as possible, unless there is a conflict with the general interest”. A major problem with the L-Decrees is that the entitlements only apply to their villages and the current agricultural plots and do not account for their wider territories and other lands occupied and used for hunting, fishing and other subsistence and cultural activities.

Historically, the indigenous people in the resource-rich interior have been the only Surinamese citizens whose rights were only to be “taken into account as much as possible”. The chairman of the Organization of Indigenous Peoples in Suriname, Nardo Aluman, said at the land rights conference held in Kwamalasemutu, “We are fighting for the land rights of both the Amerindian and Maroon people, because we are one. We live together in the interior in harmony. We are the Interior People.”

Another key point that must be considered is that, as a result of the SLMP, ownership of all natural resources will be distinct from that of land ownership. All minerals and timber within Suriname’s territories will therefore continue to be owned by the state. Regardless of land tenure or entitlements, under the SLMP, the massive expansion of gold, bauxite and diamond mining in Suriname will cause immense problems for the indigenous and tribal people. Currently, mining activities put tons of toxins into the interior environment each year, compromising the health and food security of interior people (read more about this in *The Indigenous World* 2005). These activities will be greatly expanded under the SLMP. More importantly, people will be displaced by mining operations. Already, N’dujka village of Nieuw Koffiekamp,

located north of Brownsberg Nature Park and west of Brokopondo, faces a forcible relocation for the second time in forty years. A resident of Nieuw Koffiekamp told SIHF staff that he would never move again, "We will fight – we will die first."

## **Floods displace thousands**

On May 9, torrential rains in Suriname resulted in major floods that displaced an estimated 35,000 tribal and indigenous people. Interior villages were confronted with completely destroyed homes, gardens and livelihoods. The Dutch, the EU and the US attempted to provide relief. In order to reach the victims quickly, local commercial flight companies were used to transport emergency goods. Transport costs absorbed most of the financial aid meant for the victims. The crisis caused by the floods, an unprecedented natural disaster, was exacerbated by the fact that cyanide retention pools and mercury pits were flooded as well, dumping tons of toxic chemicals into the waterways that tribal and indigenous people depend on. A gold rush that began a decade ago has attracted tens of thousands of miners who use toxic chemicals such as mercury and cyanide to process gold.

## **Concluding remarks**

For indigenous people, the land allocation system that will be put in place by the SLMP will be a disaster. Displacement and declining public health from exposure to mining waste will endanger all people living in the interior. Indigenous people do not have the financial or social capital to compete with foreigners for title to their traditional lands.

The current policy of the IDB, namely that it will not lend money to the Government of Suriname until it acknowledges indigenous land rights, appears benign on the surface. While this policy is designed to put pressure on the government to adopt the SLMP as soon as possible, forever "resolving" land disputes with forest peoples, the outcome of the SLMP will be devastating for the indigenous living in Suriname's

interior. However indigenous lands are titled, the government will retain all lucrative mineral rights, as well as the right to move indigenous communities as deemed appropriate in the interests of the state. Whatever land title indigenous groups may have, the state holds their fate, as they will retain the rights to all natural resources.

The SLMP, introduced in 2006, and scheduled to be fully implemented by 2011, is a neo-liberal structural adjustment program that will promote the interests of foreign investors and mining companies at the expense of the Amerindian and Maroon people in Suriname's interior. It was developed against a post-colonial background shared with other Caribbean nations. Similarities in society, economy and culture mean that many of the land policy issues facing Suriname today are relevant elsewhere in the region. Suriname's actions relating to land tenure will thus have consequences for the entire Caribbean. □



## COLOMBIA

According to the official 2005 census,<sup>1</sup> there are eighty-seven indigenous peoples identified in Colombia, speaking sixty-four different languages and totalling 1.4 million people, or 3.4% of Colombia's total population. The country's indigenous organisations state that there are ninety-two indigenous peoples.<sup>2</sup> The most numerous are, in order of size, the Wayúu with around 300,000 members; the Nasa or Paez with 210,000; the Embera with around 100,000; and the Pasto with 80,000.

The vast majority live in the country's rural areas. They live across more than 30% of the Colombian territory and, to date, have obtained legal recognition of some 31 million hectares of land (310,000 km<sup>2</sup>). The map of indigenous territories largely overlaps with the areas of activity of armed groups which, since the early 1960s, have been pursuing an internal war. This has led to serious crisis among these peoples, especially in the Amazonian region.

The 1991 Political Constitution establishes that: "The State recognises and protects the ethnic and cultural diversity of the Colombian Nation". It also recognises the indigenous territories as territorial organisations of the Republic. Since then, wide-ranging legislation has been promulgated but this has not, however, prevented the continuing loss of - and threats to - the indigenous territories.

### General political and legislative events

Three key elements marked the course of Colombia's political direction during 2006. These were: the rapid approval of laws opening



the path to signing of a Free Trade Agreement (FTA) with the United States of America, intensification of the Álvaro Uribe Vélez government's policy of *Democratic Security* and, finally, the re-election of the president under dubious circumstances highlighted by the involvement of paramilitary forces and drugs traffickers, amidst the significant progress of the opposition parties. All these factors directly af-

fected the situation of indigenous peoples and the political actions of their organisations.

## **Imposition of the Free Trade Agreement and legislative adaptation**

Since the Washington Consensus of 1994,<sup>3</sup> the government and the Colombian Congress have been adopting measures to rapidly adapt internal legislation to the demands of free trade, as promoted by transnational corporations. With the collapse of the negotiations to establish the Free Trade Area of the Americas, FTAA, the United States opted for bilateral negotiations with those governments most favourable. Colombia thus signed an FTA with the US on 22 November 2006,<sup>4</sup> amidst strong criticism from the opposition.

Indigenous organisations and authorities joined their voices to this criticism, particularly noting the harmful impact the FTA will have on Colombian interests and sovereignty, insofar as this Agreement undermines the state's power to control its own economy, destroys all possibility of encouraging national production, relinquishes food sovereignty and favours the large transnationals. In relation to indigenous peoples specifically, the FTA affects their whole political project, some of the demands of which have been recognised in the Constitution. The text of the Agreement signed forces the state to commoditize all its territories and natural resources, and this – without expressly stating it – challenges the indigenous peoples' right to their ancestral territories and resources. Moreover, the ban on trade barriers also threatens the right to territory and to food sovereignty, along with the right to prior consultation and to apply their own system of justice.

One of the aspects of the FTA signed by the two governments that most threatens indigenous peoples is that relating to biodiversity and traditional knowledge. The intellectual property system approved in the FTA turns indigenous people - and all Colombians - into a society dependent upon food products and medicines sold by large multinationals, thus abolishing their right to food sovereignty. Biopiracy, which continues to be the most effective way of expropriating the

indigenous people of their resources and associated knowledge, will be legalised. And, once declared a scientific service, we will be able to claim nothing; on the contrary, we will be in debt for the service we are being provided with. Moreover, Colombia is required to adapt its legislation to ease implementation of the Agreement. For example, in line with article 16.1.3(c) of the FTA text,<sup>5</sup> Colombia must ratify the 1991 revision of the *Unión para la Protección de Obtentores Vegetales* (International Union for the Protection of New Varieties of Plants - UPOV) before 1 January 2008. This obligation on the part of the Colombian state is a very serious one for the indigenous peoples and local communities because the 1991 revision consolidates the rights of those holding plant breeding certificates, to the detriment of the rights of farmers, including indigenous peoples, rural workers and Afro-Colombian communities.

The text of the Agreement was sent to the Congress of the Republic on 30 November 2006 for its approval and ratification, and extraordinary sessions of the Congress have been held to speed up the process, given the enormous political crisis created by the ever clearer impact of drugs trafficking and paramilitary groups on the government and among congressmen and women.

But the FTA was being promoted sometime before this, when the negotiations for the FTAA began in 2000. As part of this process, 2006 began with application of the Law on Legal Stability for Investors (Law 963 of 2005, adopted in July 2005), which authorized the government to sign *legal stability contracts* with large investors in order to promote new investments within the national territory or expand already existing ones. Through these contracts, the government guaranteed investors that if, during the validity of the contract, any of the regulations identified as being a determining factor of investment should change, and that change should be unfavourable to them, the previous regulations would continue to apply. These contracts could be signed for periods of up to 20 years and, in any case, no less than three.<sup>6</sup> In October, the Constitutional Court declared this law unconstitutional, although it gave companies the right to sue the government if they felt that their profit horizon was being affected.

## Forestry Law

Another highly controversial legal initiative, given its impact on indigenous peoples, was the General Forestry Law (Law 1021 of 2006). Instead of focusing on the conservation and sustainable use of the forests, it has been designed to facilitate the indiscriminate exploitation of timber, ignoring national and international progress made in this regard. In general terms, the law sees conservation only as a function of exploitation, engulfed by the need to guarantee investors that there will be no change in regulations and that the institutions will be subject only to the framework of this law.

In relation to indigenous peoples, the law raises a number of problems, in addition to the fact that it was submitted without any prior consultation, as required by ILO Convention 169. The first attack on indigenous territories consists of the fact that the law declares areas as being *of forestry interest* and, as such, they will not form part of a land reform, prejudicing the aspirations of the indigenous peoples – the ancestral owners of these areas – for territorial recognition. Secondly, it leaves the door open to the possibility of breaking the territory up into its components by establishing the legal status of the *forest canopy* (existing forest or future plantation), independent of the land on which it exists, in order to facilitate its sale. Although the indigenous territories are theoretically excluded from this break-up in the final version of the law, the state's interest in dismantling the territories is clear.

## Draft law threatens the recognition of indigenous territories

In addition, although it is still not legally in force, draft Law 30 of 2006 is progressing through Congress and this law clearly proposes putting a halt to the process of recognising indigenous peoples' territories. The draft is entitled: *On Rural Development in Colombia*, but behind this name lies its true intention: to make the land available to big business, as can be seen from its clear favouring of large investors and export production over and above small-scale farmers and domestic food

production. It is coming up against great opposition from indigenous peoples, rural workers, Afro-Colombians, people displaced by the violence and other social sectors of the country, as it is the country's most regressive bill in terms of land issues.

For the indigenous peoples, one of the most important points relates to *clarification of ownership*, insofar as the bill validates titles obtained over the last 20 years by fraudulent means or through paramilitary violence as proof of ownership (almost 4 million hectares of land)<sup>7</sup> and questions the legitimate and ancestral titles of the indigenous reserves or lands of Afro-Colombians and rural workers, which can be challenged by other titles according to the law "of equal right". Secondly, it subordinates the procedures for reserves to *regional development criteria*, an argument that was previously used by the government to justify oil projects, hydro-electric dams, timber extraction, cattle ranching, monocropping, highways and other infrastructure projects that affected the indigenous territories. In addition, various articles of the bill abolish the procedure for regularising the indigenous reserves, which is established in current legislation to ensure that they can take control of any improvements made by settlers that may have settled on indigenous territories, so that the owners can enjoy their lands in peace and tranquillity.

The antipopulist nature of the draft bill of law is clear in the way *de facto* actions on the part of different social players have been handled. While it rewards paramilitary groups that have taken territories by means of crimes against humanity, it condemns the actions of indigenous peoples and rural workers who take back their land. All these points can be summed up in one sentence of the Minister of Agriculture, at a meeting in the Congress of the Republic: "Not one more hectare of land for the indigenous people".

### **"Democratic Security" policy intensifies**

The Uribe Vélez government has held power during a period of prolonged "negotiations" with the paramilitary groups of the extreme right-wing (closely linked to drugs trafficking), whose longstanding nature has enabled them to continue their criminal actions while they

enter into negotiations. 2006 saw the formal conclusion of this process but this very fact demonstrated the true conditions under which these negotiations took place. The government itself was forced to recognise that the 30,000 paramilitaries put forward as “demobilised” were no such thing and that, on the contrary, the emergence of dozens of “new paramilitary groups” was now challenging its strategy. And in the regions of the Atlantic Coast and Orinoquia, and in the departments of Antioquia and Caldas, a mafia-like institutionality has been consolidated in which electoral “brokers”, drugs traffickers and paramilitaries have replaced the state.

Meanwhile, the Colombian government has presented its so-called “policy of democratic security” as an effective way of guaranteeing indigenous peoples their human rights. Its stated proof lies in the greater presence of the security forces on indigenous territories and it maintains that there has been a decline in human rights violations. However, this policy has in no way entailed a reduction in the violence being conducted against indigenous people.<sup>8</sup> Political assassinations, arbitrary detentions, injuries caused by the excesses of the security forces when suppressing protests and individual threats all figure high in the data.<sup>9</sup> In 2006 alone, according to figures from the Database on Political Violence of the Ethnic Watchdog of the Centre for Indigenous Cooperation (*Banco de Datos sobre Violencia Política del Observatorio Étnico del Centro de Cooperación al Indígena* - CECOIN), no less than 52 murders, 25 forced disappearances, 82 injuries, 4 kidnappings, 15 cases of sexual violence or torture and 100 arbitrary detentions were recorded, most of them at the hands of state agents. In addition, no less than 7,243 indigenous people were forcibly displaced, particularly in Chocó, Nariño, Cauca, Guaviare and La Guajira departments.

To the above must be added the way in which the Uribe government has responded to indigenous protests. Both the May protests of indigenous people of the Cauca against the FTA and the subsequent land recoveries in September and October were handled by the security forces as being terrorist threats. As a result of the protests in Cauca, Nariño, Valle and Meta, two indigenous individuals were murdered by the police, more than 40 arrested and an unknown number suffered injuries and bruising.

## The indigenous movement

Faced with the anti-populist and anti-indigenist policy of the current government, as demonstrated by the regressive legislation and large-scale repressive actions noted above, indigenous demonstrations against the economic measures have been growing in prominence since 2005. As a result, the indigenous organisations have begun to articulate the struggles of other popular sectors.<sup>10</sup> This role continued to be key in 2006. The Summit of Social Organisations held in La María, Piendamó,<sup>11</sup> took place in May 2006 with the aim of strengthening unity, agreeing a minimum programme of demands and forcing the government to fulfil the commitments it made to the indigenous people of the Cauca following previous protests. This peaceful summit was subjected to brutal and unnecessary repression at the hands of the anti-riot squad. Despite the destruction of the premises of the Indigenous Council (*Cabildo Indígena*), the strength of the indigenous peoples was not diminished. The summit arose as the key action in a rural demonstration aimed at protesting against the FTA negotiations and as a political action against the presidential candidacy of Uribe Vélez.

On the basis of this protest, actions to recover land were resumed in Cauca and Tolima departments. In Cauca, 14 such actions to recover ancestral lands have been submitted since the end of 2005, in the face of the government's clear failure to comply with its commitments. These actions were repeated in 2006, and, on a number of occasions, the indigenous peoples re-entered the lands, some of which are now in the hands of the communities. In Tolima, four recovery actions are underway, headed by the indigenous authorities of the Regional Indigenous Council (*Consejo Regional Indígena* - CRIT).

We cannot fail to mention the indigenous peoples' resistance to oil exploitation as being among their most significant actions of 2006. On 12 October, indigenous Barí from the north-east of the country held a public hearing at which they made clear their opposition to drilling for oil on their territory. The situation is the same for the U'wa who, despite clear opposition to exploitation for at least 14 years, have recently received notification from the Colombian government of authorization to drill for oil in the Sirirí and Catleya blocks. Faced with this fact, the

U'wa have stated that: "Every single U'wa will defend this land with his or her life to prevent the Whites from invading".<sup>12</sup>

A very important event took place from 19 to 29 September: the International Verification Mission on the humanitarian and human rights situation of indigenous peoples in Colombia,<sup>13</sup> organised by the National Indigenous Peace Council (*Consejo Nacional Indígena de Paz - CONIP*) and involving all the indigenous organisational processes in the country. The mission was made up of a broad international delegation and its report bears witness to the difficult situation of indigenous peoples in the regions visited and urges the Colombian government and other relevant bodies to take measures in this regard, in particular implementing the recommendations made by UN bodies.

These struggles have brought about an internal movement aimed at consolidating processes of ethnic unification and organisation. A key moment in this dynamic was the holding of the Embera National Congress<sup>14</sup> from 19 to 23 October in Pereira. It was attended by more than 3,000 Embera from nine of the country's departments. The main political positions taken at this congress were a call for unity among Embera organisations, opposition to the agrarian law underway, denunciation of the process of negotiating with the paramilitaries and a demand that the Uribe Vélez government should build peace and not focus on the use of force.

In the same vein, the Summit of Indigenous Peoples of Nariño took place in November, bringing the six indigenous peoples of this region together in San Antonio, on the shores of the Pacific Ocean, with the aim of establishing a position on human rights, biodiversity and land reform, and to demand that the Colombian government vote in favour of approving the UN Declaration on the Rights of Indigenous Peoples at the UN General Assembly. The Assembly of Indigenous Authorities of Antioquia was also held in Necoclí in the north-west of Colombia, and this focused its reflections around the exercise of special indigenous jurisdiction in the context of their autonomy.

## **Electoral processes**

In contrast to the growing indigenous prominence in the social struggles against neoliberalism, where the political appropriateness of their

intervention and coordination is clear, their electoral participation has highlighted worrying concerns. The indigenous people have the right to their own seat in the Chamber of Representatives and two in the Senate of the Republic, elected by means of a special constituency for indigenous communities. In addition, during the elections for the Congress of the Republic on 12 March, indigenous candidates also stood for ordinary constituencies.

The 2006 results signified a retrograde step in relation to the 2002 elections, when two additional senators were elected through the ordinary constituencies, with strong support from the non-indigenous urban sectors. This time, none of the candidates gained sufficient votes and, what is more, voting in the special constituency was substantially down.

For the Chamber of Representatives, the indigenous Wayúu, Orsinia Polanco Jusayú, who stood on behalf of the *Polo Democrático Alternativo*, won the seat. The fact that this party is not indigenous-based provoked negative reactions from some indigenous political/electoral sectors but, above all, highlighted the crisis within the indigenous political parties, which were unable to hold onto the space they had previously won.<sup>15</sup> It was more or less the same in the Senate with regard to the indigenous constituency, where the candidates from the *Alianza Social Indígena* (ASI) and *Autoridades Indígenas de Colombia* (AICO) were elected, after a number of complaints made about the confusion caused by the implementation of the new electoral system. The number of voters was also substantially down in this election.

The paradox of a prominent indigenous movement recognised for its mass protests, as opposed to a movement with no electoral support can be explained in a number of ways. Firstly, the participation of indigenous people, on a personal basis, on lists supporting the president's policies and hence presidential candidate Álvaro Uribe Vélez, which meant that many voters who had previously seen the indigenous sector as an independent and alternative option refused to vote for them and instead chose other options. This situation was aggravated by the support of the *Alianza Social Indígena* for presidential candidate Antanas Mokus, one of whose manifesto proposals was to support the FTA. This meant that it lost much of its credibility among the indigenous electorate. This negative response from voters was ex-

pressed in criticism of the political inconsistency of the indigenous parties, of the erratic behaviour of their representatives in Congress, and in the fact that part of the indigenous electorate voted for left-wing options that represented a clearer position in relation to the polarization caused by the leaning of the traditional parties towards the extreme right. □

## Notes and references

- 1 República de Colombia. Departamento Administrativo Nacional de Estadística. October 2006. More information can also be found at [www.dane.gov.co](http://www.dane.gov.co)
- 2 The official 2005 census indicates that there are 87 indigenous peoples.
- 3 Many critics, such as Noam Chomsky and Naomi Klein, see the Washington Consensus as a way of opening up the labour market of underdeveloped economies to exploitation from the more developed economies.
- 4 More information on the free trade agreement, among other things, can be found on the Colombian government's website at [www.tlc.gov.co](http://www.tlc.gov.co)
- 5 Published on the website [www.tlc.gov.co](http://www.tlc.gov.co)
- 6 See **Grupo de Seguimiento a Políticas Públicas del Observatorio Étnico de Cecoin, 2005**: Ley de estabilidad jurídica: del Estado Social de Derecho al Estado asegurador del riesgos de inversiones. In *Etnias & Política* No. 2, December 2005.
- 7 See **Instituto Geográfico Agustín Codazzi, CORPOICA; 2002**: *Zonificación de los conflictos de uso de tierras en Colombia*, Bogotá. Vol. 4 p. 83. **Ibáñez, Ana María y Pablo Querubín, 1999**: *Acceso a tierras y desplazamiento forzado en Colombia*, Document 2004-23 CEDE (Unianandes, 1999).
- 8 *Declaración conjunta de Organización Indígena de Antioquia, Consejo Regional Indígena del Cauca y Centro de Cooperación al Indígena*, at the 24th Session of the UN Working Group on Indigenous Populations, held in Geneva (Switzerland) from 31 July to 4 August 2006.
- 9 **CECOIN, 2006**: La política de "seguridad" de Uribe Vélez: Cuatro años contra los pueblos indígenas. In *Etnias & Política*, number 3, December 2006. Pages 6-17.
- 10 See **Arias, Silsa y Vanesa Gómez, 2005**: Minga Nacional Indígena: la semana que los Embera derrotaron a Uribe Vélez, and **Consejo Regional Indígena del Cauca CRIC, 2005**: Liberación de la madre tierra, both in *Etnias & Política* No. 2, December 2005.
- 11 A more detailed account of the Summit can be found in **Gómez Ariza, Carlos, 2006**: Cumbre de Organizaciones Sociales: Un delito llamado dignidad, en *Etnias & Política*, number 3, December 2006. Pages 18-31.
- 12 Taken from the newspaper *El Tiempo*, Bogotá, December 18 2006. Number 33630.

- 13 More information on the whole International Verification Mission, participants, regional reports and Final Declaration, can be found on the ONIC website [www.onic.org.co](http://www.onic.org.co)
- 14 More information on the Embera Congress can be found on the ONIC website [www.onic.org.co](http://www.onic.org.co)
- 15 The seat is even being legally challenged. The position of the case can be seen at [www.ramajudicial.gov.co](http://www.ramajudicial.gov.co)

## VENEZUELA

Venezuela is a multicultural country that recognises and guarantees the existence of its indigenous peoples and communities.<sup>1</sup> Of the 26 million inhabitants in the country, 2.2% are indigenous.

The rights of indigenous peoples are enshrined in the 1999 National Constitution. Venezuela has also signed ILO Convention 169.

Elections held on 3 December 2006 confirmed a second term in office for President Chávez, with 62.84% of the vote. International observers representing, among others, the Carter Foundation, the European Union and Human Rights Watch all agreed that the process was a satisfactory and transparent one, with mass participation.

The indigenous population were huge supporters of Chávez, voting for him to a greater extent than the rest of the country.

In his first speech as President, Chávez proposed deepening the reform process he had already begun during his first term in office, known as the Bolivarian Revolution.

Of the most important points, the following were noteworthy:

- 1 Enabling legislation that will allow the legal framework required for the deeper reforms noted above to be quickly guaranteed.
- 2 The creation of the United Socialist Party (*Partido Socialista Unido*), inviting political parties allied to the Bolivarian process to unite into one single party block. This invitation has led to long and serious debates within the allied parties.



There have also been other one-off announcements, such as the nationalization of the Venezuelan telephone company, *Compañía Anónima de Teléfonos de Venezuela*, privatized in the 1990s, and the decision not to renew the concession of one of the private TV channels.

This first example is in line with the government's intention to open up the telephone service, which has been a virtual monopoly of the above mentioned company and whose policy was based on a rapid return on investment that resulted in technological improvements without expanding the service to the popular sectors.

These announcements gave rise to panic among the traditional economic elites and the opposition.

One immediate effect was a large increase in the parallel dollar, leading to a virtual doubling of the value of the official dollar.

## **Political participation on the part of the indigenous movement**

As noted in *The Indigenous World 2006*, a number of indigenous leaders occupy senior posts in different areas of the national authorities (national assembly, provincial and local authorities, etc.). However, a ministerial decree has now created the Ministry of Popular Power for Indigenous Peoples, whose organisational set-up, functions and concept are still in the process of being defined. With the elections behind him, the President appointed a Yekuana leader, Nicia Maldonado (former president of the national indigenous organisation, CONIVE), to head this ministry.

The involvement of indigenous leaders in the government has resulted in a clear positioning of indigenous issues within the government's political rhetoric and on the national public agenda. However, beyond rhetoric, the difficulty the national indigenous movement has in actually getting leaders into any spaces is beginning to be noted. In addition, once rights have been recognised and rhetoric strongly positioned, the challenge facing the indigenous leadership is to be able to formulate public policies that will ensure that rights acquired are actually enforced. This is a difficult challenge given that they have insufficient people to work in the necessary areas (health, education and territory, etc.).

It is also worth mentioning that the national indigenous leadership has initiated a serious internal debate. There is some consensus around the need to re-think the indigenous organisations' ways of organising, arenas of participation and objectives. As this consensus enjoys such a favourable national legal framework, the challenge is now to guarantee enforcement of rights by designing and implementing public policies. This area of work requires well-thought out and detailed plans, along with large numbers of trained staff able to think and intervene seriously in relation to government activities that have an impact on the lives of indigenous peoples.

During 2006, CONIVE held its three-yearly conference at which it elects new authorities. The same was the case for the Regional Organisation of Indigenous Peoples of the Amazon (*Organización Regional de los Pueblos Indígenas de Amazonas* - ORPIA) and the Regional Organisation of Indigenous Peoples of Zulia (*Organización Regional de los Pueblos Indígenas del Zulia* - ORPIZ).

CONIVE plans to promote these debates among all its regional organisations and the proposal is that they should take up the land demarcation process as an absolute priority once more. At the same time, the aim is to redefine its strategy for negotiating territories with the government, incorporating the debate into the process of national geopolitical transformation proposed by Chávez.

## **Bilingual intercultural education**

Despite the rights enshrined in the Constitution, the government has had serious difficulties in implementing a widespread policy of bilingual intercultural education.

There has been a clear decision from the Presidency of the Republic and the Ministry of Education to transform indigenous peoples' education. However, given the lack of trained individuals to take these processes forward nationally, it has been impossible to live up to people's expectations. Despite this, one-off efforts can be noted that are gradually having a concrete impact on their spaces and indirect impacts on other peoples and communities. Such is the case of the curricular transformation commenced in Amazonas state for the Yanomami, Yekuana and Piaroa peoples.

In addition, the Annual Report of the Human Rights Action-Education Programme, Provea, indicates that, according to the Indigenous Education Department of the Ministry of Education, school coverage for indigenous peoples was extended to Amazonas, Apure, Anzoátegui, Bolívar, Delta Amacuro, Monagas and Zulia states.

The same source indicates that the Ministry of Education and Ministry of Popular Participation and Social Development jointly produced a work plan to protect languages that are on the verge of extinction. Implementation of this plan began in mid-2006.

## Health

Among the constitutional articles referring to indigenous peoples, the right to integral health without detriment to traditional institutions and the right to a duly demarcated living environment are noteworthy. Improvements in the status of indigenous health are due largely to enforcement of both these rights.<sup>2</sup>

Firstly, we should mention the structural changes within the Ministry of Health that are making it possible to improve the health status of all indigenous peoples.

In 2004, an office devoted to indigenous peoples' health was created within the Ministry. From an initial small "working group" of four people in 2003, it has grown to form a ministerial department of more than one hundred indigenous and non-indigenous technical and professional staff, working in Caracas and in the eight states of the country that have an indigenous population. This institutional growth in terms of both hierarchy and labour force has been, and remains, ever more essential to promote the complex health measures required to remedy indigenous standards of health - always among the worst in the country.

The Ministry of Health has opted to "mainstream" an intercultural approach throughout the health system instead of creating an indigenous health subsystem as exists, for example, in Brazil. In other words, it has chosen to work to adapt all national policies, plans and programmes to the cultural specificity of the indigenous peoples. These efforts can broadly be divided into:

Internal awareness raising and education within the Ministry, such as informal chats on the realities of the culture and health of indigenous peoples, and special courses on indigenous health for under- and post-graduate health professionals.

- Policy adaptation, such as the creation of Intercultural Health Offices in various regional and national state referral hospitals.
- Coordination with other regional and local government ministries and departments. In this regard, the coordination with the National Strategic Plan for Defence, Development and Consolidation of the South, a government plan still in its early stages of implemen-

tation and which represents the largest expansion of the Venezuelan state's efforts into the south of the country since the 1970s, can be highlighted. These are virtually all indigenous territories with the noted problem of a lack of state attention.

- Contribution to the formulation of organic laws. In particular, the contributions to the discussion on the articles on indigenous health for the Organic Law on Indigenous Peoples and Communities and the draft Organic Law on Health still under discussion.
- Coordination of health action plans. In coordination with regional health bodies, specific health actions and plans for indigenous peoples are being implemented in various states. The Yanomami Health Plan can be highlighted in this regard, which seeks to improve the quality of health care for these people and, above all, extend a culturally appropriate health system to 100% of the Yanomami population.
- Information production. In addition to the ministerial dissemination of reports on specific health problems in different indigenous areas, an outstanding group of researchers has been brought together to produce three volumes of an anthropological nature on the health status of indigenous peoples.
- Organisation of consultation processes in indigenous communities.

One area in which an initial evaluation can be made in terms of the impact of these policies on concrete populations is the Yanomami Health Plan. This plan grew out of the Venezuelan state's commitment to design and implement an integral health plan for these people as part of a friendly agreement between the state and the Inter-American Commission on Human Rights in order to avoid a court hearing related to the Hashimu case, in which 16 Yanomami were murdered at the hands of Brazilian *garimpeiros* (small-scale gold miners) in the border community of Hashimu.

The plan took its first steps in 2005. In general terms, its implementation has resulted in a reduction in the proportion of Yanomami totally excluded from the health system from an estimated 70% in 2000 to 41% in 2006.

Although still very sporadic, a number of visits have been made to completely neglected areas that had previously not been visited for over 10 years.

From only one doctor in the Yanomami area at the end of 2004, there were more than 10 by 2006. In addition, since 2003 there have been two or three doctors from the Cuban Medical Mission who help every now and then with vaccination campaigns in the Yanomami area.

In terms of local human resource training - an essential strategy if health efforts in indigenous communities are to be sustainable - the training of 23 Yanomami (from virtually all regions of their territory) as health workers has begun, giving priority to young people in those communities most remote from the health system, places where the impact of trained health staff, supervised from a distance, can be expected to bear the greatest fruit.

In relation to the baseline point of 2004, significant improvements have therefore been made to the Yanomami health system. However, in terms of what remains to be done - guaranteeing a decent level of assistance to 100% of the Yanomami - the greatest challenges still lie ahead and the achievements thus far represent no more than an initial step.

It is important to note that much of what has been achieved in terms of expanding the health system among the Yanomami is due to coordinated work with the Armed Forces around air logistics, particularly since the departure of the New Tribes Mission from Venezuela, at times the only provider of air services to indigenous areas, and given the misfortunes of the commercial airlines in the Amazon.

## **Territory and development policies**

The number one concern of all Venezuela's indigenous peoples is the now long delays in the processes of demarcating indigenous living spaces. Although the state has granted collective property titles to some indigenous communities, no demarcated ethnic territory has been officially declared, despite substantial progress in terms of self-demarcation and the final results of maps and files that have been submitted to the National Demarcation Commission, as in the case of the Barí and Jodi peoples.

Given that the state is proposing an increase in South American development and integration activities that will affect a number of areas occupied by indigenous peoples – for example, the oil pipeline to Brazil and the gas pipeline to Colombia – it is becoming increasingly urgent that the indigenous territories be demarcated in order to ensure a greater balance in future negotiations between indigenous communities and the state around ways of implementing these projects.

In addition, the Strategic National Plan for the Defence, Development and Consolidation of the South has been designed as a border area programme in the south aimed at strengthening basic health and education services as well as controlling mining, drugs trafficking and other associated illegal businesses (e.g. fuel smuggling). It is essential that this plan's humanitarian objectives prevail and that security and defence objectives are fulfilled without detriment to the rights of indigenous peoples. For this, it is essential that social monitoring and control bodies are established among the Yanomami and other peoples in order to try once more to establish bases from which to promote dialogue that will enable a balance to be achieved between indigenous peoples and the state in negotiations regarding their future. □

## Notes

- 1 The indigenous peoples in Venezuela are the Baniva, Baré, Cubeo, Jivi, Hoti, Kurripaco, Piapoco, Puinave, Sáliva, Sanemá, Wotjuja, Yanomami, Warekena, Yabarana, Yekuana, Mako, Ñengatú, Kariña, Cumanagoto, Pumé, Kumba, Urak, Akawayo, Arawako, Eñepa, Pemón, Sape, Wanai, Warao, Chaima, Wayuu, Añu, Bari, Yukpa, Japreria, Ayaman, Inga, Amorura, Timoto-cuicas and Guanono.
- 2 The text referring to health and territory has been taken from a document, as yet unpublished, by José Antonio Kelly and Noly Fernández on indigenous peoples in isolation.

## References

- PROVEA, 2006:** *Situación de los Derechos Humanos en Venezuela*. Caracas. pp. 143 – 160.
- Consejo Nacional Electoral, 2006:** *Boletín Informativo sobre los Resultados Electorales 2006*, Caracas.

## ECUADOR

There are 14 native or indigenous nations in Ecuador totalling approximately one million people.<sup>1</sup> In 1998, following intense pressure from the indigenous organisations, they managed to achieve constitutional recognition of the “pluricultural and multiethnic” nature of the country. In addition, in that same year, following protests from the indigenous movement, ILO Convention 169 was ratified by the National Congress.

Although almost a decade has passed since this framework of rights was guaranteed to indigenous peoples by the Ecuadorian state, these rights and the recognition of diversity are still not being enforced for lack of enabling legislation that would make their full implementation possible.

In 2006, an intense period of national and international lobbying by the Confederation of Indigenous Nations of Ecuador (*Confederación de Nacionalidades Indígenas del Ecuador* – CONAIE) culminated in the mission of the UN Special Rapporteur on indigenous peoples, Rodolfo Stavenhagen, to the country in April. On behalf of civil society, this same organisation produced an initial report on the state of indigenous rights, gathering information on the most representative cases of human rights violations for submission to the Special Rapporteur.

### Re-emergence of the indigenous movement

Despite the diversity of its components, the social fabric of the indigenous movement has managed to establish an alliance around CONAIE. Various processes promoted jointly between the indigenous move-



ment's organisations have led to networks, exchanges and a political drive towards strengthening of the regional bodies (coast, Amazon and Andes).

During 2006, the United States and Ecuador intended to sign a Free Trade Agreement (FTA), while hundreds of grassroots indigenous organisations conducted a process of reflection on the effects this treaty would have on their communities and life prospects. In March, a 14-day national demonstration took place with road blockades, mass rallies in the main towns and a march of indigenous delegates from the Ecuadorian Amazon to the capital.

From 11 March on, under CONAIE's leadership, thousands of indigenous people embarked on local actions to demand the following: a halt to the FTA negotiations with the USA; the termination of the Ecuadorian state's contract with the US oil company Occidental, which had caused enormous damage to the economy, indigenous territories and the environment; an end to the negative effects caused by the con-

troversial Plan Colombia<sup>2</sup> and the organising of a National Constituent Assembly to establish a new and truly democratic state.

Faced with the peaceful demonstrations of the indigenous movement, the government responded with a strong and systematic military and police crackdown. Protesting communities were subjected to constant siege and violence, arrests and kidnappings for hours on end took place for no reason in their dozens throughout the provinces of Carchi, Imbabura, Pichincha, Cotopaxi, Tungurahua, Chimborazo, Bolívar, Cañar, Azuay, Loja (Andean region); and in Esmeraldas and Guayas. In other words, in the territories of traditional establishment of the Kichwa, Aawa, Epera, Chachi and Wancavilca peoples. The eight-day march from the Amazon to the capital was besieged, suppressed with rubber bullets, tear gas, threatening actions and constant efforts to disperse the small group of 200 people who were walking from Puyo to Quito.

In summary, demonstrators suffered arrest and ill-treatment during the different forms of political protest, culminating in the death of one protester in Cuenca. Alfredo Palacio's government decreed a state of emergency, militarizing and preventing any kind of meeting for one week after the so-called "Indigenous Uprising". In addition, members of the government explicitly promoted racist actions, using the mass media for all forms of public expression. The content broadcast against CONAIE's main leaders and those of its inter-Andean affiliate, ECUARUNARI, attempted to distort their public image in terms of their legitimacy. They were libelled, and their moral and political integrity attacked, along with their public image. The media made a statement defending the racism and transforming the indigenous peoples into "enemies" for having resisted negotiations that involved the interests of all Ecuadorians. This practice created a climate of racial confrontation between different sectors of the population (CONAIE, 2006).

Finally, CONAIE ended its uprising, holding a National Assembly on 31 March. Faced with this activity, the government threatened the indigenous leadership, maintained the state of emergency and tried to physically prevent the assembly members from reaching Salasaca, where the event was to be held. CONAIE changed the location hours before the meeting, however, and 1,500 delegates were able to use the National Assembly to conduct an evaluation of the uprising.

Despite the display of repression, the political balance was a positive one for CONAIE. The indigenous movement re-emerged as a leading and decisive political player in national life. In addition, the solidarity, respect and legitimacy of many sectors, and of the general public, clearly emerged given that CONAIE's "Mandate for the Uprising" was in line with public sentiment. Finally, the uprising led to a total breakdown in the negotiations with the United States and the termination of the oil company Occidental's concession, plus it seems that Ecuador may now be on the verge of organising a National Constituent Assembly.

## **The indigenous movement and national elections**

Following this strong indigenous uprising, the Confederation of Peoples of the Kichwa Nation of Ecuador (*Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador* – ECUARUNARI) held its 2nd Congress in Cañar in April. It was attended by 1,200 delegates who redefined organisational strategies, discussed different issues relating to the political situation and the rights of its affiliate associations, and elected its authorities for the coming period. It was agreed that Luis Macas, CONAIE's president, should run as a candidate for President of the Republic. After years of electoral involvement through the intermediary of candidates from outside the indigenous movement, the decision to field a candidate for elections in the political sphere was a challenge that had to be collectively assumed.

It took from April to August for the indigenous movement's proposal to be declared as a firm candidacy. In that time, there were various attempts to divide the indigenous movement, with some candidates from the left and centre resorting to racist diatribes and divisive actions. In the end, the electoral campaign was a political event of modest results, in quantitative terms. Luis Macas managed scarcely 2.19%, coming sixth out of fifteen candidates. It did, however, result in positive publicity among the indigenous organisations, the positioning of the indigenous movement's proposal for plurinationality, and a *rapprochement* of the movement's candidate and leaders to the national debate.

## **Amazonian territories: disputes over transnational interests**

Many of the indigenous territories of the Ecuadorian Amazon hold a large proportion of Ecuador's biological megadiversity. On the one hand, the oil and minerals that form the backdrop to the country's wealth extraction are to be found in these areas. On the other, an enormous area of indigenous territories is still home to large areas of primary forest and woodlands. The weakened presence of the state in the Amazon should also be noted, characterized by strong military representation and state activities characterised by welfarism.

In the area of oil extraction, the state has handed over most activities to foreign transnational companies, with a minimum of participation in the royalties of the business. These companies have for years been conducting actions of so-called "community relations" in order to get the communities to enter into a welfarist relationship and ease possible areas of tension or resistance from indigenous communities in areas of oil exploitation. Given the few public policies in their areas, the indigenous are easy prey to this course of action. More serious still is the interference of these companies' "community relations" in the socio-organisational affairs of the communities. For years they have co-opted leaders, corrupted them, destroyed and persecuted dissidents, terrified communities and exerted an almost unique power in an underdeveloped region in which the state is virtually absent. Different mechanisms such as signing "letters of intent" have been the softener with which to remove any resistance.

On the basis of the collective rights that safeguard the integrity, life and identity of the indigenous nations, as recognised in the Political Constitution and ILO Convention 169, the oil companies have produced regulations with which to implement the right to consultation, approved and legally established as a Ministerial Agreement by the Ministry of Energy and Mines. These regulations limit the legal guarantee to prior informed consent, and to consultation itself. The procedures stated in this law enable consultation to be reduced to a few events at which some members, in isolation from their national or people's organisation, are apparently consulted. The limitations to this

kind of mechanism have been denounced in a number of cases, along with the interference - by means of gifts - with which they manage to get some leaders to sign supposed agreements for oil exploitation on their territories. The state has no provisions enabling valid and informed consultation to be guaranteed, nor any presence in those processes contracted between the oil companies and the different consultants or universities. The sole aim of the consultation is to prevent subsequent legal action for having failed to comply with these requirements.

The Waodani, Secoya, Andoa and Shiwiari peoples signed civil contracts conceding their territories to environmental projects for the international environmental goods and services market, handing over their rights to individuals, pharmaceutical companies, research bodies and non-governmental organisations, so that they could conduct this business on behalf of their nation. To date, they have been unable to suspend or terminate the contracts and powers granted in this way, endangering the rights of nations whose leaders - co-opted by these agents - conceded the historic territory of their peoples.

### **Water sources: harassment of the Kichwa peoples**

In 2006, the state attempted – through private consultants – to produce regulations by which to conserve the high plateaux,<sup>3</sup> wetlands and other water sources. These regulations, apparently based on the collective rights of indigenous peoples, would regulate a use of water sources mediated by different environmental business ventures.

The high plateaux form a part of the Andean Kichwa territory, one of the key constituents of Kichwa identity and an area of different proposals for management and conservation, taken forward on the basis of a pure community undertaking. The large cities have extracted water for consumption and production from the high plateaux.

The demand for water for human consumption in the cities is growing in relation to the requirements of community and small farmer production, which supplies the national food market. Although water sources are under pressure from endless different service users, a privatisation model has been aggressively implemented in recent years.

In Carchi, Imbabura, Pichincha, Cotopaxi, Tungurahua and Cañar, various non-governmental organisations have tried, and sometimes succeeded, in getting local communities to sign agreements and civil contracts ceding use and benefits over the plateaux to organisations in return for small amounts of money. In turn, most of these environmental organisations, in the clutches of the conservation transnationals, are funded by corporations devoted to the water business, or by people interested in taking over the work of the state water companies. This being so, the Kichwa peoples are now producing a map of their territorial components and water sources, and the conflicts being caused by such interest in them.

Another issue that raises doubts as to the enforceability of the territorial rights of the Andean Kichwa peoples of Ecuador is the implementation of a new model of electricity generation that envisages the establishment of hundreds of hydroelectric power stations primarily aimed at taking water from the sources, rivers and plateaux of the Kichwa territory, without the slightest consultation and infringing all the life possibilities of these communities.

In addition, mining requires huge quantities of freshwater for exploration and exploitation. In November 2006, Kichwa and Shuar communities from Zamora and Morona Santiago resisted the different concessions granted by the state to mining companies that were beginning to drill on the territory of these peoples.

## **Nations of the coast**

The Awa nation lives on the borders of Ecuador and Colombia, constantly savaged by the actions of the Plan Colombia, which affect their crops, life and health; this has led to a militarised territory subject to fierce aggression. In addition, their rich area of primary forest is under a great deal of strain because Ecuador's environmental authorities have reduced their request for recognition of their ancestral territory in favour of forest ventures and plantations on the part of powerful logging groups.

This nation comprises 31,000 members in both Colombia and Ecuador. The nation's organisation in Ecuador is quite solid, and belongs to

the indigenous organisation of the coast, CONAICE. In turn, CONAICE belongs to the national organisation, CONAIE. These people live in the parishes of Tululbi and Mataje, San Lorenzo canton, Esmeraldas province and the parishes of Chical, Tobar Donoso and Jijón y Caamaño, Tulcán and Mira cantons, Carchi province. The population is currently in a critical state of poverty, unable to survive in line with its cultural values. In 2006, the Ministry of the Environment changed the legal status of the Awa territory to include it in its National System of Protected Areas, thus establishing its legal authority to issue forest licences. One of the greatest risks to the Awa communities has been precisely the logging of its primary forest. In addition, they are living constantly hemmed in by groups of settlers, religious sects and paramilitaries, who safeguard this forest activity. There are also attempts at prospecting for gold on the Awa territory, regardless of the wishes and lives of these people.

### **Waadani nation: respect for otherness**

During the 1950s, there were many attempts to contact members of the Waodani nation, and these ended in the “success” of the Summer Institute of Linguistics around 1957. Hundreds of members of this nation, who had managed to live away from Western society, were brought into settlements over the next few years by members of this institution, linked to US Protestant churches.

The fundamental interest in contacting them seems to focus on the oil that the Waodani territories contained and the apparent danger that previous contact had incurred. This nation forms the last vestiges of the Wao tededo language and identity, which has no relationship to other Amazonian languages. The nation comprises 1,530 members of different ages, living in 32 family settlements.

In 1990, the national government authorised 678,220 hectares for them, part of the ancestral territory that the current Waodani recognise. But a large part of the area permanently inhabited by the Waodani has been handed over in state concessions to oil extraction companies.<sup>4</sup> The social fabric of this nation has been permanently eroded in

line with the interest in oil, and a large part of the Waodani's food and life sources are being contaminated.

In 2005, the presidency of the Organisation of the Huaorani Nation<sup>5</sup> of the Ecuadorian Amazon (*Organización de la Nacionalidad Huaorani de la Amazonía Ecuatoriana* – ONHAE) signed a Usufruct Agreement in which it conceded full rights over all its territory to Ecogénesis Ltd. The leadership involved was disowned and the organisation, under new leadership, recommenced relations with CONAIE and other players, who have managed to get the contract annulled. The company has now set up a trusteeship which, through a non-governmental organisation run by its former employees, is conducting similar work to that of the "community relations" of the oil companies.

There are at least two Waodani family groups that have insisted on remaining outside of Ecuador's Westernised society, and even away from other Waodani families. They are known as the Tagaeri and Taromenani. Being peoples in voluntary isolation, or as the already contacted Waodani say, "free brothers", there is no precise information on their number or current status.

In 1999, a number of groups concerned with obtaining some guidelines from the Ecuadorian state in anticipation of undesired contact with these peoples, as well as a minimum territory for their survival in freedom, managed to get the Ecuadorian president to decree the establishment of what is known as an Untouchable Area. This area was not geographically defined.

In May 2003, the massacre of 15 people from the Taromenani group took place against the backdrop of a state that had taken no action to protect this people. Two years later, the Ministry for the Environment, with various private partners, began the possible demarcation of the Untouchable Area. For a number of months during 2005, a consultation took place with oil companies that could be affected by the demarcation. In April 2006, as it so happens during the visit of the Special Rapporteur, an unconfirmed rumour was leaked of possible deaths among members of the Taromenani group. The Ministry for the Environment set up a committee of specialists to discuss the issue of the peoples in voluntary isolation. In all these processes, the Waodani nation was never consulted. Following different incidents, the ministry attempted to get closer to the Waodani leadership. Unfortunately, the

actions ended up being similar to those of the oil companies' "community relations": co-opting of leaders, providing resources, offers and promises of work and projects, defamation and incrimination of Waodani leaders and elders, as well as their close supporters. In a meeting in Coca in September, at which the Waodani families and delegates present were not given a chance to consider the draft decree and demarcation that was effectively being promoted, there was an unsuccessful attempt to endorse a consultation process.

The threats to the lives of this small nation are many and increasing; the wealth on their territory and their intangible heritage has caught the interest of many external players.

The peoples living in voluntary isolation, possibly Tagaeri and Taromenani, are in a situation of critical danger. Oil, mining and logging activities have forced them to move, possibly bringing them into close proximity with other Waodani, settlers, religious sects and other indigenous peoples. The demarcation of the untouchable area does not consider the mobility of these families, and violates a large part of the territory legally recognised to the rest of the Waodani nation. The area is still not legalised in Ecuadorian legislation, and boundaries have only been agreed with the oil companies. It seems that solutions aimed at guaranteeing that the peoples in voluntary isolation can live in freedom require real efforts on the part of the Ecuadorian state, the decisive support of the Waodani and indigenous organisations, and the support of specialists and bodies that have no "interest" in the territory of any of the nation's components.

## **Legal regulations and public policies**

Although the indigenous nations and peoples have significant constitutional and international recognition, Ecuador has not passed legislation enabling these guarantees to be enforced. The indigenous movement's organisations have designed 16 projects aimed at exercising constitutional regulations and laws in harmony with the interests and demands of the other social sectors. However, none of the regulations proposed by the indigenous movement in this regard have formed the object of debate or approval by the National Congress.

On the contrary, the logic of the neoliberal model has been to implement legal changes that violate rights on the basis of decrees,<sup>6</sup> establishing a platform of non-governmental organisations, private consultants and various networks to produce draft laws and regulations that they then try to promulgate without civil society's input and, in many cases, without the knowledge of the legislators themselves. Similarly, different public policies are sent out to private consultancies, and these latter take forward implementation of these proposals, outside of the framework of the established state and state authorities.

This model has its origins in the different documents that Ecuador has signed with the multilateral organisations and even with cooperation agencies. Water, the highland plateaux and biodiversity are central themes of the regulations and policies that the World Bank and Inter-American Development Bank demand the Ecuadorian state implement through their Country Assistance Strategies.

In this context, the rights of the nations and peoples become relative in the face of an extractivist model linked to the economic logic of financial and market globalisation. In Ecuador, only the peaceful resistance of the indigenous nations' and peoples' organisations has managed to sustain and propose an alternative model from the grass-roots level that demonstrates respect for equity, interculturality and plurinationality. □

## Sources

CONAIE, 2006: *Informe Derechos Humanos, Nacionalidades y Pueblos Indígenas en el Ecuador*. At the printer's.

CONAIE, 2006: *Pueblos Indígenas en Aislamiento Voluntario en la Amazonía Ecuatoriana*, Documento Base. At the printer's.

Archives of CONAIE's presidency and territorial leadership.

## Notes

- 1 These are the Shuar, Achuar, Shiwiar, Siona, Secoya, Cofán, Waodani, Andoa, Zápara and Kichwas de Orellana, Sucumbíos, Pastaza and Napo, in the Amazon region; Awa, Epera, Chachi, Tsa'chila and Andean Kichwa migrants in the coastal region; and, in the Andean region, Kichwa identified as the Pasto, Nat-

- abuela, Karanki, Otavalo, Kayambi, Kitu kara, Panzaleo, Salasaka, Chibuleo, Tomabela, Kisapincha, Puruhae, Waranka, Cañari, Saraguro and Palta peoples.
- 2 The Plan Colombia was conceived with the general aim of reducing drugs trafficking and the Colombian armed conflict, with the financial support of the USA. One of its most critical aspects has been the spraying of coca crops.
  - 3 High mountain ecosystems, located between the upper boundary of the higher Andean forests (*ceja andina*) and the lower-level glaciers. They are areas of hydrological importance and generally form part of indigenous production systems, although their use has to be limited to activities of subsistence, conservation or rehabilitation. In Ecuador, their boundaries extend from 3,300 masl to 4,400 masl. Wet plains predominate, and these have a great capacity for storing water in the ground and in the wetlands such as peat bogs, lakes and swamps.
  - 4 Companies present throughout history that have affected the Huaorani territory, Huaorani communities and territory of Tagaeri/Taromenani use: Royal Dutch Shell (1937); TEXACO 1964-1989) ESSO Hispanoil Block 8, 1970s; Petrocanadá Block 9; BRASPETRO (later PETROBRAS) Block 17; ARCO Block 10, now AGIP; CONOCO (Feb. 1986-March 1989) Block 16; MAXUS (1990-1995) Block 16; YPF/MAXUS 1997 Block 16; Repsol/YPF 1997 currently in Block 16; Block 31 Petrobrás; Block 14 and 17, ENCANA; Block 21 ORYX; Block 31 Perez Companc (CONAIE: 2006).
  - 5 The way the name of this nation is written, along with their identity and language, is an issue of permanent debate, analysis and decision on the part of the Waodani organisation. The form used here is the one used since its last Congress.
  - 6 Executive Decree in which the President of the Republic legislates on aspects within his competence and/or regulates laws of higher standing.

## PERU

The latest statistical information on the aboriginal population of Peru dates from the 1993 census, according to which there were 8,793,395 indigenous people, 97.8% of them Andean and 2.1% Amazonian. According to these figures, indigenous peoples thus represent a third of the 27 million inhabitants of Peru. In the Coastal and Andean regions, the majority of indigenous people are Quechua, followed by the Aymara who live primarily in the south of the country. In the Amazonian region, which covers 59.9% of the national territory, there are 16 ethno-linguistic families and more than 65 different ethnic groups, including no less than 11 living in voluntary isolation or initial contact.

Peru is a signatory to ILO Convention 169, which it ratified in 1993 by means of legislative resolution no. 26253. The indigenous peoples have never been accorded recognition in their constitution, however. They were mentioned in the 1979 Constitution, but only as farming and native communities with a right to communal lands that were inalienable, unseizable and not subject to a statute of limitations. The Fujimori Constitution of 1993 severely weakened these powers in order to promote private investment in the natural resources existing on communal lands.

### Election Year

2006 was a year of intense electoral activity. The presidential elections polarised the country when Ollanta Humala, a retired soldier with a confrontational rhetoric and nationalistic slant, managed to attract the support of the popular and indigenous sectors who saw in him a way of demonstrating their rejection of the traditional political system. Ol-



lanta triumphed in the first round in April but conservative politicians and the right-wing media reacted forcefully and got Alan García Pérez (APRA) elected, winning by an adjusted margin in the second round in June.<sup>1</sup>

For many international observers, Ollanta was the Peruvian symbolisation of the national indigenous trend that has been spreading across the Latin American region with Evo Morales at its head. However, this overlooks some controversial aspects that distinguish him. In

1993, he studied at the *Escuela de las Américas*, renamed the *Instituto de Cooperación para la Seguridad Hemisférica* (Institute for Cooperation on Hemispheric Security) in 2001, an organisation where United States Army personnel are trained, and currently located in Fort Benning (Columbus, Georgia). He was associated with human rights violations when – under the pseudonym of Captain Carlos – he was in charge of the Madre Mía military base and counteracted the subversion in the 1980s. Another issue is the fact that Ollanta encouraged a supposed military uprising on 29 October 2000 against the Fujimori government at the time when the evil presidential advisor Vladimir Montesinos fled the country. According to the confession of Montesinos himself, the aim of this manoeuvre was to distract public attention and facilitate his escape.

The regional and municipal elections held in November confirmed the trend towards a breakdown between the centralist political system of Lima and representation in the interior of the country. All the traditional parties lost. The APRA lost in nine of the 12 regions that it had previously held, and Ollanta Humala had not one victory in the 15 electoral constituencies where he had received important backing five months earlier in the first round of the presidential elections. The political outlook was divided, split, with numerous disparate and uncoordinated regional leaders. In this context, different political forces arose such as Kuska Peru, headed by Nelson Palomino which, through its alliance with the Hatun Tarpuy political grouping, won five district municipalities in Apurímac Region and the Huanta and La Mar provincial municipalities in Ayacucho Region, one of the main coca producing areas.<sup>2</sup> Kuska Peru has claimed it is a pluralistic political party with an indigenous component and one of its banners is the defence of coca. Palomino has announced his interest in standing as a presidential candidate in 2011.

## Different legislative measures

In July, a number of civil society organisations denounced the General Law on Modern Biotechnology Development in Peru due to the harm it will do to the country's interests and its potentially negative effects

on the health of Peruvians and the environment by promoting so-called transgenic contamination. In the end, the government criticized the draft bill approved by Congress, the content of which had divided the opinion of various public institutions. One public case that contributed to creating an unfavourable opinion around the stated bill was an experiment sponsored by the American company Ventrina in which Peruvian children were given transgenic rice. The Medical Association pointed out that the product could cause allergies, arthritis, sclerosis and even Alzheimer's disease.

One isolated law favourable to indigenous peoples that was adopted by Congress was Law 28867 on Discrimination, published on 9 August. This modified article 323 of the Criminal Code in order to specify that discrimination is an action carried out "with the aim of destroying or diminishing the recognition, enjoyment or exercise of a person's rights". It raises the punishment to international standards – a prison sentence of two to three years, even four years if physical or mental violence is used or if the agent is a state official.

However, one example that demonstrates how the state adopts important decisions without considering the people's opinions was the approval of the Free Trade Agreement (FTA) with the United States, under the new name of Trade Promotion Agreement. President Alejandro Toledo and, later, Congress approved the agreement without first putting the decision to a referendum, even after the National Electoral Board had accepted the need for such following the presentation of 59,887 signatures by the "FTA: Not like This" movement.

## Heading for an authoritarian regime?

During his electoral campaign, Alan García stated that if Toledo "dares to sign (the FTA) I will simply erase his signature so that it is discussed by the country" and he announced that he would "renegotiate the FTA in defence of the farmers". But once in government, he forgot his previous declarations and is now determined that the United States Congress should ratify it. This issue is of the utmost importance for the indigenous peoples and communities since liberal institutions such as the Institute for Liberty and Democracy (*Instituto Libertad y Democracia*

- ILD) have confirmed what many civil society sectors were denouncing, namely that "the only beneficiaries of the FTA are a small minority of Peruvians who have access to the legal mechanisms to efficiently organise their companies, do business with foreigners and use their resources to obtain capital. The measures necessary for the majority of Peruvians to directly and fully benefit from the external FTA are those that will allow for the inclusion of all Peruvians".<sup>3</sup> The minority noted above forms only 2% of the population and the indigenous and farming sectors remain outside that percentage, suffering a situation of structural exclusion.

The surprises sprung by the elected government are not limited to the FTA. A *de facto* alliance between the APRA and Fujimorism has undertaken some legal initiatives such as the approval of a Law on Non-Governmental Organisations (NGOs) in November that makes their registration with the Peruvian International Cooperation Agency (*Agencia Peruana de Cooperación Internacional* - APCI) obligatory and widens the discretionary powers of this agency to "harmonise" international support according to national development policies and the public interest.

The NGO, *Asociación Nacional de Centros de Investigación, Promoción Social y Desarrollo* (National Association for Research, Social Promotion and Development - ANC) and the *Coordinadora de Entidades Extranjeras de Cooperación Internacional* (Coordinating Body of International Cooperation Organisations - COEECI) are questioning the law because it infringes upon freedoms such as those of free association, contracting and other fundamental rights guaranteed by the constitution and international treaties. The ANC pointed out that the law could be used as a way of silencing and/or persecuting persons and civil associations that question or denounce irregularities in the state's management, the inefficiency of some public policies or human rights violations. The law that was approved on 1 November has been strongly criticised by various international human rights organisations, such as Human Rights Watch, and constitutional review proceedings have been commenced before the Peruvian Constitutional Court.

It is important to analyse the government's behaviour given that, in its first five months, it has adopted decisions such as amendments to the NGO framework, proposing the death penalty, threatening to vio-

late international human rights agreements, and withdrawing from the jurisdiction of the Organisation of American States (OAS) which demonstrate, according to political analysts such as Alberto Adrianzén, “an increased hardening of the regime, thus demonstrating its authoritarian profile”.

### **Loss of Amazonian forests and indigenous territories continues**

The specialist Marc Dourojeanni presented a case study warning that the Interoceanic Highway that is to link Brazil and Peru will have severe social and environmental impacts that are not only damaging to the Amazonian forests but also to the indigenous peoples. The highway, which forms part of the Regional South American Infrastructure Integration Initiative (IIRSA), will have strong social impacts “in terms of the indigenous peoples in voluntary isolation, increased migration towards the Amazonian region, invasion of indigenous lands in general, conflicts over lands and their regularisation, dilution and loss of traditional cultural values, among other things,” he affirms.

Among the most probable environmental impacts are a “rapid increase in deforestation, degradation of the natural forests, invasion of protected areas, major increases in forest fires, expansion of coca production, uncontrolled gold mining, degradation of the urban environment, loss of biodiversity, increased hunting and fishing activities and a reduction in the extent and quality of environmental services, in particular greater problems with water resources, including flooding and drinking water quality”.

The creation of the 1,478,311-hectare Sierra del Divisor Reserve Zone in Loreto and Ucayali regions on the border with Brazil was rejected by the national indigenous organisation, AIDESEP, who pointed out that it overlaps with the Isconahua Territorial Reserve and two proposals for the Yavari-Tapiche and Kapanawa Territorial Reserves for indigenous peoples in voluntary isolation and initial contact. For AIDESEP, this is “clear interference on the part of environmental NGOs that want to displace the indigenous organisations with their conservation policies (...). This attitude indicates a new phase and modern

form of colonisation of the indigenous people which has simply been intended to generate internal division in our organisational structure”.

### **Illegal logging and deforestation: an endemic problem**

The suspicion regarding management of protected areas and logging concessions has increased in line with deforestation. According to the National Institute for Natural Resources (*Instituto Nacional de Recursos Naturales* - INRENA), more than 8 million hectares of the country have been deforested. According to the last Peruvian forest map, up to the year 2000, 7,388,002 hectares of forests have disappeared, of which 3,720,000 has. were empty areas and 3,667,802 has. occupied.

In March, IRENA declared that the exploitation rights of 22 logging concessions located in the departments of Madre de Dios (4), Ucayali (15), Huanuco (1) and San Martin (2) had expired. This drastic measure was adopted because the companies holding the concessions had failed to present or implement the corresponding forest management plans, covering an area of 301,187 hectares of forest. In addition, administrative proceedings were commenced in relation to 18 concession holders who were also demonstrating irregularities. If illegal actions are proven, these companies will receive severe punishments.

But nothing has prevented the continuing illegal logging of the Amazonian forests, even in “protected” areas. The Federation of Native Communities of Purús (*Federación de Comunidades Nativas del Purús* - FECONAPU) denounced the fact that the National Alto Purús Park has become a den of illegal loggers who are extracting mahogany at their leisure and driving the indigenous people living in isolation further towards the Brazilian border. The Federation’s indigenous leaders are of the opinion that the park’s status should be cancelled in order to extend the existing communal territory, since this offers more effective protection.

The audacity of the illegal loggers has reached extreme levels, including the murder of two indigenous people, probably from the Masatanahua ethnic group. According to a statement made by the head of Capiroshari community, this happened on 18 July in part of the Muru-

nahua Territorial Reserve in Yurúa district, Ucayali Region. The AID-ESEP Ucayali Regional Organisation (ORAU) continued to accuse people associated with the logger Mario Pezo and the logging company ENA of being responsible for the illegal logging and clashes with groups of indigenous people living in isolation. According to the indigenous organisation, this mafia is operating in collusion with former members of the Peruvian Navy and has important influence within INRENA.

### **Amazonian “red gold” fever**

Mahogany is one of the most sought after species, given its high commercial value of up to US\$1,600 per cubic metre on the international market. It is included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) yet represents 72% of all wood logged nationally, of which 90% is exported to the United States.

If current levels of illegal logging and over-exploitation continue, it is estimated that mahogany will be commercially extinct within 10 years. Given this problem, in July, the Native Federation of Madre de Dios and its Tributaries (*Federación Nativa de Madre de Dios y Afluentes* - FENAMAD) brought a lawsuit before the International Trade Court of New York requesting that the North American government ban imports of illegal mahogany from Peru because of their illegal extraction in areas where indigenous people in isolation live. However, INRENA responded by endorsing the exports, stating that they complied with a series of steps and controls. It is important to be aware, in this regard, that there are only 380 people looking after 36 of the 60 natural protected areas, through lack of public funding.

### **A determined and successful protest action**

In the early hours of 10 October, the indigenous communities of the Corrientes River Basin occupied the oil facilities of PlusPetrol in the north-eastern Peruvian Amazon and paralysed 60% of the country's

oil production. This determined action was undertaken by the Federation of Native Communities of the Corrientes River (*Federación de Comunidades Nativas del Río Corrientes* - FECONACO) and forced the company's management to come to an agreement to address the impact of 35 years of wastewater discharge from plots 1AB and 8, which has destroyed the basin's ecosystem.

The Corrientes case was a very interesting one because the government's initial reaction was extremely negative, accusing the NGO Racimos de Ungurahui, FECONACO's advisor, of manipulation. However, a series of events turned the government's position around. On the one hand, technical reports from the health sectors indicated irrefutably that the inhabitants of the Corrientes River presented high levels of cyanide and cadmium in their blood. Weeks earlier, the actress Q'orianka Kilcher, who played the role of Pocahontas in the film "The New World", had personally visited the basin and given her testimony regarding the contamination to the press. Finally, various newspapers and TV channels gave wide coverage to the issue, creating a wave of solidarity. At the end of November, PlusPetrol paid their first contribution of 525, 400 *nuevos soles* for implementation of the Integral Health Plan, part of the agreements signed during 2006.

## **Andean Coordinating Body established**

From 15 to 17 July 2006, the city of Cuzco was the setting for the founding congress of the Andean Coordinating Body for Indigenous Organisations (*Coordinadora Andina de Organizaciones Indígenas* - CAOI). The main organisations behind this initiative were the Confederation of Kichwa Nations and Peoples of Ecuador (*Confederación de las Nacionalidades y Pueblos Kichwas del Ecuador* - ECUARUNARI), the National Council of Ayllus and Markas of Qullasuyo (*Consejo Nacional de Ayllus y Markas del Qullasuyo* - CONAMAQ) from Bolivia and the National Confederation of Communities Affected by Mining (*Confederación Nacional de Comunidades del Perú Afectadas por la Minería* - CONACAMI), who have been exchanging experiences and coordinating initiatives since 1988.

The initial challenge facing the CAOI is quite a large one since the coordination has been taken on by Peru, despite the fact that Coastal and Andean communities have, to date, basically organised under the banner of farming unions, and the organisations with an indigenous profile form a complex, dispersed and varied spectrum. Unlike the indigenous Amazonian organisations, which are primarily united under the umbrella of AIDESEP, the Coastal – Andean regions lack transparent processes and coordinated leadership to be able to coordinate all the Andean sectors around one common indigenous agenda. □

## Notes and References

- 1 Alan Garcia was President of the Republic from 1985 to 1990. During his government, the country suffered the worst economic crisis in its history, with hyperinflation and a government tarnished by corruption and the killing of more than 250 prisoners in three jails in Lima in response to a riot provoked by the Shining Path guerrillas. He has been accused of illicit enrichment and responsibility for the deaths mentioned, which led to his exile in Colombia and France. In 2001, the Supreme Court declared the crimes time-barred.
- 2 According to the United Nations, the Rio Ene and Apurimac Valley (VRAE) region produced 53,300 tons of coca leaf in 2004.
- 3 See: [http://www.ild.org.pe/pdf/TLC\\_Interno-Peru.pdf](http://www.ild.org.pe/pdf/TLC_Interno-Peru.pdf)

## BOLIVIA

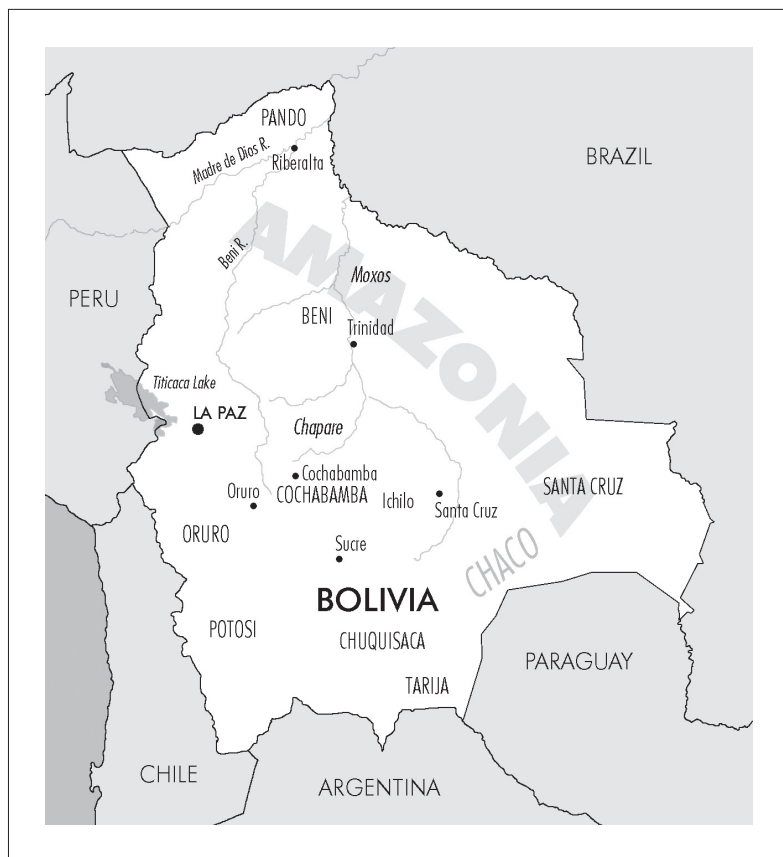
According to the 2001 National Census, 62% of the Bolivian population aged 15 or over identify themselves as indigenous.

The Quechua form 30.7% and the Aymara 25.2%, and they are settled in the Andean areas, in the valleys in the west of the country and in urban areas. In the east, the Chaco and the Amazon, 17% of the population is indigenous, and it is this area that holds the greatest wealth in terms of cultural diversity, with 32 peoples, including the Chiquitano with 2.2%, the Guaraní with 1.6 %, and the Mojeño with 0.9%.

Bolivia guarantees a series of important rights to indigenous peoples in its constitution. In addition, 2006 saw the inauguration of a Constituent Assembly, the aim of which is to revise the Bolivian Constitution.

### Evo Morales - president

The elections of 18 December 2005 saw the indigenous Aymara, Evo Morales, of the Movement to Socialism (*Movimiento al Socialismo* - MAS) proclaimed outright winner with 53.7% of the vote. It was an historic day for the country because, in 24 years of democracy, a president had never achieved such an overwhelming victory. The big losers were the traditional parties. While some - such as the MNR (Revolutionary Nationalist Movement/*Movimiento Nacionalista Revolucionario*) - managed to survive, others disappeared, as was the case of the MIR (Movement of the Revolutionary Left/*Movimiento de Izquierda Revolucionaria*) and the ADN (Nationalist Democratic Action/*Acción Democrática Nacionalista*).<sup>1</sup> Following this election, the MAS now controls the Chamber of Deputies but not the Senate.



Evo Morales took office with the *“October 2003 agenda”*, which focuses on three main issues: nationalisation of oil and gas, the Constituent Assembly and land/territory in relation to natural resources.<sup>2</sup>

### **Organisation of the Constituent Assembly and the Referendum on Autonomy**

The Constituent Assembly had been called for by the indigenous movement of the Bolivian lowlands since 2002 when, during the historic 4th March for “Popular Sovereignty, Territory and Natural Re-

sources", they demanded greater participation and inclusion in the country's decisions, a demand that was severely criticised and rejected by the traditional parties.

One of the new government's electoral promises was to respond to this call for an Assembly, and this was achieved by promulgating the Special Law organising the Constituent Assembly and proclaiming the Referendum on Autonomy.

The indigenous peoples began to draw up their proposal for how the Constituent Assembly should be organised, including *special indigenous constituencies* in order to guarantee the presence and participation of the peoples.

In October 2005, they presented the proposal as a Unity Pact,<sup>3</sup> calling for 258 assembly members in local, departmental and special constituencies, these latter for the indigenous peoples of the lowlands given their high level of dispersion and electoral disadvantage.

This proposal was consolidated and further deepened in January 2006, guaranteeing equal participation under two systems of representation: firstly, mixed or combined, that is, the election of constituent members by universal vote (personal and direct). Secondly, by custom and usage via direct representation. The electoral system proposed three constituent members in each of the current 68 uninominal constituencies, plus two for each department, with the aim of balancing the representation of the regions, 10 constituent members elected for special ethnic constituencies in the lowlands<sup>4</sup> and 16 that would participate directly by custom and usage from the highlands.<sup>5</sup> In addition to the consensus achieved among the indigenous and rural populations, the proposal had the support of the urban sectors (women's and youth movements).<sup>6</sup>

However, the MAS ignored the proposal, approving a law that completely ignored the special constituencies, arguing that the government was already indigenous. The newly-elected government misread the situation in the east of the country, and failed to fully understand the nature of the special indigenous constituencies, sidelining the social movements' proposal in the parliamentary game.

Alongside this process, deep divisions were being created in the country between the MAS, the opposition and the so-called Civic Committees in the east,<sup>7</sup> who were committed to departmental autonomy

over and above the Constituent Assembly. Finally, through political agreements in Parliament and the decisive intervention of the Vice-president of the Republic, Álvaro García Linera, the Law organising the Constituent Assembly and the National Binding Referendum on Autonomy for departments were approved. In its main articles, the Law established how the constituent members would be elected, through uninominal and departmental constituencies, and the 2/3 majority as a means of approving changes to the Political State Constitution, that is, 170 votes.

### **Election of the constituent assembly members and the referendum**

The elections for the constituent members and the Referendum on Autonomy were held on 1 July. The MAS won throughout the country, obtaining 50.7% of the vote, that is, 137 of the 255 members elected in 70 uninominal constituencies and nine departments.<sup>8</sup>

The participation of indigenous, rural and settler organisations from the lowlands in alliance with the MAS enabled the election of 4 indigenous constituent members: Nélida Faldin and José Bailaba (Chiquitano), Miguel Peña Guaji (Mojeño-trinitario) and Avilio Vaca (Guaraní).

The results of the Referendum on Autonomy indicated that 57% of the voting public nationally said NO to the autonomies, as opposed to 42% who voted YES, specifically in the 4 departments of the lowlands, reflecting the polarisation between the east and west of the country which the Vice-president of the Republic has described as a “catastrophic balance”.

### **The government's social policies**

The social measures of greatest impact were in education and health, both areas welcomed by the people. The start of the “*Misión Milagro*” Programme should be noted, with support from the Cuban government, and by means of which 50,000 Bolivians on low incomes have

been able to benefit from surgery, with eye centres being set up equipped with the latest technology. These government measures have been resisted by conservative sectors, however, the most outspoken actions being mounted by the country's professional medical association which - openly supported by the private media - questioned the presence of Cuban physicians in the country.

Universal Mother and Child Insurance (SUMI) for women up to the age of sixty has been extended. This programme provides free care to expectant mothers for six months following birth and to newborn babies up to the age of five. With the new measures, SUMI cover has now been extended to young people up to the age of 21.

In education, literacy was made a priority. As many as 68% of the rural population are unable to read and write and so the National Literacy Plan "Yes I Can" was commenced, using a Cuban educational method and aimed particularly at over 15s in rural and urban areas who were either completely illiterate or only functionally literate.

The "Juancito Pinto" Voucher must also be mentioned, consisting of a grant of 200 Bs. (approx. US\$30) per pupil aimed at reducing primary school drop-out rates. The Voucher was distributed throughout all state schools in rural and urban areas, and funded by income obtained from the oil and gas nationalization. The government set aside 30 million US dollars for this.

## **The state – owner of oil and gas**

The call for nationalisation of the oil and gas industry became effective on 1 May 2006 with the promulgation of Supreme Decree 28701 "Chaco Heroes", and by means of which the President took oil and gas back into state ownership and re-established the *Yacimientos Petroliferos Fiscales Bolivianos*, YPFB, company.

He also ordered those oil companies that were willing to continue working in the country to sign new contracts with YPFB within 180 days; contracts with Argentina and Brazil are among those worthy of note. Both managed to achieve a considerably increased income for the National Treasury through taxes and better prices for exported gas,

creating hopes among the people that their living conditions would improve.

With regard to oil and gas, the indigenous and rural worker organisations of the lowlands have worked together participatively to produce a proposal for Socio-environmental Monitoring Regulations, and another on the Procedure for Consultation and Participation in Oil and Gas Activities among Indigenous, Native and Rural Peoples.

The first is aimed at guaranteeing the participation of indigenous and rural workers' organisations in the monitoring, control and auditing of oil and gas activities operating on or around their territories, as they are the people most affected by socio-environmental impacts. The second states that there should be consultations with indigenous and native peoples and the rural population before any oil activity is commenced. The proposals have already been presented and there have as yet been no official observations from the government, so it is hoped they will be approved.

In addition, the government is establishing regulations for the Direct Taxation of Oil and Gas (IDH). In December 2006, the creation of the Development Fund for Indigenous, Native and Rural Communities (FDPPIOYCC) was approved but this has not begun operating to date.

## **The Constituent Assembly**

The country's indigenous and rural communities, mobilised around the constituent assembly, began processes for producing constitutional proposals, scouring the country for inputs. This process was not only intense and internal to each organisation but went beyond organic and geographic boundaries, within the strategic alliance of the Unity Pact, with the aim of building a single proposal for the new Constitution coming from all social organisations.

This constitutional proposal represents a joint effort to achieve a national consensus around re-defining the country and moving from a monocultural state towards a plurinational model. The most important issues in this proposal are the recognition of decentralised power on the basis of indigenous autonomies, and legal pluralism as a cross-

cutting theme in public management and administration, with the clear aim of breaking free from the neo-colonial state.

In terms of natural resources, the proposal envisages that these should be under the control of the plurinational state and the indigenous, rural and native communities. In the case of non-renewable natural resources, shared ownership is proposed; their use, management and exploitation must be subject to processes of consultation. This right to consultation involves benefit sharing, along with compensation and mitigation plans in case of environmental damage.

In the case of renewable natural resources, the proposal establishes exclusive indigenous ownership of these resources on their territories and the right to be consulted when they are outside their territories.

The proposal was submitted on 5 August 2006 at the inaugural session of the Assembly, in a symbolic and political act, with a commitment on the part of the social organisations to continue to further and enrich the work with a view to overcoming some internal contradictions.

In the words of the government itself, the Unity Pact proposal is the basis for constitutional debate within the Assembly. Nonetheless, the government has also circulated its own proposal as a contribution to the open debate. On this occasion, the social organisations hope that the Unity Pact proposal will be well-received and considered, so that the historic contribution of these peoples is able to feed into the process of change.

At this stage, the Constituent Assembly already has its internal regulations in place and committees have commenced their public hearings, one of the mechanisms for social participation that was established in the regulations. The other mechanism is that of the Regional Assemblies that will be held in each department under the Assembly's thematic committees. This year the organisations' agendas will be drawn up to fit in with the timeframes and deadlines of the Constituent Assembly itself and the timetable of the committees.

## **The 5th Indigenous March**

Government land policy has been aimed at dismantling the so-called *agrarian counter-reform package* imposed by the MNR government (2002-

2005), and so seven Supreme Decrees have been issued which, together, set out a new agrarian policy aimed at the distribution and redistribution of state lands resulting from the process of regularisation, with the principle of collective and free provision to indigenous and rural communities. In addition, unrestricted access to land ownership on the part of women has been envisaged, along with regulations governing the hiring of staff for the National Agrarian Reform Institute (IN-RA), among other things. Notwithstanding these advances, the agrarian process that commenced in 1996 is nearing its end. As established in the law, the regularisation processes had to be completed within 10 years.<sup>9</sup>

In order to avoid leaving demands already underway pending and causing a legal vacuum, the government promulgated a law with a single article that extended the periods for regularisation to seven years but which failed to correct key aspects of the regularisation process and thus proposed no new elements with which to reorganise the agrarian reform.

Against this backdrop, the lowland organisations decided to commence a new agrarian process, proposing a new *law on community renewal of the agrarian reform* that aimed to rectify the obstacles and deviations of the previous law, and to plan for an integrated land reform. Power groups were quick to oppose these aspirations on the part of indigenous and rural communities, despite the government's efforts to open spaces for dialogue in which to build a law agreed by consensus.

On 30 October, from the National Confederation of Indigenous Peoples of Bolivia (*Confederación Nacional de Pueblos Indígenas de Bolivia* – CIDOB) began the "5th National March of the Lowlands", headed towards the government offices with the aim of renewing the agrarian process, guaranteeing access to and re-establishment of the indigenous peoples' ancestral territories plus access to the land for thousands of landless rural workers.

During the course of the march, the organisations managed to get the law debated in parliament, obtaining the approval of the Chamber of Deputies where the MAS has a majority. However, the debate took a turn for the worse when the law reached the Senate, dominated by the opposition party. It was left to stagnate, giving the people a clear indi-

cation of the alliance of this political force with conservative, landowning and business sectors.

The march lasted almost one month, until it reached the government offices on 28 November. Its arrival was massively attended, and welcomed by the President in a public act at which he urged the legislature to listen to its demands.

In line with a request made by the President of the Senate, he asked the organisations to wait until the evening for a law to be issued. If not, a Supreme Decree was expected that would provide for the demands of the indigenous peoples and make their proposals on the land issue possible. Throughout the evening, the Senate sat in a marathon session while indigenous, rural and native communities from across the country remained outside the legislative palace. As midnight neared, news was received that the law had been approved in the Senate and, immediately afterwards, in the Presidential Palace, the law was promulgated in the presence of thousands of marchers.

This new process for indigenous, native and rural communities represents a great step forward in terms of their historic struggle to regain their land/territory. On the one hand, the aim is to identify unproductive lands that are not fulfilling what is known as Social and Economic Function (FES), in order to enable their reversion. On the other, the expropriation of lands is envisaged in order to re-establish the indigenous territories.

In addition, the law establishes the provision of lands in communal and not individual form and it provides for social control of the whole regularisation process. It also empowers the President of the Republic to issue legal status to indigenous and rural communities should the local authorities refuse to do so.

## **Autonomy sets Chiquitanía ablaze**

One event that deeply marked the indigenous peoples of the Chiquitanía lowlands and their organisations was the violence that occurred following the San Julián blockade on 15 December, the same day that the Pro Santa Cruz Civic Committee called a mass rally against Evo

Morales' policies, known as the "Million-dollar Council", in the city of Santa Cruz.

Against this backdrop, the Council was held in a climate of tension and anticipated conflict. It should be recalled that the pickets were preparing to carry on with the Council, with the goal now to raise not only the issue of autonomy but the independence of Santa Cruz. In this atmosphere, the department's indigenous and rural organisations decided to make their dissident voices heard in opposition to a rhetoric that claimed to be the only one in the region, in addition to enjoying the open support of the mass media.

The decision the organisations took was to blockade the San Julián area. The conflict exploded when delegations from the provinces who were coming to participate in the Council could not get past the blockade, leading to clashes. Groups close to the Pro Santa Cruz Committee committed acts of vandalism, setting fire to the offices of the Indigenous Organisation of San Javier (*Central Indígena de San Javier*) and pursuing the indigenous leaders and their families.

This conflict, triggered by the clashes in San Julián, put the indigenous organisations on a state of emergency, focusing their attention and efforts on resolving this situation with the support of human rights defence organisations, with whom they made joint public denunciations at national and international level. Negotiations with the national government, the urgent action submitted to the Inter-American Court of Human Rights (IACHR) so that they would be aware of the case, and to Amnesty International, are all worthy of note.

The government's attitude towards this conflict was too weak, negotiating with those who were committing the acts of violence in the Chiquitanía provinces instead of pacifying the region, as both parties to the conflict were under pressure.

Alongside this, the indigenous organisations of Chiquitanía held emergency assemblies and councils in the face of the intolerant and racist attitude of the Provincial Civic Committees. □

## Notes and references

- 1 The social movements' reference to parties as "*traditional*" refers to those that have alternated in the political system since the restoration of democracy in 1982 and have implemented a neoliberal model in the country, applying the recommendations of the World Bank and International Monetary Fund.
- 2 One of the first signs of the government's change was the austerity measure that lowered the salaries of the government authorities, beginning with the president himself, who lowered his salary to 57%.
- 3 The Unity Pact was the result of the National Meeting of Indigenous, Native and Rural Organisations of the Highlands and Lowlands, held in Santa Cruz from 8 to 10 September 2004.
- 4 The constituent members elected in the special ethnic constituencies would be: 3 from the Chiquitanía region, 3 from the Chaco, 2 from the south Amazon, 1 from the north Amazon and 1 from the Afro-Bolivian community.
- 5 There were other proposals from the lowland indigenous peoples, such as that of CIDOB which proposed direct election through custom and usage for the 36 indigenous peoples of Bolivia.
- 6 The final proposal was consolidated in the context of the Social Summit held in Santa Cruz de la Sierra in January 2006, in the presence of the newly-elected Evo Morales.
- 7 The country's lowlands are known as the east, as opposed to the west, which refers to the highlands.
- 8 The law establishes the election of three representatives per uninominal constituency, two for the winner and one for the runner-up; the departmental constituencies will elect five representatives, two for the winner, one for the runner-up, one for third place and one for fourth. Should the third and fourth places not gain a minimum percentage, then they will be absorbed into the first and second places, in line with the electoral quotient.
- 9 To date, the information indicates that the regularisation has made no progress: 56.76% of lands are not regularised, only 10.66% of regularised lands are titled, there are another 17.67% awaiting titling and 14.91% in the process of regularisation. Linked to this process are acts of institutional corruption within the bodies that have taken undertaken the regularisation as well as acts of violence on the ground, encouraged by conservative groups opposed to indigenous and rural communities having access to land. **Tamburini, L, 2007: *Indigenous Affairs* 1-2007, IWGIA, Copenhagen.**

## BRAZIL

In a country with almost 180 million inhabitants and 8,514,215 kms<sup>2</sup> of land, Brazil's indigenous population numbers approximately 734,127<sup>1</sup> individuals, or around 4% of the national population and occupies 12.74% of Brazilian territory, with 96.61% of the Indigenous Lands being in the Amazon. Of the 734,127 Indians, 383,298 live in urban areas. Brazilian legislation establishes a series of rights for indigenous peoples and Brazil signed ILO Convention 169 in 2004.

2005-06 were years of great violence against indigenous peoples in Brazil.<sup>2</sup> During Fernando Henrique Cardoso's government (1995/2002) there were a total of 165 murders, an average of 20.65 per year, and yet during Luiz In io Lula da Silva's government (2003/2006) there have been 122 murders, an average of 40.67 per year. In this context, the Indigenous Rights Defence Forum (which groups together different organisations working for indigenous peoples in Brazil) expressed its condemnation of the recent actions of the Federal Government, which were evidence of the intentional dismantling of indigenist policy, with flagrant violations of the rights of indigenous peoples. The Ministry of Justice is treating the administrative measures for the demarcation of indigenous lands with disdain: in total, 29 indigenous lands are paralyzed procedures. In the last two years, the state body for indigenous peoples' protection, the National Indian Foundation (FUNAI) has failed to follow up 28 identification studies for indigenous lands, while other indigenous peoples from different areas are continuing to claim around 240 indigenous lands from FUNAI. It can thus be seen that the balance of the current government's indigenist policy is negative. The

Brazilian government is not demarcating more lands, it has a policy of abandonment in terms of the health care of these peoples, does not guarantee a truly differentiated indigenous school education and is not complying with the legal obligation (ILO Convention 169 - through Decree 5051) to guarantee indigenous peoples' participation in the formulation and implementation of public policies that affect their interests.<sup>3</sup>

### **Lands authorized and in the process of authorization: a major paradox**

The federal government's lack of attention becomes clear when we look at the number of lands demarcated by this government.

The legal/administrative situation for 2006 was the following:

- a lands under identification: 87 with an area of 1,033,209 hectares, representing 0.95% of Brazilian lands.
- b lands identified and approved by FUNAI (areas published but not declared by the Ministry of Justice): 48 with an area of 2,886,890 hectares, representing 2.66% of Brazilian lands.
- c lands declared indigenous (lands declared permanent indigenous possessions by the Ministry of Justice, which also establishes their administrative demarcation): 32 with an area of 9,304,260 hectares, representing 8.58% of Brazilian lands.
- d reserved lands (lands created during FUNAI's predecessor organisation, the Indian Protection Department – SPI): 13 with an area of 98,679 hectares.
- e authorized lands (indicates lands that have a presidential decree authorizing demarcation): 55, with 7,631,500 hectares.
- f lands registered with the Land Registry Department and/or the Department for Union Heritage: 345, with 87,519,104 hectares.

Total indigenous lands reserved, authorized or registered number 413, covering an area of 95,249,283 hectares<sup>4</sup> according to the Indigenist Missionary Council (*Consejo Indigenista Misionero* - CIMI), as of August



2006 there were 226 Indigenous Lands (TI) that had not been regularised at all throughout the country, 74 of these being in Mato Grosso do Sul, 30 in Rio Grande do Sul, 21 in Par, 17 in Rondonia, 17 in Mato Grosso, 20 in Amazonas and 12 in Paran, in addition to other states with lesser numbers.<sup>5</sup>

On 27 December 2006, the Minister of Justice, Marcio Thomaz Bastos, signed a declaration of permanent indigenous possession for ten territories which, together, total more than 480,000 hectares.<sup>6</sup> Six Indig-

enous Lands recognised in the package cover almost 1.3 million hectares and are located in Amazonas state. This includes TI Balaio Alto – R Negro, with 400 Indians from nine ethnic groups (Tukano, Bar, Baniwa, Desana, Pira-tapuya, Kubeo, Coripaco, Tuyuka and Tariano), living in five communities. In addition, there are the following Indigenous Lands:

- Tabocal, with 907 hectares of permanent possession for the Mura people (15 Indians) – Amazonas.
- Tenharim Marmelos (Gleba B) – 473,961 hectares of permanent possession for the Tenharim-AM people, with approximately 756 Indians.
- Xipaya – 178,624 hectares located in the so-called *erra do Meio*, for the Xipaya people, Par, with approximately 50 Indians.
- Lago Marinho – 3,500 hectares of permanent possession for the Mura people, Amazonas, with approximately 50 Indians.
- Sapotal – 1,265 hectares of permanent possession for the Kokama people, Amazonas, with approximately 380 Indians.
- Pitaguary – 1,735 hectares, metropolitan region of Fortaleza, Cear, with approximately 871 indigenous Pitaguary.
- Kariri-Xok – 4,419 hectares of permanent possession for the Kariri-xok people, with approximately 1,763 Indians.
- Arroio Kor – 7,205 hectares of permanent possession for the Guarani kaiow and Guarani ndeva, Mato Grosso do Sul, with approximately 404 Indians.<sup>7</sup>

According to FUNAI's President, M cio Pereira Gomes, the aim of Luiz In io Lula Silva's government was to have authorized 100 Indigenous Lands by 2006, but this promise has not been fulfilled. A little over half of the indigenous lands have been authorized, with most of the recognition processes languishing in oblivion.<sup>8</sup>

After this declaration, M cio Pereira Gomes publicly stated that, Brazil's indigenous peoples have too much land: up until now there have been no limits to their land claims but we are reaching a point when the Supreme Court will need to establish a limit.<sup>9</sup> Most of these TIs are in a situation of armed conflict and, in 2005, throughout Brazil there were 32 conflicts over territorial rights, of which 17 were in Mato

Grosso do Sul, considered to be the region with the second largest indigenous population yet with the lowest rate of demarcated land in Brazil. In 2006, of the main areas in conflict, Mato Grosso do Sul continued to be the primary focus of national attention. The violence with which the indigenous populations of this region have been treated typifies this government's indigenist policy. By way of example, we can mention the eviction of Guaran-kaio'w families from their Nhande Ru Marangatu lands (around 500 Indians), followed by the death of Dorvalino Rocha, whose self-confessed murderer is still at large. The history of this TI is one of the greatest shames of Luiz Inácio Lula da Silva's government. It was authorized in March 2005 by the President of the Republic but this authorization was suspended by decision of the Supreme Federal Court, preparing the ground for another legal decision that established the reinstatement of private land ownership. This reinstatement led to various threats against the indigenous peoples, including the Terena of TI Cachoeirinha, in Miranda municipality and the Patax'h-h from the south of Bahia, Itaju do Colônia municipality.

Another three areas typify the Brazilian government's contempt: the demarcation of the area to the south of Bahia and the Tupinikin and Guaran lands in Espírito Santo, for which the recommendations in the reports are to extend them from 7,060 hectares to approximately 11,000 hectares. Meanwhile, since 1998, the *Aracruz Celulosa* company, which works the area claimed by the indigenous peoples, has had the backing of the then Minister of Justice, Iris Rezende who, by means of an unconstitutional act, allowed the company to work 11,009 hectares of indigenous lands. Since then, the struggle to recover this land has led to great violence. In the south of Bahia, in Pau Brasil municipality, the Patax'h-h people have, for 24 years, been awaiting a decision of the Supreme Federal Court regarding an action for annulment of land titles that involve occupied estates and other properties. They form around 40 families with approximately 1,850 members who are occupying a small part of what would be the 54,100 hectares of their original lands. The position of the Krah-kanela people has been different.<sup>10</sup> They recovered their lands, ignoring an agreement signed by FUNAI at the end of 2005 stating that the community could return to part of the Mata Alagada land, (Lagoa da Conceição municipality - Tocantins)

until 31 January 2006 when the indigenous reserve would be created. Meanwhile, it was only on 8 December that the Official Union Bulletin published a Decree signed by the President of the Republic declaring that the rural lands intended for settling this people were of public interest, and could thus be confiscated. This relates to two estates of 7,000 hectares.

These cases typify the arbitrary actions of the Brazilian government in relation to policies authorizing the indigenous territories. In addition to this, we can see a gradual paralysation in the work of demarcating these territories. The information may point to an increase in state public administration expenditure on specific actions for indigenous peoples but, at the same time, resources intended for land regularisation and protection of indigenous territories have diminished. The greatest investment was in 2001 with R\$ 67,138 million (approx. 32 million dollars); since then, investment has declined year on year, falling from R\$ 42,496 in 2005 to R\$ 42,081 million in 2006.

## Indigenous rights

In 2005 and 2006, more than 80 indigenous individuals were subjected to illegal criminal proceedings because of conflicts over land. Dourados prison (Mato Grosso do Sul) alone holds 70 indigenous prisoners. Mato Grosso do Sul continues to be the epicentre of violence, being one of the country's richest agricultural frontiers and the country's largest cereal exporter. Agribusiness is driving out the indigenous population, the second largest in Brazil with approximately 48,000 individuals belonging to the Terena, Chamacoco, Ofai-xavante, Guat, Kadiweu and Guaran Kkaiw and andeva peoples and representing 2.31% of the state's population.

One symbolic case relating to a violation of indigenous rights occurred in Passo Piraju – Porto Cambira, Dourados municipality. Three years ago, around 200 indigenous people returned to settle in this region, which they call Passo Piraju. They had a court order authorizing their leave to remain on the land until an anthropological study had been conducted by FUNAI. On 1 April 2006, three unidentified persons entered the camp and began to attack the group. They reacted in

defence, resulting in the deaths of two people, later identified as policemen. Nine Indians were arbitrarily arrested, and they remain in prison to this day, despite writs of *habeas corpus* having been issued for their release. Complaints of abuses of authority on the part of the police following the conflict and in the prison itself, plus the disappearance of Antonio da Silva, a resident of the community, were not investigated.<sup>11</sup>

We agree with the many Brazilian jurists who believe that the problem in Brazil is not a lack of laws but of their enforcement. In this regard, in article 56 of Law N 6001/73, the Indian Statute establishes that, sentences of imprisonment and detention shall, wherever possible, be served under conditions of semi-freedom, on the premises of the Indian federal welfare organisation closest to the convicted person's home and ILO Convention 169, ratified by Brazil, states that criminal sentences imposed by legislation should take account of their economic, social and cultural characteristics, giving preference to methods of punishment other than confinement in prison (Arts. 9 and 10). However, neither of these laws are being respected.

## Indigenous health

Since 2005, the scandalous neglect of indigenous peoples' health has been constant.<sup>12</sup> Various indigenous protests bear witness to this neglect, which can be deemed tantamount to genocide. The continuing lack of technicians, medicines and equipment, the failure to transfer the most seriously sick to hospital, in addition to complaints about the diversion of budgets and medicines, means the indigenous population are the victims of constant epidemics that had previously been eradicated, primarily causing the deaths of children.

Epidemics of malaria and hepatitis are threatening the population of Valle del Javar (Civaja), Amazonas, possibly affecting 255 Indians out of a population of 3,500. Malaria is also affecting the Yanomami. In the first half of 2006 alone, 2,591 cases were notified, representing a 470% increase on the same period in the previous year. In addition, the Xing Park is suffering an epidemic of sexually transmissible infections (STIs), causing the deaths of women through uterine cancer.

According to complaints made by the indigenous organisations, the incidence of illnesses such as malaria, tuberculosis and STIs has advanced among the indigenous peoples of the country's different regions, revealing the decline in care and destruction of the health infrastructure.<sup>13</sup>

## **Indigenous movements and organisations: their main demands**

### **Manifesto of the Guaran kaioiw people of Mato Grosso do Sul**

These people are demanding recognition of a dignified life; respect for the Brazilian Constitution and international laws, such as ILO Convention 169; more speed in the recognition, delimitation, demarcation and authorization of land; and respect for traditional lands. They are calling for the more than 10 *tekoha* (Guaran lands) to be demarcated in Mato Grosso do Sul – and that those responsible for the murders of a number of indigenous leaders in recent years, such as Mar I de Souza (Campestre/Nhanderu marangatu – 23/11/1983), Samuel Martins (Kajari-26/02/2000, Marcos Veron (Takuara – 13/01/2003), Dorival Benitez (Sombrerito – 26/06/2005) and Dorvalino Rocha (Nhanderu marangatu-24/12/2005), be rapidly brought to justice and punished.<sup>14</sup>

### **Indigenous peoples' week**

Representatives from organisations and associations allied with the indigenous and popular movement of the Southern Cone (Argentina, Bolivia, Brazil, Paraguay and Uruguay) met in S Gabriel on 7 February 2006 where they made the following commitments: to support the initiatives of the Guaran people in the defence of their constitutional and historic rights, particularly the right to land; to encourage actions promoting the coordination, union and autonomy of the Guaran people, such as regional and continental meetings and assemblies; to fight to put an end to the violence, aggression and discrimination from which the Guaran continue to suffer, such as murder of their leaders, theft of mineral resources, destruction of their environment and their lack of economic viability.<sup>15</sup>

### **35th Assembly of the Indigenous Peoples of Roraima state**

In the presence of 720 indigenous leaders from the Inagari, Macuxi, Taurepang, Sapar, Wapichana, Wai wai, Yekuna and Yanomami peoples, along with that of the national indigenous organisation, COIAB, the 35th Assembly of indigenous peoples of Roraima state took place on 10 February 2006. It called for the urgent removal of invaders who had already received compensation but were still living on Indigenous Lands; the expulsion of invaders from the TI Raposa do Sol in accordance with the Decree authorizing this Indigenous Land; a rejection of mining exploitation and hydro-electric construction, along with the rapid withdrawal of *arimpeiros* (small gold miners) from the Cotingo River in TI Yanomami. It called for a rejection of the electrification of their lands without a prior environmental impact study, as the communities should be informed and consulted on all governmental and non-governmental projects.<sup>16</sup>

### **The Permanent Forum for the Defence of Indigenous Rights**

This Forum was held on 17 February 2006, where it was agreed to call for the dismantling of the government's indigenist policy, describing it as the enocide of the indigenous peoples. The Forum called for the urgent demarcation of 14 Indigenous Lands that are currently being analysed by the Ministry of Justice. It denounced FUNAI for reducing the number of Technical Groups aimed at identifying and demarcating the TIs, and failing to follow up on the 28 identification studies undertaken in recent years. There are around 240 TIs being claimed by the indigenous peoples, who are awaiting their regularisation, of which administrative procedures have only been commenced for 64. It denounced the unconstitutional creation of a commission made up of representatives of the Union and Santa Catarina state with the purpose of analysing the areas to be demarcated and, further, the paralysis in procedures for demarcating indigenous lands in Mato Grosso state, as a result of the governor's request for a oratorium on the demarcation of indigenous lands there.<sup>17</sup>

### ***Campamento Tierra Libre***

Considered by the indigenous and indigenist organisations to be one of the main demonstrations on the protest calendar, more than 500 indigenous leaders from 84 peoples attended the *Campamento Tierra Libre* (Brasilia, 6 April 2006). Its Declaration criticised the government's current indigenist policy and suggested paths for a new relationship between indigenous peoples and the Brazilian state, primarily via the participation of indigenous peoples in formulating public policies aimed at them. Criticism made of the government included: a demand that indigenous rights should not be considered in isolation but in a coordinated manner with the Indigenous Statute and the urgent need to improve indigenous health care.<sup>18</sup>

### **8th General Assembly of the Indigenous Coordinating Body of the Brazilian Amazon, COIAB**

This Assembly took place in Aldea Maturuca, Raposa do Sol, from 21 to 25 April 2006. It called for unrestricted defence of the human, collective and native rights of the indigenous peoples and communities of the Amazon and the entire country; demanded regularisation of lands, indigenist legislation, health, education, ethnic development, gender issues, grassroots networking and networking with the indigenous movement's supporters.

### **1st Regional meeting of struggling indigenous women from the north-east and east**

This meeting was held in Salvador on 22 November 2006. The main points of discussion were: indigenous school education, lack of medical care and physical and moral aggression.

### **1st Meeting of indigenous youth and youth in solidarity with the cause, Minas Gerais**

This meeting, held in TI Ind ena Patax in October, was primarily aimed at discussing such issues as: the struggle for land and affirmation of

indigenous rights; water and the environment; spirituality; education; social inclusion and citizenship; art and culture; the indigenous movement; emotionality and sexuality.

### **Manifesto of the Organisation of Indigenous Peoples of Acre, the south of Amazonas and north-west of Rondonia – OPIN**

The 1st meeting of the Deliberative Council of OPIN was held in Rio Branco on 17 August 2006, where it expressed its condemnation of the federal government's paralysis in relation to the processes for regularising the indigenous lands of Acre and the south of Amazonas.<sup>19</sup> It also condemned the situation of conflict that is becoming established alongside the indigenous Apolima Arara community of the Amia River, with the collusion of IBAMA<sup>20</sup> and IMAC,<sup>21</sup> who are systematically authorising the removal of wood from a TI that has a recognition process underway.

### **Seminar for National Coordination of the Indigenous Movement**

Indigenous populations from across the whole country want infrastructure projects that have a direct and indirect impact on their lands to be suspended until their voices have been heard on the issue. Some of the greatest controversy surrounds the Small Hydroelectric Plant (PCH) Paranatinga II, Kuluene River, in the region of the headwaters of the Xingu, Mato Grosso; the surfacing of the Cuiab-Santarem highway (BR-163), which links Mato Grosso and Par; the S Francisco River transposition project; the planned hydroelectric projects of Madeira River (AM), Belo Monte (PA) and Estreito (TO) and the doubling of the size of the BR-101 highway in R Grande do Sul.

## **Conclusion**

This year, the Brazilian government continued its humiliating policy towards indigenous peoples. Although the indigenous organisations have become stronger, the great problem is still the arbitrary nature of policies for demarcating indigenous lands and, at the same time, the

lack of public policies aimed at this population, which results in constant conflicts created by the asymmetry of strength between Indian and non-Indian. □

## Notes and references

- 1 **IBGE – Instituto Brasileiro de Geografia y Estadística, 2000:** *Demographic Census 2000*. The *Instituto Socioambiental* does not use the IBGE statistics and continues to state that Brazil's indigenous population totals around 370,000 inhabitants or 2% of the population.
- 2 **CIMI – Indigenist Missionary Council:** *La violencia contra los pueblos indígenas en Brasil. 2003-2005*. The information includes data to May 2006.
- 3 Brasilia, 17 February 2006. Available at: <http://www.forumcarajas.org.br/articulacoes2.php?id=4>
- 4 **Instituto Socioambiental, 2006:** *Pueblos Indígenas en Brasil 2001/2005*.
- 5 Idem. 2005:166.
- 6 The indigenous lands declared in December will be physically demarcated for subsequent authorization by presidential decree.
- 7 [www.socioambiental.org/nsa/detalhe?id=2390](http://www.socioambiental.org/nsa/detalhe?id=2390)
- 8 We are referring to: (TI): Aldea Cond/SC (Kaingang); BaioGuat/MT (Guat); Maiaio/AM (Bar, Baniwa, Desana, Pira-tapuya, Kubeo, Kuripako, Tuyuka, Tukano, Tariano); Batel/MT (Kaiabi); Boa Vista/PR Kaingang; Cacique Fontoura/MT (Karaj); Guyrarok/MS (Guaran kaiow); Lagoa Encantada/CE (Jenipapanind); Las Casas/PA (Kayap); Manoki/MT (Iranxe); Morro dos Cavalos/SC (Guaran: Mby and andeva); Pia guera/SP (Guaran ndeva); Pitaguary/CE (Pitaguary); Potiguara do Monte Mor/PB (Potiguara); Ribeir Silveira/SP (Guaran mby and andeva); Sarau/PA (Amanaye); Taunay Ipegue/MS (Terena); Toldo Imb/SC (Kaingang); Toldo Pinhal/SC (Kaingang); Xapec/SC (Guaran mby and Laigang); Yvytor Laranjinha/PR (Guaran ndeva and Kaingang).
- 9 *Folha de São Paulo*, 12 January 2006.
- 10 The Krah-kanela, after three decades on the move, lived from 2001 in a house built on the old rubbish tip of Gurupi town, Tocantins, in unsanitary conditions, exposed to illness and social and family breakdown.
- 11 [www.cimi.org.br/?system=news&action=read&id=1917&eid=352](http://www.cimi.org.br/?system=news&action=read&id=1917&eid=352).
- 12 The National Health Foundation has been responsible for indigenous health since 1991. Funasa's Consultative Committee has five indigenous leaders, representing the Special Indigenous Health Districts (DESEIs), two directors of regional indigenous organisations (*Coordinating Body of Indigenous Organisations of the Brazilian Amazon – COIAB* and the *Coordination of Indigenous Peoples and Organisations of the North-East, Minas Gerais and Espírito Santo – APINME*) and representatives of the Federal Attorney-General's Office, the *National Indian Foundation (FUNAI)* and the *Intersectoral Coordinating Body for Indigenous Health (CISI)*, among other associations.

- 13 [www.socioambiental.org/nsa/detalhe?id=2272](http://www.socioambiental.org/nsa/detalhe?id=2272)
- 14 [www.cimi.org.br/?system=news&action=news&action=read&id=1646&eid=352](http://www.cimi.org.br/?system=news&action=news&action=read&id=1646&eid=352).
- 15 Sep Tiaraju.  
[www.cimi.org.br/?system=news&action=read&id=1756&eid=362](http://www.cimi.org.br/?system=news&action=read&id=1756&eid=362).
- 16 35th assembly of Indigenous Peoples of Roraima. 10 February 2006. [www.socioambiental.org](http://www.socioambiental.org)
- 17 [www.cimi.org.br/?system=news&action=read&id=1765&eid=234](http://www.cimi.org.br/?system=news&action=read&id=1765&eid=234).
- 18 [www.cimi.org.br/?system=news&action=read&id=1854&eid=274](http://www.cimi.org.br/?system=news&action=read&id=1854&eid=274).
- 19 TI Arara do Am ia-Apolima, TI Curralinho-Kaxinawa, TI Jaminawa do Guajar-Jaminawa, TI Jaminawa del r Caet-Jaminawa, TI Naua-Naua, TI Guanabara-Manchineri, TI Monte/Primavera/Goiaba – Apurin y Jamamadi, TI Iquirema-Jamamadi, TI Lurdes-Jamamadi, TI Cajueiro-Apurin, TI Valparaiso-Apurin, Ticaiapuc-Jaminawa, TI S Paulino-Jaminawa. The non-cancellation of the boundaries of the TI Igarap do Caucho-Kaxinawa, TI Kaxanawa y kampa del r Breu-kampa y kaxinawa, TI Katikuna/kaxanaw-Shanenaw y Kaxinaw, TI Kaxinaw de la Col ia Vinte e sete – Kaxinaw, TI Nukini- Nukini, TI Arara do Igarap Humait-Arara. The urgency of FUNAI's study of TI Kontanawa-kontanawa, Estir -Jamimawa Kulina, Maracaju-jamamadi, Laguna de Vit ia-apurin, Sanguan-Apurin, Mamori-Apurin.
- 20 *The Brazilian Institute for the Environment and Renewable Natural Resources.*
- 21 *Acre Institute for the Environment.*

## PARAGUAY

The 2002 census of indigenous peoples gave a figure of 87,099 people, representing 1.7% of Paraguay's total population.<sup>1</sup> The National Census, however, through the question on ethnic belonging, recorded another 2,070 people who stated that they belonged to one of Paraguay's indigenous peoples. More than half the indigenous population live in the Western (Occidental) Region, also known as the Chaco.

The indigenous population has been classified into 20 ethnic groups, of which the largest numerically are the Mby'a guaraní, Avá guaraní, Pa'i tavyterã, Nivaclé, Enlhet norte, Enxet sur and, to a lesser extent, the Manjui, Guaná and Tomaraho ethnic groups.

The situation of extreme poverty in which the indigenous peoples live is reflected in their lack of land ownership. The census indicates that there are 412 indigenous communities in Paraguay, of which 185 have no permanent property titles, 45 in the Western Region (Chaco) and 140 in the Eastern (Oriental) Region.

Paraguay has a legal framework that guarantees and recognises a fairly wide range of rights in favour of indigenous peoples. The approval of ILO Convention 169 should also be noted, transposed into law as Law 234/93.

In a recent report published during 2006,<sup>2</sup> numerous civil society organisations, including the NGO Tierraviva, presented their conclusions regarding compliance with the International Covenant on Economic, Social and Cultural Rights. This included a specific chapter on the situation of indigenous peoples and highlighted Paraguay's cur-



rent agro-export model as the main cause of violations of economic, social and cultural rights. This conclusion was arrived at after examining rights closely linked to land tenure in rural areas, such as the right to work, to food, to water and housing.

The report states that the government's promotion and development of a production model based on extensive and intensive commercial agriculture, aimed at monocropping of, primarily, soya, wheat and sunflower, has resulted in a heavily concentrated land tenure system, destruction of the traditional family-run farms and a massive rural exodus to the city. In addition, it states that this situation has seri-

ously affected the indigenous communities, particularly in the Eastern region, where a gradual and illegitimate appropriation of traditional indigenous lands has taken place. These now form vast deforested areas used for the mechanised cultivation of oleaginous export crops, without any state intervention having taken place to establish the geographical limits of this expansion in order to ensure at least a minimum area of land that would enable the dignified survival of the many communities whose forced displacement and marginalisation is now becoming apparent.<sup>3</sup>

As for the Western Region, the report also mentions that a sharp increase can be seen in areas cleared of trees, which now stretch on a worrying scale as far as Alto Paraguay. This situation is all the more serious when one considers that the central Chaco is completely deforested, and here the cattle ranching frontier has replaced forests with artificial pasture and livestock. Clearly, there is no room for the indigenous population, except as cheap labour under exploitative conditions that the ILO has termed modern slavery in another report published recently.<sup>4</sup>

## **International rulings**

In March 2006, the Inter-American Court of Human Rights (IACHR), whose headquarters are in San José, Costa Rica, issued a new ruling against the Paraguayan state, this time in the case of the Sawhoyamaya Indigenous Community of the Enxet people in the Chaco Region regarding legalisation of their lands. This ruling is in addition to another issued by the same court in the case of the Yakye Axa community in 2005.<sup>5</sup>

These rulings, particularly the latest one, represent a significant step forward in terms of case law and the establishment of legal standards, defining the new scope and application of the American Convention on Human Rights in relation to indigenous peoples and communities.

However, the experiences of the indigenous communities and their representatives, suggest that, since notification of both rulings, the main practical difficulty observed in terms of their fulfilment and im-

plementation has been related to confusion within the state bodies and a lack of leadership in terms of coordinating actions aimed at implementing the different points.

Although it is clear that no particular legislation has been passed in Paraguay by which to implement rulings issued by supranational courts, neither is any state body authorised to disregard these rulings. On the contrary, it should be clearly understood that any failure to comply only increases the government's liability regarding the agreements signed, for which reason the civil servants involved should ensure full knowledge of the situation and honour their commitments by faithfully complying with the rulings.

In addition, it must be recalled that the state as a whole must take responsibility for the actions or omissions of public departments or employees, however individual or sectoral they may be, and this is no excuse for the ignorance or lack of clarity continually alleged by different authorities in relation to the requirements imposed by the Inter-American Court's resolutions.

However, it must be noted that some steps, however symbolic, were taken during the course of 2006 in terms of compliance, one of them considered historic by the mass media. This was the public act of recognition of the state's international responsibility in the human rights violations suffered by both the Yakyé Axa community and its members. This took place on 10 August in the presence of the authorities, primarily the government and decentralised bodies, in the community's settlement.

In addition, on the same day, the payment due to Yakyé Axa's leaders by way of compensation was partially paid, with 60,000,000 guaraníes being handed over out of a total of 90,000,000 that the state is required to pay.

The opening of two bank accounts with the Central Bank of Paraguay, one of them to hold the funds necessary to pay for the lands forming the object of the claim and the other to hold funds destined for community projects once the community has been resettled, must be recognised as important initial steps in the full implementation of the ruling against the Paraguayan state.

In relation to the other ruling, Paraguay was again found guilty of violating the right to property, to legal guarantees and protection, to life and legal status.

The IACHR's ruling of March 2006 regarding the Sawhoyamaya community served to clarify two confusing issues that arose from the Yakye Axa ruling: property and life. With regard to the right to property (land), it expressly established that the state must give the community its traditional lands, clarifying the apparent confusion around this issue that the Yakye Axa ruling had introduced (and which the state has repeatedly made use of) when it stated that the lands to be provided to the community should be identified in advance, thus opening up the possibility of providing alternative lands.

With regard to the right to life, Judge Ventura Robles, a member of the Inter-American Court, maintained in her concurring opinion that the court's position formed a significant departure from the criteria used in the Yakye Axa case, even though the cases could be considered identical in all but the names of the victims. In the latest ruling, that of the Sawhoyamaya, the Court even virtually admitted a mistake had been made and indicated that the burden of proof should be reversed in favour of the victims. Particular attention was also paid to the fact that the additional proof should consider indicating a lack of documentation as being a responsibility of the state and not of the victims. On this point, the Court was rigorous and analysed the deaths of the community members case by case, used criteria such as the date of ratification of the Human Rights Convention by Paraguay, life expectancy in the country, the cause of death and the particular inclusion of one of them in the complaints from the Inter-American Commission on Human Rights in order to establish the state's responsibility.

In relation to the contributions of the international rulings, we can mention the following points:

**Autonomy** of the indigenous peoples. Obligation of the states to acknowledge the particular characteristics of the communities, their special situation of vulnerability.<sup>6</sup>

**Right to Property.** The Inter-American Court maintained that the state's bilateral commercial agreements, signed in contravention of the

American Convention, could not be used as an excuse for failure to comply with this latter.<sup>7</sup>

According to the Inter-American Court, private property and the rational exploitation of land cannot form a tool with which to deprive the indigenous peoples of their right to property.<sup>8</sup>

The Inter-American Court also established that possession of the land must be understood as a form of acquisition by the indigenous peoples, and the fact that they do not have actual possession of the land does not signify the loss of the right to property, provided the special relationship of the communities to their lands is maintained and can be proven.

Another point noted was that possession cannot be considered lost if it cannot be physically exercised for reasons of violence or coercion.<sup>9</sup>

**Right to life.** Regarding the communities' special situation of risk, the Inter-American Court established that, because the state is aware of their situation, they should benefit from protection, this being the state's unavoidable responsibility.<sup>10</sup>

With regard to this right, the Court also maintained that the mere availability of health centres did not necessarily imply that they were accessible.<sup>11</sup>

In terms of children and expectant mothers, the Court established that they must be recognised as subjects of law to whom the state has special duties.<sup>12</sup>

## **Other relevant cases in terms of the state's action**

### **Growing criminalization of the struggle for land**

The action of the justice system was reflected during 2006, on the one hand, by a growing criminalisation of demands for indigenous rights, the number of criminal prosecutions increasing. These are conducted without any legal grounds against indigenous community members and their defence lawyers who are demanding satisfaction of their rights.

In addition, it was possible to observe clearly discriminatory attitudes, as seen in the constant inaction of members of the judiciary and public prosecutor's office in cases brought by indigenous leaders against large cattle farmers and estate owners. This was in stark contrast to their rapid reactions when investigating complaints made by cattle ranchers against indigenous community members, in violation of the guarantees of due process.

The case of the Kelyernmagategma community of the Enxet people, in the Chaco region, illustrates the above. In January 2006, seven indigenous people, including a 14-year-old teenager, were violently captured by employees of the El Algarrobal S. A. ranch, a firm that holds title to the lands on which this community is settled. These people were held incommunicado for 48 hours, without knowing the reason for their detention. They were transferred to the capital and handed over to the Attorney-General's Office by "depositing" them in the police station of Villa Hayes, Presidente Hayes department. They are currently back in their community but accused of rustling, the proceedings being plagued by violations of their rights.

The violent actions denounced by this community since 2004<sup>13</sup> continued to enjoy the most absolute impunity during 2006, the Attorney-General's Office still failing to formally communicate commencement of investigations to the Court of Safeguards (*Juzgado de Garantías*). Not one person has been accused and no witnesses have been called to make statements.

In the context of the proceedings for the case referred to in the paragraph above, it has also been possible to note a tendency on the part of public prosecutors to renounce their investigative powers in order to redirect their efforts towards reconciliation in conflicts arising from the outrages committed by cattle farmers against indigenous communities and which were denounced by these latter to the corresponding state authorities. It should be noted that, beyond an obvious desire to violate legal mandates regarding the obligation to investigate criminal actions, this conciliatory desire is only evident in cases where the cattle ranchers are the ones being exempted from investigation and punishment should an agreement be reached.

In another case for alleged rustling brought against six indigenous people from the Laguna Teja hamlet, La Patria community of the An-

gaité community, the intermediary stage having been reached, the preliminary hearing planned on four occasions during 2006 had to be suspended due to the failure of the public prosecutor to appear in court. This failure was, on the third occasion, communicated to the State Attorney-General's Office and the Deputy Public Prosecutor of Chaco, without this making any difference on the fourth occasion it was arranged.

In another case against the Kelyenmagategma community, the public prosecutor had to allow the claims of the defence, given the impossibility of sustaining his accusation on the basis of the arguments provided to him by the investigation. This case was concerning the alleged invasion of a property by the indigenous community and the supposed incitement of their lawyers.<sup>14</sup>

In the case of another community, known as Ñembiará, an indigenous Mbya guaraní community in Caaguazú department that was subjected to two violent evictions in 2004, the state authorities that conducted the proceedings were not removed from their posts, as was hoped would happen during 2006. What is more, they did not even have to stand trial to establish responsibility for the illegality of their actions, despite promises from their superiors to investigate what had happened.

### **Groups of Ayoreo people in situation of isolation**

According to information provided by the GAT (People, Environment and Territory) organisation, during 2006 the Ayoreo totobiegosode called for the more determined intervention of the authorities in order to speed up negotiations to regularise the farms that form the heart of the South Zone of the Ayoreo Totobiegosode Natural and Cultural Heritage (*Patrimonio Natural y Cultural Ayoreo Totobiegosode* - PNYCAT), initiated with the Paraguayan state back in 1993. In addition, they demanded the continuation of precautionary measures over the territory claimed in order to safeguard the natural resources and protect their relatives who still live a mobile lifestyle throughout the bush.

Currently, 80,000 hectares of the 550,000 that make up the PNYCAT are under indigenous title, a large part of the territory claimed being in the hands of private owners who are conducting activities in open vio-

lation of the precautionary measures imposed by the Paraguayan courts, consequently endangering the lives of the people in voluntary isolation. What is more, this area forms part of the Chaco Biosphere Reserve, part of UNESCO's World Network.

In order to preserve the natural and cultural heritage of the indigenous Ayoreo totobiegosode population of Alto Paraguay, an Interinstitutional Agreement for the Preservation of the Natural and Cultural Heritage of the Ayoreo Totobiegosode of Alto Paraguay Department was signed in Asunción at the end of December.<sup>15</sup>

With this new project, a series of supportive institutions<sup>16</sup> and observers have signed a document establishing an Interinstitutional Committee that aims to coordinate efforts to consolidate and legalise the farms in the heart of the south zone of the Ayoreo totobiegosode natural and cultural heritage, in the Alto Paraguay region of the Chaco.

### **Multi-sectoral work group for the Amotocodie territory**

As a result of actions promoted by the NGO Iniciativa Amotocodie in order to obtain better protection of the Amotocodie territory (home to various groups of indigenous people in isolation), the establishment of a joint dialogue committee last August following an urgent request from this NGO was seen as a significant step in the right direction. The work group is made up of state bodies from central and regional government, NGOs, indigenous peoples and private owners and has been named the "Multisectoral Work Group for Protection of the Ayoreo People". The Work Group has met monthly since its creation, including the main public and private players and representatives from the different interest groups involved in the situation with the aim of analysing and containing situations of risk that threaten the integrity of the groups in isolation and their territory. In addition, in the medium to long term, the Group is proposing the creation of a territorial reserve for groups in isolation in the Amotocodie region.<sup>17</sup>

### **Legislative actions during 2006**

The processing of Law 2822 (Statute on Indigenous Peoples and Communities) repealing Law 904/81 (Statute on Indigenous Communities)

took place at the end of 2005 for the most part but, even so, it is of importance and is mentioned here given that completion of the process took place in the first half of 2006. Both chambers of the National Congress thus accepted the presidential veto deciding not to approve the part that had been agreed. For this reason, Law 2822 remains definitively shelved, with Law 904/81 remaining in force.

Below is a summary of other outstanding plans that were brought in or had some type of legislative processing during 2006, according to information provided by the secretariats of both chambers of the National Congress:

1. Bill of law establishing the registration of indigenous traditional knowledge.
2. Bill of law creating the General Department of Indigenous School Education.
3. Project to distribute and deposit part of the “royalties” with the municipal governments.
4. Project of credit assistance and integrated development for indigenous communities.
5. Project to create the Mutual Health Hospital System belonging to the indigenous people of the Chaco.
6. Expropriation request on behalf of the Ebetogue community of the Ayoreo people.
7. Project to release a part of the land of Villa Hayes district to INDI in order to subsequently transfer it to Mr. Ignacio Flores Ferrari.
8. Project to approve the agreement to donate USD 1,700,000 for regularisation of indigenous lands, from the Japanese Social Development Fund.
9. Amendment of article 7 of Law 2522/05, which establishes that titles transferring ownership to indigenous communities should be issued free of charge at the Higher Government Notary (*Escribanía mayor de Gobierno*).
10. Bill of law expanding the general budget of the Nation for the Ministry of Education and Culture – INDI. □

## Notes and references

- 1 **Dirección General de Estadística, Encuestas y Censos, 2002:** *Censo Nacional Indígena de Población y Vivienda 2002*. Available at: [www.dgeec.gov.py](http://www.dgeec.gov.py).
- 2 *Informe de la sociedad civil sobre el cumplimiento del Pidesc*, Chapter on indigenous rights in Paraguay. 2006.
- 3 *Ibid.* P. 192.
- 4 **Alvaro Bedoya Silva-Santisteban & Eduardo Bedoya Garland, 2005:** Working Document *Servidumbre por Deudas y Marginación en el Chaco de Paraguay*. International Labour Office, Geneva, July 2005.
- 5 Cfr. IACHR, case of Yakye Axa Indigenous Community. Ruling of 17 June 2005. Series C N° 125.
- 6 Cfr. IACHR, case of Sawhoyamaya Indigenous Community. Ruling of 29 March 2006. Series C N° 146, para. 83; IACHR, case of Yakye Axa Indigenous Community. Ruling of 17 June 2005. Series C N° 125, para. 63.
- 7 Cfr. IACHR, Sawhoyamaya Indigenous Community. Ruling of 29 March 2006. Series C N° 146, para. 140.
- 8 *Idem supra* note 13, para. 138.
- 9 *Idem supra* note 13, para. 128.
- 10 *Idem supra* note 13, para. 168.
- 11 *Idem supra* note 13, para. 174.
- 12 Cfr. IACHR, case of Sawhoyamaya Indigenous Community. Ruling of 29 March 2006. Series C N° 146, para. 177; IACHR, case of Yakye Axa Indigenous Community. Ruling of 17 June 2005. Series C N° 125, para. 221.
- 13 Cfr. Trial 11.599/04. Precautionary Measures case 987/04 IACHR, Human Rights Unit, Department of Public Prosecutions.
- 14 The author of this report was present as defendant in this case, being found innocent along with the Enxet leaders in 2006.
- 15 UNDP press report, December 27 2006, Asunción, Paraguay.
- 16 SEAM (Ministry of the Environment), INDI (Paraguayan Indigenous Institute), State Attorney-General's Office, provincial government of Alto Paraguay, CI-PAE (Committee of Churches for Emergency Aid) – Programme of Environmental Promotion, Defence and Education –, OPIT (Payipie Ichadie Totobiegosode Organisation), GAT (People, Environment and Territory) and the UNDP (United Nations Development Programme) in their position as project members; and the Network of Private Not for Profit Entities at the Service of Indigenous Peoples (*Red de Entidades Privadas sin Fines de Lucro al Servicio de los Pueblos Indígenas*), the Paraguayan Network of Environmental NGOs (*Red de Organizaciones Ambientalistas No Gubernamentales del Paraguay*), CODEHUPY (Coordinating Body for Human Rights in Paraguay) and POJOAJU (NGO Association of Paraguay).
- 17 Cfr. *Pueblos Indígenas aislados y en contacto inicial*, Benno Glauser, November 2006, in the hands of the author.

## ARGENTINA

The 27 indigenous peoples<sup>1</sup> of Argentina total 485,460 individuals, representing between 3% and 5% of the country's overall population. A large number of these people live in rural communities<sup>2</sup> but increasing numbers of young people are moving to the city to live.

In the Centre West Chaco region, which is home to the highest proportion of indigenous peoples (9 different ethnic groups, the majority of whom are hunter gatherers), natural resource exploitation is causing desertification, soil impoverishment, a loss of biodiversity and high levels of river contamination.

In the Centre South region, the Mapuche, Rankulche and Teheulche peoples are faced with the constant invasion and appropriation of their lands by multinationals and local businessmen, along with oil contamination.

Reforms to the 1994 National Constitution included recognising specific rights to indigenous peoples in article 75.<sup>3</sup> In addition, 11 of the 23 Argentine provinces have incorporated special rights into their constitutions and a number of them have passed indigenist laws. In addition, Argentina has ratified ILO Convention 169, and other international human rights treaties have constitutional standing.

### Indigenous involvement in public administration

Following several years of complaints made at national and international level,<sup>4</sup> the National Institute for Indigenous Affairs (*Instituto Nacional de Asuntos Indígenas* - INAI) at last formalized indigenous participation within its body with the creation and establishment of the

Council for Indigenous Participation. It is a collegiate body of 83 representatives (one post holder and one substitute per people and per province) elected by communities with a legal status and the main role of which is to advise, support and approve policies proposed by IN-*AI*.

In addition, a Department for Native Peoples and Natural Resources has been opened within the National Ministry for the Environment, headed by a leader from the Mapuche people of Neuquén.

It is hoped that the involvement of indigenous leaders in state bodies will lead to substantial changes in public policy that are of benefit to the communities, particularly with regard to urgent issues such as the titling of land and territories and the defence of their natural resources.

## **Regulatory changes**

The constitution of Neuquén province was amended for the very first time in February to recognise the pre-existence of the Mapuche people with full rights that must be respected by all provincial authorities. This recognition was the result of sustained pressure from the communities, from a large part of Neuquén society and from leading personalities in the Church and the arts, plus Nobel peace prize winner Adolfo Pérez Esquivel.<sup>5</sup>

A similar reform took place in May, in the province of Tucumán, where Lule and Diaguita communities achieved a consensus to make a recommendation to constituent members that was later to become enshrined in article 136 on the "Rights of Aboriginal Communities".<sup>6</sup>

The law on public order relating to indigenous communal property was promulgated in November, declaring "an emergency regarding the possession and ownership of the land that indigenous communities traditionally occupy, whose legal status is duly registered with the National Registry of Indigenous Communities, competent provincial body, or such as is pre-existing" for four years throughout the whole country. In addition, throughout this period, the law suspends implementation of eviction rulings aimed at removals and/or evictions from lands that may violate indigenous ownership and/or possession. In



the first three years, INAI must conduct a survey of such ownership, demarcating the territory occupied by all the country's indigenous communities. For this, it will coordinate the necessary actions with the Council for Indigenous Participation (CPI), the provincial indigenous institutes, national universities, provincial and/or national bodies, indigenous organisations and non-governmental organisations. The law also provides for the establishment of a Special Fund for the Assistance of Indigenous Communities with a total of 30,000,000 Argentine pesos (approximately US\$10 million) devoted to implementing a Community Strengthening Programme. This programme is aimed at consolidating the traditional ownership of the land occupied by indigenous communities, programmes of regularisation of ownership of provincial and national state lands, a Plan for Surveying Ownership Status and the purchase of other lands appropriate and sufficient for human development.

INAI has begun work on implementing the law and it is hoped that surveying of community lands will begin in some provinces from March 2007 on.

### **Consolidation of estates in Patagonia (in the south of the country)**

Chubut province rejected the 7,500 ha that the *Compañía Tierras del Sud Argentina S. A.* (CTSA) made available for the implementation of production projects on the part of Mapuche communities. This decision was based on studies conducted by the National Institute for Agricultural and Livestock Technology (*Instituto Nacional de Tecnología Agropecuaria* - INTA), which determined that the lands were of very low productive value. As a press release from the NGO *Servicio de Paz y Justicia* (SERPAJ) commented tartly, "Benetton, the owners of CTSA, was generous in its donation of unproductive lands". In 2004, the Curiñanco-Nahuelquir family travelled to Rome to submit a demand to the multinational corporation for the return of 535 hectares of territory. Some days prior to the journey, Benetton announced through its press office that it had made 2,500 hectares available to the Nobel peace prize winner, Adolfo Pérez Esquivel, for the benefit of the Mapuche,

although the location was unknown and the specific territory claimed was not recognised. For this reason, these lands were rejected both by the family and by Pérez Esquivel. And then, in 2006, the CTSA, which owns 900,000 hectares in Argentine Patagonia, again proclaimed “a symbolic gesture of social responsibility aimed at encouraging dialogue in the history of conflict between the Mapuche people and the Argentine state, and in which Benetton finds itself involuntarily involved”. The company decided to play a “leading role” by handing over 2,500 hectares of infertile land.

### **Depredation of native forest in the Chaco region (Salta province)**

In Salta, five community authorities have had criminal complaints made against them for calling for answers to their demands. The native communities of Río Itiyuro, who are now settled along Route 86 close to Tartagal town, are faced with a fierce struggle to defend their natural resources. For years they have been demanding title to their traditional territory, which has been broken up and sold to logging, soya and bean companies that have embarked on an extensive plan to log the native forest, with the support of the local government which wants to convert the forest into agricultural plains. This new attack on biodiversity and on the life of the indigenous peoples calls the effectiveness of the Emergency Law on Community Ownership into doubt, given that indigenous families are witnessing the daily removal of timber from their forests by the lorry load. They have therefore denounced this deforestation and have asked the Ministry for the Environment and Sustainable Development of Salta Province (*Secretaría de Medio Ambiente y Desarrollo Sustentable* - SEMADES), the body responsible for granting logging permits, to suspend these authorisations, protesting peacefully by occupying part of Route 86. But these legitimate defence actions have resulted in police repression and the application of criminal law against their leaders. When these actions became common knowledge among the public, the government agreed to take the necessary measures to provide seven Wichí communities with ownership and possession of a total of approximately 8,000 hectares (none of

which have yet actually materialised). But the pillaging of their natural resources and the laying of fences has not ceased, despite the fact that Environmental Law 7070 establishes various monitoring and sanction mechanisms. No measures have been effectively implemented, however, with the exception of those taken against the complainants, who were prosecuted.<sup>7</sup> Law 7070 establishes the procedure for public hearings to discuss and present objections to logging permits granted by SEMADES but the official announcements regarding such hearings are published in the Official Journal or daily newspapers, two media that are clearly inaccessible to the indigenous communities, thus denying them their right to information. And so they only found out about the deforestation of their traditional lands when the bulldozers arrived one morning. In line with regulations, the period for submission of complaints had expired and they had no further right to complain. The leaders were therefore forced to adopt other methods to avoid further damage: in October, men, women and children from the communities stood in front of the bulldozers that were trying to deforest various hectares of the territory of Caraguatá community. In the presence of officers from the National Gendarmerie, chief Antonio Cabana (who had also been prosecuted on eleven counts of road blocking and extortion) told the Minister of the Interior that they were not going to allow the bulldozers to carry out the work.

### **Protest and hunger strike in Resistencia (Chaco province)**

This protest began in May when a group of communities rose up to demand the resignation of the Mayor of Villa Bermejito because of his racist and xenophobic practices. This rapidly led to solidarity among other communities and organisations and, in particular, the Aboriginal Institute of the Chaco (*Instituto del Aborigen Chaqueño* - IDACH),<sup>8</sup> which resulted in a campaign on the part of all of the province's communities. A list of demands was drawn up requesting the provision and permanent titling of the indigenous territories, the immediate relocation of *criollos* occupying 150,000 hectares titled to the Meguesoxochi Association in 2000; the strengthening and budgetary expansion of the IDACH; the permanent regularisation of bilingual indigenous teachers in post;

an end to discrimination and a halt to the illegal handover of public lands to third parties.

Following submission of the demands, 30 delegates waited to be seen by the Governor but, following his refusal, the communities decided to begin a peaceful protest, occupying the provincial capital's Central Square until finally, at the end of June, the government agreed to meet with the delegation and agreed a truce in order to move forward in seeking a solution to the demands. But they did not keep their promise, dialogue broke down and, seeing their demands had received no response, 12 leaders began a hunger strike that lasted 33 days while the camp in the square continued. At the end of this long month, the communities agreed to recommence dialogue with the provincial government and this concluded in the signing of an agreement. Among the main points, it was agreed to grant an increase in the IDACH's budget for 2007; to relocate, with titles and measurements, the *criollo* settlers occupying 150,000 hectares and to grant titles to small indigenous producers, along with the permanent regularisation of bilingual teachers in post and the provision of lands appropriate and sufficient for the indigenous communities. On 12 October, they decided to close down the camp in Villa Bermejito - which had continued with its demands all these months - as the families preferred to await the government's response at home, bearing in mind the length of the demands and protests - more than 162 days - and in the hope that the federal justice system would prosecute the mayor for alleged crimes of discrimination and ill-treatment. In the context of this protest, various testimonies gained strength regarding the scandalous sale of large areas of public lands on the part of the Provincial Settlement Institute (*Instituto Provincial de Colonización*) at derisory prices, lands which were then sold on for huge sums.<sup>9</sup> When this information was made publicly known by indigenous and *criollo* demonstrators, the provincial government was forced to suspend acceptance of allocation requests for 180 days and the Public Prosecutor's Office for Administrative Investigations (*Fiscalía de Investigaciones Administrativas*) urged the government to overturn allocations on the part of individuals and companies, to conduct a "rationalization" of the Settlement Institute and to suspend all allocations underway.

## **The IACHR takes a step forward**

The Inter-American Commission on Human Rights (IACHR) has admitted the complaint presented by the Lhaka Honhat Association in 1998 for failure to title their traditional territory.<sup>10</sup> In its Report N° 78, the Commission stated: a) that the State had had many opportunities to resolve the fundamentals of the issue; b) that there had been undue delay in pronouncing a final verdict on Lhaka Honhat's appeal for legal protection (*recurso de amparo*), submitted in 2000 and still pending; and c) that, if proven, Lhaka Honhat's complaint regarding Salta province's failure to implement a land demarcation and titling policy that was legal and respectful of the life of the communities could be considered a violation of the rights guaranteed in articles 8 (1) (legal guarantees), 13 (freedom of thought and expression) linked to article 23 (political rights), article 21 (right to private property) and article 25 (legal protection). It thus decided to proceed with the case, publish this decision and include it in its Annual Report to the General Assembly of the Organisation of American States (OAS).<sup>11</sup> Should a solution not be forthcoming, the IACHR will refer the case to the Inter-American Court of Human Rights, which will consider the alleged violations of Lhaka Honhat's rights and, if proven, the Argentine State will be convicted of violating the human rights of indigenous peoples.

## **The National University of Plata (UNLP) is forced to withdraw its employees from the Kuña Pirú valley**

In a meeting that lasted more than four hours in the Vice-chancellor's office of the university, the Yvy Pyta, Kapi'Poty, Ka'agy Poty, Kaa Kupe, Ñu Pora and Katupyey communities complained that they had been subjected to threats and pressure from employees of this institute aimed at forcing them to sign a pre-agreement denying them their rights to their traditional lands. These lands were given 12 years ago to the UNLP by a cellulose company, ignoring the communities that had lived there for more than 150 years. In this dispute, the UNLP has wavered continually without ever reaching a conclusion. This is all the

more incomprehensible given that the university offers a course in anthropology.

The communities are demanding the return of the 6,000 hectares that form their territory and a halt to interference from university employees in their decisions. Although the UNLP initially denied such activities on the part of its employees, it later declared any steps that had been conducted null and void and ensured the indigenous authorities that those individuals would no longer participate in the negotiations, giving guarantees to the chiefs that other spokespersons would represent the UNLP.<sup>12</sup> □

## Notes and references

- 1 These are the Atacama, Avá-Guarany, Comechingones. Chané, Charrúa, Chorote, Chulupí, Diaguita-Calchaquí, Huarpe, Kolla, Lule, Mapuche, Mbya-Guarany, Mocoví, Omaguaca, Ona, Pilagá, Rankulche, Tapiete, Tehuelche, Toba, Tonocoté, Tupí-Guarany, Vilela, Wichí, Yamana and Zurita.
- 2 The current formation of these communal settlements is the result of complex relationship processes with other groups and, primarily, with the colonial and republican powers. Additionally, and above all in the North East region, it is the result of evangelisation processes that brought families together from different peoples in one settlement called a "mission" or "community". Such is the case of the communities of the Argentine Chaco region.
- 3 In its examination of reports submitted by Argentina, the Committee of Experts on the Convention on the Elimination of all Forms of Racial Discrimination (CERD) stated its concern at the lack of information provided by the state regarding representation of indigenous peoples in public administration and recommended the urgent creation of a Coordinating Council of Indigenous Peoples within INAI (CELS 2004, "Human Rights Report").
- 4 Article 53: "The Province recognises the ethnic and cultural pre-existence of the Neuquén indigenous peoples as an essential part of the provincial identity and character. It guarantees respect for their identity and the right to a bilingual and intercultural education". "The Province shall recognise the legal status of its communities, and the community possession and ownership of the lands they traditionally occupy, and will regulate the provision of other lands appropriate and sufficient for human development: none of these shall be disposable, nor transferable nor open to encumbrance or seizure. It will guarantee their participation in the management of their natural resources and other interests affecting them, and will promote positive actions in their favour." More information can be obtained from: huilipanv@yahoo.com.ar or see web page : <http://argentina.indymedia.org/news>

- 5 Article 136. "The province recognises the ethnic and cultural pre-existence, the identity, the spirituality and institutions, and guarantees bilingual and intercultural education and the economic, political, cultural and social development of the indigenous peoples living in the provincial territory. It recognises the legal status of the communities and the community possession and ownership of the lands they traditionally occupy, and regulates the provision of other estates appropriate and sufficient for human development. Laws will be passed in fulfilment of these articles". More information can be obtained from: [ciquilmes@yahoo.com.ar](mailto:ciquilmes@yahoo.com.ar); [delfingeronimocic@yahoo.com.ar](mailto:delfingeronimocic@yahoo.com.ar); or see web page [www.andhes.org.ar](http://www.andhes.org.ar)
- 6 Antonio Cabana de Tonono; Roberto García de Caraguatá, Juan Vega from Km 14, Eduardo Rivero from Km 12 and Eduardo Basualdo, president of the Governing Commission of Pacará, were summoned by the Dalta courts to answer to 11 complaints of "road blocking and extortion".
- 7 Provincial indigenist agency created by law in 1986; it has a presidency and management team made up of indigenous representatives elected by the communities.
- 8 According to the complaints made, the province went from owning 3,900,000 hectares of land in 1995 to 1,598,000 in 2003 and 650,000 in 2005. The "*festival of transfers*" – as the province's *Diario Norte* described it – meant that in just one day in 2003, 161 land allocations were signed. Bearing in mind the length of the working day in the provincial public administration, this works out at one allocation granted every three minutes (CELS Human Rights in Argentina, forthcoming).
- 9 With the backing of the Centre of the Legal and Social studies (*Centro de Estudios Legales y Sociales* - CELS), the Lhaka Honhat organisation – which groups together around 40 communities, submitted a complaint against the Argentine state for failure to title their traditional lands, conduct a socio-environmental impact study on their territory due to the construction of an international bridge and a national highway or hold due consultations with the communities. In 2000, the parties agreed to commence a process of friendly resolution that broke down in 2005 due to the Salta government's decision to hold a popular referendum and given the lack of will on the part of the Argentine state to seek a solution.
- 10 Detailed information on this complaint and its procedure can be found in IWGIA, 2006, *Argentina: el caso Lhaka Honhat*. Report 1. available in PDF on the site: [www.iwgia.org](http://www.iwgia.org)
- 11 More information can be found from *Prensa Comunidades Mbya Guaraní* [vascobaigorri@yahoo.com.ar](mailto:vascobaigorri@yahoo.com.ar)

## CHILE

There are nine indigenous peoples living in Chile. The Aymara, Quechua, Atacameño, Likanatay, Colla and Diaguita peoples live in the north of the country. The Rapanui people live on Easter Island, in Polynesia, and the Mapuche people live in the Central South area. These latter are, in turn, divided into the Lafkenche, Huilliche, Pehuenche, Nagche and Wentche regional groups. Yámana and Kawaskar communities live in the extreme south. All these peoples and their territories were brought under the jurisdiction of the Chilean state following expansionist military campaigns at the end of the 19th century, processes that are at the origin of many of the current claims for land and complaints of violations of rights.

According to the 2002 official census, the number of people aged 14 and over who identify as indigenous totals 692,192 individuals, equivalent to 4.6% of the country's population.<sup>1</sup>

Chile has not ratified ILO Convention 169 and its Constitution does not recognise the pre-existence and rights of indigenous peoples. Indigenous affairs are governed by Law 19,253 of 1993. This indigenist legislation does not address indigenous rights but rather the development of indigenous "ethnic groups".

Chile's economy is based on a neoliberal primary export model whose main focal points – mining, logging, fishing and aquaculture – exert pressure on indigenous territories and resources.

Chile's political year was marked by the erratic installation of the country's fourth post-dictatorship democratic government, following elections in January 2006. Michelle Bachelet, a Socialist activist,

took office as the first woman President of Chile amidst high expectations, following a campaign in which she promised to emphasise respect for human rights, social equality and civic participation. However, for indigenous peoples, no progress was noted in terms of fulfilling these promises during the first year of Bachelet's administration.

In terms of collective rights, no progress was made in the state's obligation to recognise and guarantee the rights of indigenous peoples. Despite a propitious environment in parliament, the government gave no urgency to ratifying ILO Convention 169. On the contrary, the rights of indigenous communities to their lands and resources were severely affected by infrastructure projects and the approval of environmentally harmful mining and industrial investment projects.

With regard to fundamental individual rights, the new government failed to address urgent issues such as the situation of the Mapuche political prisoners. Although the President announced that her government would not invoke the anti-terrorism law for acts of social protest, there were no changes in the criminalization of indigenous actions.

One area in which progress was made in 2006 was within the indigenous movement itself. During the year, alliances and agendas were consolidated on the basis of demonstrations in defence of their rights.

## **Indigenous affairs marginalised from government agenda**

Bachelet had promised the indigenous organisations that she would introduce a new policy and comply with the recommendations of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.<sup>2</sup> However, as stated by indigenous leaders, 2006 was "a lost year" in terms of changes in official policy. Indigenous rights remained off the agenda of "36 measures" during the administration's first months.

Despite official rhetoric advocating a rights-based policy focus, the new Ministry of Planning (*Ministerio de Planificación* - MIDEPLAN) authorities did not include indigenous policies within this approach. The government chose to continue a clientelist indigenist policy consisting



of welfarist projects, benefit funds and a police response to indigenous social protest.

Throughout the year, a gradual deterioration could be seen in the institutional status of indigenist policy. The first step was to demote indigenous affairs from vice-ministerial level, relegating them to the delegitimised and weak National Corporation for Indigenous Devel-

opment (*Corporación Nacional de Desarrollo Indígena* - CONADI). This institutional design was quickly overwhelmed by the dynamic of the conflicts.

Around the middle of the year, the different situations of conflict being caused by CONADI's Land Fund became increasingly clear. On the one hand were the recurrent clashes occurring between Mapuche communities, caused by an arbitrary allocation of lands without respect for the ancestral rights of each community. On the other, a lack of financial support for the self-management of returned lands led, in some cases, to communities signing sharecropping and leasing contracts. When she became aware of this, the MIDEPLAN Minister threatened in a newspaper (*El Mercurio*, 21/08/2006) to "take the land away" from those communities, displaying a notable ignorance and lack of awareness of the legal status of indigenous lands. Her declarations were refuted by CONADI's director, who recognised that the state's response to indigenous demands was weak and ministerial authorities incompetent.<sup>3</sup>

The institutional crisis worsened with unfortunate incidents in which CONADI's managers were attacked (28/08/2006) by young Mapuche angry with the authorities for the successive police raids being suffered by the Mapuche community of Temucuicui, in Mal-leco province. Following this episode, CONADI's director presented his resignation and submitted a complaint against the community members, increasing yet more the police harassment of the community.

The difficulty in finding a new high-profile director for CONADI reaffirmed CONADI's limited role as a mere implementing agency for funds. Towards the end of the year, the government chose to maintain a "carrot and stick" approach with which to manage indigenous policy. On the one hand, it announced the approval of a US\$45.2 million IDB (Inter-American Development Bank) credit for the second phase of the "*Programa Orígenes*" – a typical neoliberal and clientelist project undermining community organisation.<sup>4</sup> On the other, on the same day that CONADI's new director was appointed, it announced an increase in the number of special police forces in the Mapuche area.

## A year with no progress in recognition of rights

One effect of the marginalisation of indigenous affairs from the government's agenda was the lack of progress in terms of indigenous legislation, despite the fact that the government coalition now has a sufficient parliamentary majority following the elimination of the "appointed senators" in March 2006.

The Bachelet government has attached no legislative urgency to ratification of ILO Convention 169, the only remaining stage of which is a vote in the Senate, despite having undertaken to ratify it "in the shortest possible time".<sup>5</sup> Nor has there been any progress in reforming sectoral legislation (water, mining, environment, and planning laws, etc) that is in contradiction with the Indigenous Law. Such reforms are part of the recommendations made to the State of Chile by the UN Special Rapporteur for indigenous peoples, and fulfilment of such recommendations forms part of the commitments made by Bachelet to the indigenous organisations on 6 January 2006.

In April, the government again insisted on a draft constitutional reform on "recognition of indigenous peoples", approved by the Chamber of Deputies on 10 January 2006. This draft (Legislative Bulletin 4069) was rejected by all the country's indigenous peoples and organisations, for lack of consultation, because it ignored collective rights and because it attempted to introduce the sentence "the Chilean nation is unique and indivisible", the effect of which would be to strengthen the national security architecture that shapes the Chilean Constitution. In April, the proceedings for this bill were halted in the face of angry indigenous protests. The government's constitutional ventures of January and April left an aftermath of street protest arrests and prosecutions of indigenous leaders, such as the case in which the *Consejo de Todas las Tierras* leader, Aucan Huilcaman, was denied his fundamental freedoms throughout the whole of 2006, although he was finally acquitted.

Other expressions of the marginalisation of indigenous affairs can be seen in the public budget and in international relations policy. In the 2006 draft public budget, a mere 0.3% was devoted to indigenous policies, despite an historic fiscal surplus caused by the high price of cop-

per. In international relations, the government showed a prolonged indecision regarding Chile's vote in the United Nations Assembly on support for the Declaration on the Rights of Indigenous peoples, due to resistance within the Chilean Ministry of Foreign Affairs.

## Mapuche political prisoners on hunger strike

One crucial test of the new government's political will towards indigenous peoples could be seen in the situation of the Mapuche political prisoners. On the same day that the new President took office, three Mapuche prisoners and one young Chilean woman began a hunger strike in demand of their release. Juan Carlos Huenulao, Patricio and Jaime Marileo, and Patricia Troncoso are being held in Angol prison, sentenced in 2004 to ten years for the crime of arson against the goods and plantations of the "Poluco-Pidenco" estate, an action that took place in 2001 in the context of Mapuche land claims and which was described as an "act of terrorism" by the Lagos government.

The Mapuche hunger strike gained greater legitimacy and solidarity following a ruling of the Angol Criminal Court on 7 April 2006 which acquitted two other Mapuche sentenced for the same crime on the basis of the same proof. The ruling marked a U-turn on the part of the courts and questioned the application of the Anti-terrorist Law, highlighting the disproportionate nature of the previous sentences.

As indicated by different UN bodies, application of the Anti-terrorist Law to the Mapuche protest in Chile is a legal aberration, when actions attributed to the Mapuche relate to material damage rather than indiscriminate attacks against human life, which are an essential feature of terrorist crimes. In April 2006, the International Federation for Human Rights (FIDH) presented the State of Chile with a full report entitled, *Chile: La otra transición: derechos del pueblo mapuche, política penal y protesta social en un Estado democrático* (Chile: the other transition. The rights of the Mapuche people, criminal policy and social protest in a democratic state) along with a number of political and legislative recommendations to be added to those already issued by the UN Special Rapporteur, Rodolfo Stavenhagen, and the UN Committee on Economic, Social and Cultural Rights.<sup>6</sup>

The hunger strike of the Mapuche prisoners significantly contributed to drawing domestic and international public opinion to the situation of human rights violations of the Mapuche people. Significantly, on 10 May, during a public reception in honour of President Michelle Bachelet during her visit to Spain, the winner of the Nobel Prize for Literature, José Saramago, drew the president's attention to the situation, urging her to "look at your Mapuche". The Nobel prize winner also indicated that he had visited Chile and met with Mapuche leaders who were now in prison or being prosecuted. The President subsequently travelled to Vienna, to the EU – Latin America Summit and there, on 12 May, in an audience with the resident Chilean community, she was questioned about the situation of the Mapuche prisoners, finally making a public commitment "not to apply the anti-terrorist law".

On 14 May, before Bachelet had returned to the country, MPs from the President's own party managed to obtain a suspension of the hunger strike from the prisoners with the promise of the immediate approval of a draft parole law (known as the Navarro project), thus defusing an issue of tension for the government. However, the draft law suffered from technical – legal errors, did not have the support of all pro-government MPs and was not supported by the government, as indicated by the Minister and General Secretary of the Presidency, Paulina Veloso.<sup>7</sup>

The uncertainty regarding the fate of the draft parole law and its content led four of the prisoners to take up their hunger strike again a week later. On 20 May, it was called off, the decisive factor in this being the establishment of a Political Committee for the Release of the Mapuche Prisoners, made up of leaders from different Mapuche organisations and prisoners' families, with the aim of establishing the process of legislative reform.

As June approached, some possibilities for change arose. On the one hand, the President had undertaken to ratify ILO Convention 169 and announced a series of indigenous policy measures, reiterating that her government would not apply the Anti-terrorist Law to acts of social indigenous protest. On 3 July, the government sent a new Draft Law to Congress, reforming the Anti-terrorist Law and which would

indirectly have favourable effects on the situation of the Mapuche prisoners.

However, following a sharp U-turn in the government's agenda and the replacement of the Minister of the Interior, all the legislative initiatives were abandoned. The Senate rejected the Navarro project (6.09.2006) and the government abandoned its own draft law, while the "short timeframe" for ratification of Convention 169 was extended indefinitely.

### **The government's U-turn in relation to the social movements**

Changes on the national stage affected the opportunities for the indigenous movement. From the second half of May on, Chilean politics was shaken by the greatest social protest of the last 20 years, with more than a million secondary school students on the streets. What was known as the "Revolution of the Penguins", became a turning point in the Chilean democratic transition, placing a check on the government and taking over the public agenda for the next few months.

After the student revolt, a diversity of social movements and street protests emerged. The government was challenged by the right-wing with regard to its capacity to govern and maintain public order. Changes were made in the Ministry of the Interior and a policy of greater police control of social protest was adopted. In turn, the government was under pressure from powerful interest groups who were also challenging the government's capacity to maintain economic growth.

### **Continuity of criminal policy**

During 2006, repeated actions of police violence and disproportionate punishment of indigenous communities and peoples occurred. One representative case was that of the Temucuicui community in Malleco province which, over the course of the year, bore the brunt of eight police operations in which children, women and the elderly were particularly affected.

Faced with indigenous marches in cities and road blockades, the police response was disproportionate, with an indiscriminate use of tear gas, lead shot and invasion of homes, as happened in the Quepe communities who were rejecting an airport. The inclusion of the army in patrol missions around the Lafkenche lakes and coast was particularly serious, such as the case of the Lleu Lleu Lake in Arauco and Mehuin coast, Valdivia province.

In addition, the search for and capture of Mapuche community members being prosecuted under Law 18,314, and who are in hiding, continued. Only following the Inter-American Commission on Human Rights' admission of the complaint submitted against the State of Chile by *lonkos* (traditional leaders) Pascual Pichun and Aniceto Norin did the government make any progress in organising prison benefits for the Mapuche political prisoners.<sup>8</sup>

## **Economic policies and violation of indigenous rights**

With regard to the economy, the Bachelet government continued the broad outlines of the primary export model, based on the export of natural resources on the part of large economic groups. The government provided active support to megaprojects and investments that threaten indigenous territories and the environment.

2006 was characterised by conflicts around the environmental authorisations of projects affecting Mapuche territories. Such was the case of the 17 wastewater treatment plants and urban expansion projects; the construction of a new international airport in Freire commune and the construction of a pipe transporting waste products from the cellulose plant in Valdivia out to the Lafkenche sea. Mapuche communities were affected in all these cases but neither their participation nor their rights were considered. The communities turned to administrative and judicial bodies to enforce their rights and demand that consultation processes and environmental impact studies be conducted, a requirement that the Supreme Court confirmed in one case in January 2006. In each place, the communities mounted permanent demonstrations, with road blockades, marches and public acts where they made known their rejection of the projects.

In the north of the country, the National Commission for the Environment (*Comisión Nacional del Medio Ambiente* - CONAMA) approved the "Pascua Lama" mining project, being promoted by the controversial Canadian company, Barrick Gold. The project is located on the Chilean-Argentine international border, 150 kilometres south-west of the town of Vallenar, Huasco province, in the midst of glaciers, and in the territory of Diaguita communities whose legal existence was only recognised in 2006. The presence of mining interests also became apparent in the south of the country, in the Lafkenche coastal area of Arauco and Cautín.

With regard to the forest complex of cellulose plantations, the president of the *Corporación de la Madera* (Corma) stated that, with the construction of the last three large cellulose plants in 2006, the cycle of heavy investment in this sector had now come to an end and there would be no further significant developments in the coming 15 years.<sup>9</sup> This does not mean an end to the expansion of the forest complex, however. In 2006, one feature of the new cycle became evident in that plantations are being located within the plots of small farmers who, instead of providing the use of their lands, are receiving state subsidies with funds coming from the multilateral bank. The social, economic and ecosystemic consequences will be evident within another 15 years.

In this context of expansion of the extractive industries, boosted by the effects of different international trade agreements, conflicts in defence of territories and resources (lands, water, subsoil, shores, forests) and demands that the state comply with obligations regarding indigenous rights and territorial organisation are multiplying. Alongside this, the demands of the urban and migrant indigenous populations are emerging with greater strength.

## **Progress of the indigenous movement**

During 2006, the indigenous movement made good progress in terms of its organisation, its repertoire of collective actions and its political agenda, on the basis of the different and disparate conflicts in defence

of lands and territories, solidarity with the Mapuche political prisoners and demand for spaces for participation.

The hunger strike of the political prisoners, beyond the specific nature of the cause, was the catalyst for a social, symbolic and political phenomenon that provided the framework for a shared consciousness among a fragmented indigenous movement. From April to May 2006, an ascending spiral of collective pro-indigenous rights actions took place, with street demonstrations, artistic and performance productions throughout Chile and in the different countries that are home to Chilean and Mapuche communities.

Different events before and after the strike, not necessarily connected, were indicative of the social awakening being championed by the indigenous organisations in 2006, particularly the Mapuche people. By way of illustration, a number of milestones can be noted: the massive Nagche March for the right to water, in March; the persistent campaign of resistance to the airport project in Quepe, near Temuco; the multiple collective protests and actions against waste water treatment plants in La Araucanía; the massive and festive indigenous march of 9 October in Santiago; and the demonstrations of the Huilliche communities of Chiloé demanding respect for their old Crown titles, continuing the legacy of the *lonco mayor*, Carlos Lincoman, who in April 2006 set off to find his ancestors, accompanied by a multitude of old and new Mapuche Huilliche generations.

In terms of alliances, the participation of the Coordinating Body of Mapuche Territorial Identities (*Coordinación de Identidades Territoriales Mapuche* - CITEM) in the formation of the Andean Coordinating Body of Indigenous Peoples (*Coordinadora Andina de Pueblos Indígenas*) must be noted. This groups together organisations from Peru, Bolivia, Ecuador, Colombia and Chile. However, within Chile, links between indigenous peoples have still not been consolidated, with the exception of persistent efforts undertaken in this direction by the *Consejo de Todas las Tierras*, and Aymara and Quechua organisations.

Another noteworthy aspect of the year was the publication of books on historical research and political analysis produced by Mapuche researchers, who are reviving and taking over responsibility for the field of ethno-political studies in Chile, traditionally monopolised by *criollo* indigenism. Such production must be added to the creativity of

Mapuche poets, an active journalism and the flourishing of fusion music groups formed by indigenous youth, in which the revelation of the year was the group Wechekeche Ñi Trawun.

The different processes, contests and events of the year were indicative of a virtual "permanent state of indigenous assembly". Many autonomous territorial assemblies were held, and other meetings in the context of the "national indigenous debate" organised by the government in the second half of 2006. Of the main highlights, the following can be mentioned: the Congress of Lafkenche identity, which met in Valdivia from 1 to 3 September, with more than 400 representatives from coastal communities stretching from the Bio Bio to Aysen. The seminars and congresses of urban indigenous groups and the Congress of the Mapuche Territorial Organisations in Quepe, held in November. Such meetings and their resulting documents are establishing a consensus around a common political agenda through which to demand, defend and exercise rights and open a path to a pluriethnic democracy.

## Final reflections

Although 2006 was a "lost year" in terms of new policies and indigenous institutionalism took a turn for the worse, submerged in a crisis of legitimacy, it was a "winning year" for the indigenous movement.

The isolation and stigma of indigenous "terrorism" constructed by the right wing, the logging companies and the Lagos government was overturned. There was progress in legal terms both in local courts and international bodies, and this is contributing to a critical review of criminal policy and to the state assuming its responsibility and its obligation to provide compensation.

The indigenous movement demonstrated the potential of its repertoire of collective actions and capitalised on the wide deployment of social activism throughout the year. It moved from a long cycle of resistance to another, no less complex, of reconstruction as a political player and historical subject. Key steps were taken towards renewing alliances, the indigenous agenda, the foundations of collective rights and political proposals, vis-à-vis the hard profile of the country and the challenges of a pluriethnic democracy □

## Notes and references

- 1 87.3% of these people belong to the Mapuche, 7% to the Aymara and 3% to the Atacameño. The other peoples (Colla, Rapanui, Quechua, Yámana and Kawaskar) represent 2.7 % . 70 % of the indigenous are concentrated in three regions, 29.5% in Araucanía, 27.7% in the Metropolitan area and 14.7% in Los Lagos. The indigenous demographic profile in Chile is noteworthy for the fact that more than half the indigenous population is under the age of 30; the indigenous urban population represents 64.8% and the rural 35.2%.  
The 2002 census has been questioned as a "statistic of ethnocide" by Chile's indigenous organisations. The results contrast with the 1992 census, in which a total of 998,000 indigenous were recorded (the figure increases to 1,350,000 when you include those under the age of 14).
- 2 "*Compromiso por los Pueblos Indígenas*", Agreement between candidate Michelle Bachelet and indigenous peoples' representatives, Nueva Imperial, 6 January 2006.
- 3 *El Mercurio* 28.08.2006.
- 4 IDB CH-L1014 : Integrated Development Indigenous Peoples, Phase II. Description and project document available at: <http://www.iadb.org/projects/Project.cfm?project=CH-L1014>
- 5 Presidential Speech 23.06.2006.
- 6 UNCommittee on Economic, Social and Cultural Rights. 33rd period of sessions (8 to 26 November 2004). Final observations of the Committee on Economic, Social and Cultural Rights: Chile, E/C.12/1/Add.105.
- 7 *El Mercurio*, 17.05.2006.
- 8 HRC REPORT N° 89/06, Petition 619-03, Chile, Aniceto Norin Catriman and Pascual Pichun Paillalao; <http://www.cidh.org/annualrep/2006sp/Chile619.03sp.html>
- 9 *Diario Financiero*, 07.12.2006

## Sources

[www.azkintuwe.org](http://www.azkintuwe.org)  
[www.mapuexpress.net](http://www.mapuexpress.net)  
[www.politicaspUBLICAS.cl](http://www.politicaspUBLICAS.cl)  
[www.fidh.org](http://www.fidh.org)  
[www.conadi.cl](http://www.conadi.cl)  
[www.observatorio.cl](http://www.observatorio.cl)  
[www.mideplan.cl](http://www.mideplan.cl)  
<http://diario.elmercurio.com/>  
[www.corma.cl](http://www.corma.cl)  
[www.camara.cl](http://www.camara.cl)





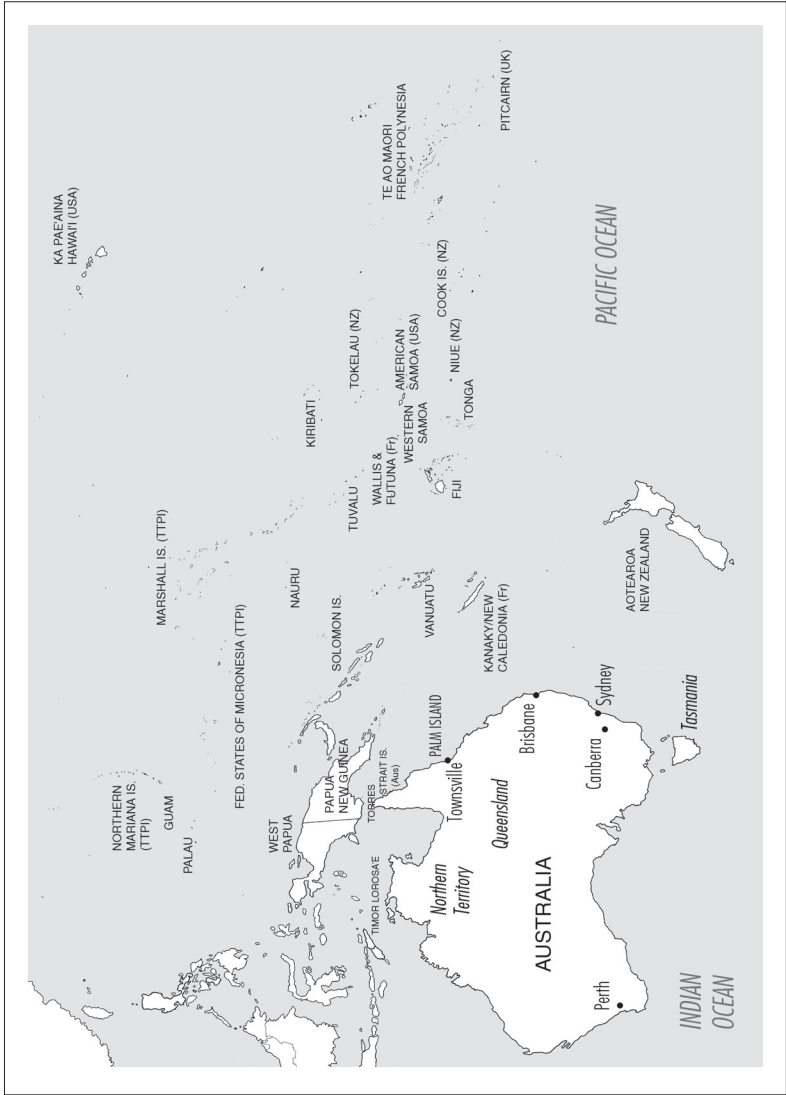
AUSTRALIA,  
NEW ZEALAND  
AND THE PACIFIC

## AUSTRALIA

Australia's growing indigenous community currently makes up two and a half percent of the total population, and more than half of these 460,000 indigenous residents live in urban and regional centres. However, a far greater proportion (27%) still live in very remote areas compared to the non-indigenous population (2%). The vast majority of Aborigines have been violently dispossessed of their land, and all have been subjected to economic and political marginalization and oppressive state control. Today, indigenous life expectancy remains 20 years below the national average, and indigenous citizens are far more likely to live in poverty, be removed from their families as children and be incarcerated than the general population.<sup>1</sup>

Constitutional changes in 1967 led to all indigenous people being counted in the census and to the strengthening of their rights to vote, receive equal wages, own property etc, and a 1993 legal decision led to a limited form of native title. During the 1980s and 1990s, momentum was building for formal reconciliation and constitutional recognition in the form of a treaty; however, the election of the current conservative federal government in 1996 has halted this process.

Ten years after the conservative Howard government was elected on a platform of governing for the "mainstream", progress on indigenous rights has largely stagnated. In 2004, Howard abolished the elected federally-structured indigenous representative body, the Aboriginal and Torres Strait Islander Commission (ATSIC), labelling it corrupt and separatist. It was replaced with an appointed advisory committee known as the National Indigenous Council (NIC). In the past



few years, many indigenous leaders have sought to work with the government and to engage with its individualistic philosophies on welfare dependence, economic development and "mainstream" service delivery. Over the course of 2006, however, a shift in attitude and approach has become evident.

A level of frustration has been expressed at the government's lack of consultation and genuine discussion with indigenous peoples, and this is reflected in the political events of 2006. Government policy development and mainstream media debate has taken place without a great deal of input from or consultation with indigenous Australians, while many indigenous people have sought to express themselves politically without going through government channels. This has involved direct action, protest and legal challenge, often in the face of government opposition.

## **Queensland unrest**

Nowhere has this been more violently in evidence than in the northern state of Queensland. There were a series of developments in 2006, mainly relating to an incident some years ago in the troubled community of Palm Island.

On 19 November 2004, Mulrunji Doomadgee (also known as Cameron Doomadgee) was found dead in a police cell after being arrested for public drunkenness.<sup>2</sup> The Queensland state coroner conducted an initial investigation, which was withheld for a week amidst growing tension. When finally released publicly, the report revealed Mulrunji had suffered four broken ribs, massive internal bleeding and a liver almost torn in two, but found that there was "no evidence to suggest [these injuries] had resulted from a direct use of force".<sup>3</sup> The testimony of two Aboriginal witnesses, who claimed to have heard Mulrunji being assaulted and calling for help, was dismissed and the coroner found that the "injuries were consistent with the deceased and the policeman... falling on a hard surface, such as the steps of the watch-house".

After hearing the report read out, a crowd of 300 Palm Island residents marched to the courthouse and then the police station, setting

both alight and confronting police. Emergency powers were invoked and 80 police reinforcements flown in. Twenty-three people were charged with offences relating to the riot, and the Queensland government subsequently successfully appealed against a number of non-custodial sentences it found to be too lenient.

Then, in September 2006, the results of the subsequent formal inquest into Mulrunji's death were released and took both sides by surprise. Acting State Coroner Christine Clements found that, on the balance of probabilities, Senior Sergeant Chris Hurley "did respond with physical force against Mulrunji", and that these actions caused the fatal injuries.<sup>4</sup> She also found that the subsequent initial investigation was biased and inappropriate.

Family and friends of Mulrunji, and the wider indigenous community, were given little time to absorb this unprecedented report. On 14 December 2006, Queensland Director of Public Prosecutions Leanne Clare declared that there was insufficient evidence to lay charges against Sergeant Hurley. This announcement was greeted with anger and distress by the Queensland indigenous community, and demonstrations and public calls for a review of the decision gathered momentum. As public pressure increased, Queensland premier Peter Beattie relented and ordered a review of the Director of Public Prosecutions' decision not to prosecute Sergeant Hurley over Mulrunji's death.

## **Focus on "black-on-black" violence**

While the issue of relations between black communities and white police was prominent in 2006, the first half of the year saw media and government attention focused on violence amongst indigenous people themselves.

The controversy began in May when remote Northern Territory community Wadeye was convulsed with "gang" type violence. Two rival Aboriginal groups clashed violently and hundreds of thousands of dollars of property was destroyed. One Australian newspaper memorably labelled Wadeye "Australia's first war zone",<sup>5</sup> and various solutions were discussed. Some members of the public and the government demanded that the army be sent in to impose martial law and

restore order; others suggested that women and children be evacuated to Darwin. The violence subsided, but the question of Wadeye became enmeshed with broader debates on indigenous community violence that were soon to flare up.

Soon after, a report detailing assault and violence in remote indigenous communities was leaked, sparking what can only be described as a "media frenzy". Northern Territory Crown Prosecutor Nanette Rogers has spent years observing and prosecuting violent crimes in indigenous communities. When she compiled a report on the subject for senior police, she made the decision to release it to the national media as well. It documented instances of rape, child abuse and domestic violence in grizzly detail, and the nation reacted with outrage. Indigenous leaders welcomed the focus on the poverty and violence found in many indigenous communities, but some expressed concern at the direction the debate was taking. Rogers lay primary responsibility for the violence at the foot of Aboriginal male-dominated social structures that created a culture of fear and silence for victims, and criticized those perpetrators who "put up the same old excuses" of "customary law" or "traditional practice".<sup>6</sup> Media debate focused on the relationship between violence and indigenous culture, sidelining issues of poverty and substance abuse.

Prime Minister John Howard called an emergency Intergovernmental Summit on violence and child abuse in indigenous communities. Ministers from federal and state governments convened on 26 June to brainstorm solutions to the problem. The most significant concrete outcome was the decision to amend the Crimes Act to delete references to mandatory consideration of cultural background; this would prevent indigenous people claiming that customary law "prevents, authorizes or requires violence against women and children".<sup>7</sup> This amendment has since been passed through federal parliament and become law.

## High level rebellion

It is significant that no indigenous leaders were invited to attend this summit, or to have input into the decision to amend the law. This re-

flects a basic pattern of the Howard government: it consults indigenous peoples if and when it chooses, and only rarely when substantial policy matters are at stake.

Even the staunchest indigenous allies of the Howard government rebelled following the summit. The National Indigenous Council (NIC) is the advisory body hand picked by the federal government to replace the elected structure of ATSIC. It has been vocal in its support of Howard's welfare and land reform agendas but, by September 2006, it had had enough. Chairperson Dr. Sue Gordon informed the government that the council would resign *en masse* if it were not consulted more fully on key issues in the future. This led to a backdown and apology by federal minister Mal Brough, who admitted, "I feel like I've under-utilized them absolutely...I didn't know they felt marginalised". He said that the committee would meet with government in 2007 "to decide on a way we can ensure we make the best use of their contacts and their knowledge, and to look at the terms of reference that were originally set out to ensure they are fulfilled properly".<sup>8</sup>

Those familiar with Australian politics of the 1970s may note the parallels between the NIC and another advisory body set up by the government which could not be "contained". Under the Whitlam government, the National Aboriginal Consultative Committee demanded, "An active role or we resign"<sup>9</sup>. It changed its name to the National Aboriginal Congress, and demanded it be transformed from an advisory committee into a statutory body with formal decision-making powers. These demands ultimately led to the establishment of ATSIC.

The experiences of the 1970s taught everyone that, hand in hand with exclusion of indigenous peoples from policy decisions on their own future comes increasing frustration and a willingness to take direct action at all levels, from community riots to committee mutiny. In 1974, an Aboriginal commentator observed that, "The government is in for a sad awakening: the Aboriginals are becoming very frustrated and angry...I feel we are in for real trouble, even violence".<sup>10</sup> It seems government and bureaucracy in Australia will be forced to learn anew the consequences of political marginalization of indigenous citizens.

## Perth Native Title decision

Finally, we can note one significant advance that was made in the recognition of indigenous rights, although once again this gain was made through direct legal action by Aboriginal groups in the face of government opposition.

Breaking with precedent (particularly the *Yorta Yorta* decision made by the High Court in 2002), the Federal Court surprised legal and political circles on 19 September 2006 by granting native title in a highly developed metropolitan area. Justice Wilcox found that the Nyoongar people demonstrated an ongoing physical and cultural connection to the land now occupied by the Western Australian capital of Perth, and therefore they could claim native title rights. Previously, the disruption and displacement caused to indigenous peoples in densely settled areas was considered to have prevented these groups from meeting the legal native title requirement of ongoing traditional connection to their land.

Justice Wilcox was careful to stress that native title did not apply to freehold or long-term private leases, but his decision was met with anxiety and defensiveness by many non-indigenous people. The Federal Attorney General claimed that, "In a major capital city, where you do have very extensive areas of parklands, water foreshores, beaches, matters of that sort, you could well find that... native title owners would be able to exclude other people from access to those areas".<sup>11</sup> The federal government has joined the West Australian government in seeking to overturn the decision on appeal. □

## Notes and references

- 1 All statistics taken from Australian Bureau of Statistics National Aboriginal and Torres Strait Islander Surveys and the national census (2001;2002;2005). Available at [www.abs.gov.au](http://www.abs.gov.au).
- 2 Black deaths in police custody have been an ongoing source of anger and distress for indigenous peoples. A significant report by the Royal Commission into Aboriginal Deaths in Custody (1990) made wide-ranging recommendations to prevent the over-representation of indigenous people in custody and their deaths by suicide, substance use and police actions. Few of these recommenda-

tions have been implemented, and Aboriginal people continue to die in custody at an alarming rate.

- 3 Quoted in Koch, One death too many, *The Australian*, 27 November 2004.
- 4 Clements, 27 September 2006: *Finding of Inquest into the death of Mulrunji*, available at <http://www.justice.qld.gov.au/courts/coroner/findings/mulrunji270906.pdf>
- 5 Murdoch, Not the third world, just Australia's first war zone, *Sydney Morning Herald*, 23 May 2006.
- 6 From *Lateline* interview, ABC, 15 May 2006.
- 7 Intergovernmental Summit on Violence and Child abuse in Indigenous Communities Communiqué, 26 June 2006, available at <http://www.atsia.gov.au/Media/media06/4606.aspx>
- 8 Quoted in Karvelas, Indigenous advisors considered quitting, *The Australian*, 30 November 2006.
- 9 In Elliot, *News*, 12 February 1974.
- 10 Quoted in Black Congressmen off the payroll, *The Australian*, 11 February 1974. Compare this to activist Murrando Yanner's 2007 comments: "I think it's going to get worse for both sides. I can see a police officer being severely injured and one of us getting shot", in Mancuso, *Australian Associated Press*, 11 January 2007.
- 11 Quoted on *ABC news*, 21 September 2006.

## AOTEAROA - NEW ZEALAND

A homage to the passing of the Māori Queen Dame Te Atairangikaahu  
23 July 1931- 15 August 2006

*Hoki atu râ e te whaea, e te ariki, ki ôu tûpuna ki tôu whaea, ki tôu matua, hoki hoki, moe mai râ*

(Beloved Queen, may you return to your ancestors and rest well)

Māori, the indigenous people of New Zealand, represent approximately 17 percent of the total population of 4 million in Aotearoa New Zealand. The majority of Māori retain a strong tribal identity, despite now residing in urban centres and being highly integrated into the wider national economy. The disproportionate disadvantage experienced by many indigenous peoples is, similarly, a significant issue for Māori. The gap between Māori and non-Māori is pervasive. Indicative measures include: Maori life expectancy almost 10 years less than non-Māori, household income 72 percent of the national average; and only 4 percent of Māori have successfully completed tertiary education. Māori rights are sourced in the Treaty of Waitangi, the international instrument through which sovereignty was acquired by the British in 1840. The Treaty of Waitangi is not recognised by the courts or Parliament as holding formal legal status; accordingly, the framework protecting Māori rights is largely dependent upon political will leading to the *ad hoc* recognition of the Treaty in statute.

In recent years, Aotearoa New Zealand's indigenous politics has been characterized by regression, from the hard-won biculturalism of the last thirty years to an insidious assimilationist agenda premised

on the sentiment that all New Zealanders are now “indigenous” to the country, and that Māori, therefore, do not possess a distinct moral, political or legal status. The year 2006 witnessed successive reforms, furthering the new resurgence by weakening the already fragile constitutional protections for Māori, despite the government being urged to do precisely the reverse by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur), who visited the country in November 2005.

### **The UN Special Rapporteur’s report**

The Special Rapporteur conducted an official country visit to New Zealand in November 2005 and released his report in March 2006.<sup>1</sup> An insightful, comprehensive and timely report, it considers three principal contentions affecting the human rights situation of Māori: constitutional protections, reparative justice and distributive equality.

#### **Constitutional protections**

Aotearoa New Zealand’s constitution is unique within the Commonwealth in that it is the only remaining example of absolute parliamentary sovereignty; Parliament retains the ability to override human rights through legislation and the courts are precluded from overturning any such enactment. The human rights situation of all New Zealanders is therefore vulnerable, but only rarely of concern due to the generally strong political commitment to upholding core human rights values and standards. In respect of Māori, however, it has frequently been expeditious to sacrifice rights protections to immediate electoral needs and other political objectives.

The Special Rapporteur criticised the legal and political fragility of Māori rights, identifying a “human rights protection gap”;<sup>2</sup> and presented compelling recommendations for constitutional reform. Government and civil society were encouraged to responsibly and democratically debate constitutional issues, envisioning a future capable of respecting the pluralism of New Zealand society. Specific recommen-

dations concentrated on the need to limit parliamentary sovereignty through entrenched legal protection for the Treaty of Waitangi, and human rights more generally.

The Treaty of Waitangi was signed in 1840 by representatives of the British Crown and Māori. Contemporary interpretation of the Treaty is contested due to marked textual differences between the English and Māori language versions, and an enduring controversy as to its legal status in domestic and international law. At a minimum, the Treaty guaranteed the protection of pre-existing property rights to lands, resources and cultural heritage, and respect for *tino rangatiratanga*, loosely translated as self-governance. Historically, the Treaty was disregarded as it was perceived to impose moral rather than legal obligations.<sup>3</sup> The Treaty has since been judicially recognised as a “founding document”, possessing constitutional significance. It is not, however, a formal part of New Zealand law and so remains unenforceable unless expressly incorporated into statute.<sup>4</sup> The Special Rapporteur characterised the Treaty as “a constitutional guarantee of human rights” but concluded that the current legal position of the Treaty was insufficient to provide effective protection in political and legal arenas, and that entrenchment was “long overdue”.<sup>5</sup> The Government was urged to lead constitutional reform in a direction that recognised the Treaty of Waitangi as the basis for the relationship between the government and Māori, culminating in constitutional entrenchment.

### **Reparative justice**

Historical injustices, common to colonialism globally, are addressed in Aotearoa New Zealand through a two-stage reconciliation process consisting of a quasi-judicial inquiry conducted by the Waitangi Tribunal and a negotiated settlement package reached by agreement between the Government and Māori claimants. The Tribunal is a permanent Commission of Inquiry, comprising experts charged with determining whether Crown conduct has breached the principles of the Treaty of Waitangi and issuing remedial recommendations, for example, recommending the repatriation of particular sites or specific amendments to policy or legislation.<sup>6</sup> The Tribunal’s recommendations are generally not legally binding on the government, and it is increas-

ingly common for politicians to dismiss those that are challenging to implement.<sup>7</sup> The Special Rapporteur considered the Tribunal and the broader Treaty settlement process to be “intimately connected” to the right to a remedy for breaches of legal rights.<sup>8</sup> Accordingly, the government’s treatment of reparative justice as a moral and political, but not legal, right was criticised by the Special Rapporteur, who ultimately recommended that the “Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law”.<sup>9</sup>

Negotiated settlement packages typically comprise cultural and economic redress, both of which the Special Rapporteur found wanting. Cultural redress consists of statutory mechanisms that provide for symbolic recognition of Māori associations and traditions with particular sites or resources, and may provide for participation in decision-making processes. The Special Rapporteur noted that there was no provision for self-determination or self-governance, and recommended a compromise solution of granting tribal collectives actual decision-making capacity over ancestral or culturally significant sites and resources. Economic redress is estimated to equate to approximately one percent of the real value of lands and resources appropriated by the Crown during the early colonial period. The Special Rapporteur was concerned that the approach was less than equitable, and failed to provide sufficient long-term financial security for tribal collectives, whose membership potentially spans several thousand members and successive generations.

### **Distributive equality**

The Special Rapporteur comprehensively reviewed the disproportionate disadvantage experienced by Māori in all measurable social indices, including educational achievement, life expectancy, standard of health, quality of housing, level of income and involvement in the criminal justice system. Recent advances and constructive government programmes instrumental in “closing the gap” between Māori and non-Māori quality of life indicators were acknowledged. However, at the time of the Special Rapporteur’s visit, the “Māori privilege” rhetoric was at its height, and a number of programmes had been retargeted

based on socio-economic need rather than ethnicity. The report counselled against the efficacy of a “needs not race” approach to address the contextual factors contributing to the persistent inequalities experienced by Māori. Notions of “undue Māori privilege” were described as contributing to social and racial tensions, and were partially attributed to systematic negative descriptions of Māori in media coverage. The Special Rapporteur recommended that social delivery services continue to be targeted and tailored to the needs of Māori.

## Government response

The government dismissed the report as “disappointing, unbalanced and narrow”,<sup>10</sup> and was particularly indignant that it amounted to an “outsider” interfering with parliamentary sovereignty:

*“His raft of recommendations is an attempt to tell us how to manage our political system. This may be fine in countries without a proud democratic tradition, but not in New Zealand where we prefer to debate and find solutions to these issues ourselves.”<sup>11</sup>*

The lack of rational correspondence between the report and the government response is striking. The report cogently emphasised the need for constitutional constraints due to recurrent improper exercise of parliamentary power. The government’s jealous defence of parliamentary sovereignty illustrates the presently intractable tension underlying the position of Māori in Aotearoa New Zealand.

## Constitutional retreat

Obstinately rejecting the Special Rapporteur’s recommendations, the government has substituted constructive constitutional dialogue with a stealthy constitutional retreat, incrementally diminishing the political relevance, legal character and constitutional significance of the Treaty of Waitangi.

## **Treaty of Waitangi Amendment Act 2006**

The Treaty of Waitangi Amendment Act 2006 imposed a closing date on lodging historical Treaty claims to the Waitangi Tribunal. Historical claims, defined as any act or omission of the Crown which occurred before 21 September 1992<sup>12</sup> must be lodged with the Tribunal on or before 1 September 2008. The Tribunal will not be able to hear historical claims submitted after the closing date but will continue to inquire into contemporary breaches of the Treaty that occur after 21 September 1992, for example future statutory or policy reforms that prejudice Treaty guaranteed rights.

The Act has both symbolic and practical significance. The Tribunal was established in 1975 but only obtained retrospective jurisdiction in 1985, enabling it to hear claims relating to historical actions dating from 1840, when the Treaty was signed. Extending the Tribunal's jurisdiction was largely a result of sustained Māori protest and an evolving recognition, by the wider New Zealand public, of the moral legitimacy of Māori claims for justice. The 2006 Amendment symbolises the reversal of popular sentiment and a corresponding weakening of political commitment to a meaningful process of reconciliation. It may also indicate that the Tribunal has an imminent expiry date.

In a practical sense, the closing date lacks meritorious justification and jeopardises the integrity of the settlement process. The unilateral imposition of the closing date was rationalised as serving the national interest of greater certainty and efficiency in respect of the Treaty settlement process".<sup>13</sup> The principal delays in the process are, however, due to the Tribunal's lack of resources and the prolonged nature of negotiations with the government; it is difficult to identify how the closing date will remedy either of these difficulties. Lodging a Tribunal claim is a complex and arduous process requiring prospective claimants to identify, with reasonable precision, the nature of prejudicial historical Crown conduct. The short period until the termination of the Tribunal's historical jurisdiction requires hasty action by prospective claimants, which may be contrary to customary tribal processes and improperly bar legitimate claims. The closing date is, therefore, far

more likely to amount to a further example of, rather than a means to resolve, Treaty grievances.

## **Principles of the Treaty of Waitangi Deletion Bill 2006**

This Private Member's Bill was introduced by New Zealand First, a coalition partner in the current government, as part of a confidence and supply agreement. The Bill seeks to remove all statutory references to the Treaty of Waitangi on the basis that such references are "an anomaly which has harmed race relations in New Zealand".<sup>14</sup> As the Treaty is not directly enforceable, the courts are only able to adjudicate on Treaty matters where an express or implied statutory provision directs that the Treaty is to be considered when interpreting and applying that particular statute. Removing such references effectively extinguishes the narrow jurisdiction of the courts in respect of the Treaty, and will result in only the Waitangi Tribunal possessing the jurisdiction to consider breaches of the Treaty, subject to the caveat that findings will not be legally binding. The judiciary has been instrumental in recognising and legitimating Māori rights affirmed under the Treaty, progressing the "constitutionalisation" of the Treaty and serving, in part, as the contemporary conscience of the nation. Should this Bill become law (the probability of which is uncertain), the legal and constitutional status afforded to the Treaty will be nullified, in effect returning to the early colonial positioning of the Treaty as merely a moral covenant.<sup>15</sup>

## **Draft Ministry of Education Curriculum Document**

The draft curriculum, released in July, serves as a national educational policy statement, directing the teaching and learning content throughout New Zealand schools and establishing learning objectives for school students. The current curriculum "recognises the significance of the Treaty of Waitangi" as a guiding principle and directs that "the school curriculum will recognise and value the unique position of Māori in New Zealand society...[and] will acknowledge the

importance to all New Zealanders of both Māori and Pakeha traditions, histories, and values".<sup>16</sup> The draft curriculum has removed these references, perhaps signifying an intention to further obscure the political and popular relevance of the Treaty in contemporary New Zealand society.

## Contemplating the future

Throughout 2006, government officials elevated the national political agenda to the international arena, vigorously opposing the adoption of the Declaration on the Rights of Indigenous Peoples. The stated rationale was that the Declaration is "deeply flawed" and "will not encourage constructive relationships".<sup>17</sup> Particular objection has been made to the provisions for self determination,<sup>18</sup> the exercise of free, prior and informed consent,<sup>19</sup> and restitution for historical expropriations,<sup>20</sup> which the present government predictably perceives as unduly privileging indigenous peoples:

*"[N]o government can accept the notion of creating different classes of citizenship. Nor can one group in society have rights that take precedence over the rights of others."*<sup>21</sup>

Accordingly, the remedy to the "new atavism" permeating 2006 and beyond is unlikely to reside in legalistic rights protection mechanisms of domestic or international law. Constitutional commitment to the Treaty of Waitangi is ultimately dependent on a favourable political climate. The prevailing prejudicial rhetoric is unlikely to dissipate quickly. Māori, however, are accustomed to pursuing intergenerational justice. The emergence of the Māori Party<sup>22</sup> may also be instrumental in transforming the parameters of the political debate, potentially framing sufficient political incentives for constructive constitutional renewal, in which the Treaty of Waitangi is properly recognised as Aotearoa New Zealand's "founding document". □

## Notes and references

- 1 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people's Mission to New Zealand.
- 2 Ibid., paragraph 13.
- 3 *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.
- 4 *Hoani Te Heuheu Tukino v Aotea District Māori Land Board* [1941] AC 308; *New Zealand Māori Council v AG* [1987] 1 NZLR 641 (*Lands*).
- 5 Special Rapporteur Report, paragraph 10.
- 6 Section 6 Treaty of Waitangi Act 1975.
- 7 The Tribunal has a narrow jurisdiction to issue binding recommendations in respect of particular Crown owned lands.
- 8 Special Rapporteur Report, paragraph 30.
- 9 Special Rapporteur Report, paragraph 89.
- 10 **Deputy Prime Minister Michael Cullen, 2006:** Press release: Response to UN Special Rapporteur report 04/04/2006. Available at <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=25366>
- 11 Ibid.
- 12 21 September 1992 has been used to define historical Treaty claims for over a decade, the rationale being that it is the date on which Cabinet agreed to the principles applying to the Treaty settlement process.
- 13 Māori Affairs Committee Report on the Māori Purposes Bill, 2006.
- 14 Explanatory Note to the Principles of the Treaty of Waitangi Deletion Bill 2006.
- 15 *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.
- 16 New Zealand Curriculum Framework, 1993.
- 17 UNGA Third Committee 61st Session Item 64(a) The Declaration on the Rights of Indigenous Peoples, Statement on behalf of Australia, New Zealand and the United States.
- 18 Article 3.
- 19 Article 20.
- 20 Article 27.
- 21 Ibid.
- 22 See *The Indigenous World* 2005.

## KANAKY - NEW CALEDONIA

Kanaky-New Caledonia is home to the Melanesian Kanak people. It has been under French rule since 1853. Out of a total population of 320,000, the Kanak number approximately 100,000. Other ethnic groups have settled in New Caledonia in the last 150 years and include the French (37%) and Polynesians (11.8%) from the other French possessions in the Pacific.

While traditionally agriculturalists, the Kanak lost most of their land to the French settlers and lived until the 1960s as a marginalized, discriminated group of people. In the 70s and 80s a strong independence movement swept across the country ending with the Accords de Matignon (1988) and the Accord de Nouméa (1998). The latter agreement set out a 15-year transition to independence to be decided by a referendum in 2014.

Today, the Kanak participate in the government and enjoy in principle the same rights as the rest of the population. The Customary Senate, which consists of tribal leaders, is recognized and has an advisory role. However, their economic and social situation remains precarious and a constant influx of immigrants – especially from France - exacerbates the demographic as well as the electoral imbalance.

For the Kanak people, the main events of 2006 related primarily to mining on the one hand, and land on the other. In mineral exploitation and the mining industry, as in other areas, the rights of indigenous peoples are still flouted by the dominant society, either through ignorance of these rights or through a desire to maintain the colonial heritage.

## Mineral exploitation

New Caledonia possesses great mineral wealth: nickel (20 to 25% of the world's reserves), cobalt (second largest world producer), manganese, copper, gold and gas. Around 90% of the value of New Caledonia's exports comes from mining and metallurgical products. However, the Kanak people remain the primary victim of the mining industry, having paid dearly for 135 years of exploitation that have done nothing but degrade their environment, impoverish their people and displace them according to the mining companies' need for space. Such mining has, however, lined the pockets of the mining companies, particularly ERAMET-SLN.<sup>1</sup>

There are currently two large projects being implemented – Koni-ambo and Goro-Nickel – but, as in the case of ERAMET-SLN, few of the profits go back to the Kanak people, with the exception of some clans who own the mining sites and who are due to receive the compensation provided in mining legislation, which is still however in draft form.

If the Koniombo project (North Province of the Grande Terre) had not fallen victim to Suisse Xstrata's<sup>2</sup> takeover of Canadian Falconbridge, New Caledonia would eventually have had the experience of a certain partnership between the extractive industry and the indigenous people, in the direction intended by the Millennium Development Goals. In fact, this project represented a major development pole for North Province and an essential factor in the rebalancing of the provinces, since it anticipated the construction of a large nickel processing factory. The atmosphere of uncertainty in which the Xstrata managers are keeping the project is leading people to imagine a scenario that contrasts with the visions of the previous project developers: will Koniombo suffer from the preference that the Swiss mining company could grant to other of the Group's exploitations, particularly those on the African continent where national mining regulations aimed at attracting foreign investment help to attenuate, for the private investor, the risks inherent to the country and the project?

The second large project – and the most controversial – is that of Goro-Nickel (South Province of the Grande Terre). This is a particu-

larly ambitious project due to the extent both of the mining area affected (260 km<sup>2</sup>), its infrastructure (among other things, a number of nickel and cobalt preparation and processing factories, a power station, an industrial port and a “living base” capable of housing 3,000 people during the construction phase) and the planned investment (1.45 billion euros). Its nominal annual production capacity will be 60,000 tonnes of nickel and 5,100 tonnes of cobalt.

Run by the Goro-Nickel company (originally controlled 90% by the Canadian INCO group and 10% by the three provinces of New Caledonia grouped into a body called the *Société de Participation Minière du Sud Calédonien*), the project very quickly ran into serious financial difficulties (a 40% increase in the initial costs of the project) and, above all, social problems. The Kanak population want to work, but not at any cost. They demand, first and foremost, a total respect for the environment and the notion of heritage and no longer want mineral exploitation to continue as in the past. The conflictive situation of previous years (see *The Indigenous World* 2006) thus continued into 2006. In February, the indigenous Rhéébu Nùù (“eye of the country”) Committee which, along with CAUGERN (*Conseil autochtone pour la gestion des ressources naturelles de Nouvelle-Calédonie*/the Indigenous Council for Natural Resource Management in New Caledonia), is leading the indigenous people’s struggle against INCO’s hegemony, wrote an open letter to the Kanak presidents of the Loyalty Islands and North provinces demanding they: “hear the message expressed with determination by all indigenous peoples of the South, regarding refusal of the pipe and the release of heavy metals into the Havannah Channel and subsoil and of the acid rain!” and stating: “Our Rhéébu Nùù Committee has but one demand of you: withdraw your support and your moral and political guarantee from the Goro-Nickel project! Withdraw your capital from Goro Nickel! Contrary to what you think, it is a vital question for the struggle of the Kanak people and citizens for the sovereignty of our country”.<sup>3</sup>

Over the course of the following months, opposition to the project increased. In April 2006, the gigantic work site was blocked for several weeks by activists from the Rhéébu Nùù Committee. In September, the situation culminated in a general strike organised by the *Confédération syndicale des travailleurs de Nouvelle-Calédonie* (Union of New Caledonia Workers/CSTNC) which paralysed the whole country with road-

blocks, blockades of fuel depots and, above all, of the factory offices and nickel mines. In the name of protecting “local jobs”, a principle that had been stipulated in the last Matignon Accords of 1998 with France but disregarded, the CSTNC called for the “immediate departure” of 700 foreign workers, 500 of whom were Philippine welders. The union also called for the resignation of local government and a clearer timetable for construction of the Koniambo factory in the North Province.

Also in September, a takeover of the Canadian giant International Nickel Company INCO Ltd transferred the project to the portfolio of the Brazilian firm *Companhia Vale do Rio Doce* – CVRD. In December 2006, CVRD announced that start-up of the future factory would be delayed beyond the anticipated start date (end 2008) and that the costs would increase, now having reached a total of 3 billion US\$.

## Indigenous rights flouted

If we were to ask the question, “Are direct foreign interests in New Caledonia compatible with the notion of respect for indigenous rights?”, the answer would have to be no with regard to the Goro-Nickel project in particular. In 2000, when France transferred responsibility for mining to the provinces, it perhaps thought that each provincial government would take indigenous rights into account as stipulated in the Nouméa Accord and that the principle of free, prior and informed consent would be applied. The Goro-Nickel management and the president of South Province remain deaf to this message and show contempt for indigenous rights. As France is unable to provide adequate legal protection for victims of violations of economic, social and cultural rights, the Kanak people of Djubea-Kapone, under the leadership of the Rhéébu Nùù Committee, are undertaking various actions, sometimes in conflict with the French military forces that have arrived to defend the interests of the mining company.

And yet various judgements over the last few years reaffirm Kanak rights. In November 2004, Judge Gilles, of the Nouméa Magistrates’ Court, passed a ruling affirming that the political and cultural rights and freedom of expression of indigenous populations were legally

protected. The judge recalled at the same time that, in order to enforce the rights granted to them, economic operators had to take all appropriate measures to avoid outraging the indigenous populations, in order to legitimately reassure them of the sustainability of their means of existence and protection of their environment.<sup>4</sup> On 8 June 2006, another judge, Jean-Paul Briseul, Public Prosecutor at the Nouméa Administrative Courts, called for the order authorising the operations of the future factory of the Goro-Nickel company to be repealed because French and/or community regulations and international agreements, even if they had not been made effective by the New Caledonia Congress, had to be applied. The judge also added that, given local realities, the Kanak identity could have or should have formed the object of a specific chapter in the impact study for the Goro-Nickel project.

Another important ruling was issued on 16 December 2005 by the Supreme Court of Appeal, in which the highest French court ruled that *it emerges from article 7 of the organic law that people of customary Kanak civil status are governed, for all civil law, by their customs.*<sup>5</sup>

Pierre Frezet, also a judge, wrote in 2006:<sup>6</sup>

*"The ruling of the Supreme Court of Appeal invalidates the order of the Nouméa Court of Appeal dated 17 September 2001... (which) amounted to draining the organic law of 19 March 1999 and the Nouméa Accord (text of constitutional ranking) of their substance. It enabled a situation of legal apartheid to continue, against the desire of the legislature itself which, through the preamble to the Accord, undertook a commitment to 'full recognition' of the identity of the Kanak People, with a view to a reconciliation and construction of a 'common destiny'."*

Pierre Frezet added:

*"The ruling is a brutal wake up call. It reminds, in a way, the Nouméa Court of Appeal – and everyone who serves in New Caledonia and for whom the re-found peace has quickly blocked out the dark hours – that they are living on Kanak lands. And not, as they may have thought - victims of the fantasies surrounding them - on some southern French Mediterranean coast..."*

Given the opinions of these judges, the behaviour of the mining industry in New Caledonia had to change. And yet by the end of 2006, nothing had changed. It was the same for the mines producing raw minerals for export to Australia, Japan, China and, in the future, South Korea and which are destroying the lagoons, reefs and ocean. Each

boatload contributes its share of pollution, helping destroy the habitats of dugongs, turtles, fish and crustaceans, forcing fishermen to venture further away from the safe coasts, taking every risk to be able to feed their families. An environment that will be destroyed for centuries although, for the indigenous people, it constitutes the source of life because, since the dawn of time, it has been their "larder", insofar as it represents the secret habitat of certain mythical ancestors and, in some places, the "land of the dead".

## Customary lands

Stipulated in the organic law of March 1999, the guarantee fund for New Caledonia to which the state must contribute in order to support the financing of development projects on customary lands remains gathering dust among the authorities' projects and increasingly seems to be no more than a pipe dream.

As if to refute all claims by their customary owners, the suburban areas of "greater Nouméa" have been turned into building plots enabling, moreover, a response to be made to the needs of immigrants coming, above all, from France,<sup>7</sup> and land speculation is reaching epidemic levels on the west coast.

In terms of exercising ownership rights, since the Nouméa Accord the law recognises three categories of land, and these form the legal framework of land ownership: *"The right of ownership guaranteed by the constitution is exercised in terms of land in the form of private property, public property and customary lands."* This tripartite system has now clearly failed and is harmful to no-one but the Kanak people. Colonial history testifies to the natural incompatibility of property with any other land law. The historic co-existence to date has benefited French common law through the disappearance of indigenous legal values. The hesitations of some Kanak populations to see transfers regularised to which they do not feel a party are justified given the redistribution of lands was undertaken without taking into consideration the relationship with the soil as established by the Kanak institutions long before colonisation. In addition, traditional custodianship of the land based on sovereignty cannot be converted into profit-making holdings or into

private properties, as desired by development policies. This transformation of the relationship with the land into property rights involves economic impacts that have an influence on a land redistribution policy aimed at destroying traditional Kanak society.

The administrative authorities hide their refusal to recognise the sovereignty of the Kanak people behind the smokescreen of the category of customary lands without, however, recognising the beneficiaries the real right of ownership, as guaranteed by the French Constitution. It has been necessary to declare the non-transferability and inalienability of customary lands in order to prevent what the law permits: the free sale of lands by their owners. Such a solution, while necessary protection against the contractual alienation of customary lands, nonetheless creates a situation of discrimination towards a part of the population, henceforward considered officially incapable of freely disposing of their property.

The re-found sovereignty of the Kanak people demands the return of the populations displaced by colonisation to their native lands. The Kanak customary authorities have constantly recalled the trauma created by an absence of elders belonging to the land on which the populations now live. Some chieftaincies have themselves undertaken the necessary research to identify the clans and date back the genealogy of the populations to before 1878, similar to producing a land registry of our "country". These chieftaincies are now demanding the establishment of plots of land identifying the formal tribal sites " *in order to mark the origin of our children*".<sup>8</sup> This may, perhaps, be one way of avoiding the risk of conflicts born of an opposition between the identity of peoples and the property rights that emanate from the Western culture in power.

"We talk of the land: the land here, New Caledonia and dependencies, all the land is customary. Someone mentioned recognition.... I think it is now important to accept that there is official recognition, on behalf of everyone in the country, on behalf of the French state, that this country is a customary land. And on this basis, it will be possible to put in place all the systems we want for the shared life of this country."<sup>9</sup> □

## Notes and references

- 1 This French multinational operates five mining centres situated in the North and South provinces of the island and processes the minerals at its metallurgical plant in Doniambo, near Nouméa, the largest ferronickel factory in the world.
- 2 Xstrata is a major global diversified mining group, listed on the London and Swiss stock exchanges.
- 3 Open letter to Paul Neaoutyine, President of North Province and to Hneko Hnepeune, President of Loyalty Islands Province, Nouméa, 22 February 2006.
- 4 Ruling of 8 November 2004, Goro-Nickel v. Raphaël Mapou and the Rhéébu Nùù Committee.
- 5 Supreme Court of Appeal, 16 December 2005, Opinion No. 005 0011.
- 6 Revue Juridique, politique et économique de la NC n°7 2006/1, p.40.
- 7 Many French senior citizens come to live in New Caledonia because their pensions are, like all expatriate employees, multiplied by 1.75.
- 8 Bergé Kawa, High Chief of Sarraméa, pers. comm. Petit-Couli, 2005.
- 9 Joseph Bouarate, High Chief of Hienghène district, *Débats sur la sécurité foncière, Actes du séminaire "Foncier & développement en Nouvelle-Calédonie"* - Nouméa - Centre Culturel Tjibaou - 10, 11 & 12 October 2001.

## TOKELAU

Tokelau is a non-self governing territory under the administration of New Zealand. It consists primarily of the three atolls, Nukunonu, Fakaofu and Atafu. The land area is 21 sq km (all of it less than 5 m above sea level), while the sea area is 290,000 sq km. Cash income arises from tourist/collector artifacts and tuna fishing licenses. Fifty years ago, the economy was subsistence-based. Today, it is heavily reliant on aid from New Zealand.

Tokelau is a global society with a declining population of approximately 1,400 living in Tokelau – with an estimated three times as many Tokelauans living in New Zealand. There are also Tokelauan communities in Samoa, Australia and the US.

Through history (pre- and colonial), there have been close ties with Samoa. The European explorers (from 1765 on), missions and the Peruvian slave trade in the 1860s, which extracted almost half the population (the men), all had a major impact on the social organization and lives of indigenous Tokelauans. However, social organization continues to be based on villages and descent groups, and customary land use prevails to a certain degree.

**T**okelau has a long colonial history and the main event in 2006 was a referendum held to determine the future status of the islands.

The British declared the atolls their protectorate in 1889 and incorporated them into the Gilbert and Ellice Islands Protectorate in 1908. This became a colony in 1916 and, as such, the administrative responsibility of New Zealand in 1925. In 1948, with the Tokelau Islands Act, the administration of (Western) Samoa and Tokelau was separated and Tokelauans became citizens of New Zealand.

In an act of self-determination implementing UN Resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples, a referendum was held in Tokelau from February 11-15, 2006 to determine the future constitutional status of Tokelau and its relationship to New Zealand. The outcome did not change the status of Tokelau, and is believed to have been heavily influenced by overseas Tokelauans, although they could not actually vote in the referendum. Sixty percent of voters wanted the status of self-government in free association with New Zealand. However a two-thirds majority is required to accept the proposal. Because of this outcome, a second referendum is planned for November 2007. The fact that a referendum was held was a result of a combination of three factors: the interest of the United Nations Decolonization Committee, which began visiting the islands in 1976; the long-term debate in the local community about the future status of the islands; and the politics of the New Zealand government. For the last thirty years, Tokelauans have increased their level of "self-administration", gradually taking over the executive powers of the administration, some legislative powers, and public service functions. The 1996 Tokelau Amendment Act gave the general *fono* (parliament consisting of representatives from the three atolls) the power to make laws. Tokelauans want to continue to build a modern governing structure based on the indigenous system of law and the traditional institutions of (now elected) *faipule* (village leaders) and the general *fono* (council). □

## BOUGAINVILLE

The colonial history of Bougainville follows the histories of Papua New Guinea (PNG) and the Solomon Islands closely. Geographically and culturally, Bougainville is part of the Solomon Islands chain. Politically, it has been part of PNG, as “North Solomon Province”, since the country gained independence from Australia in 1975 and claimed Bougainville. It has, since 2005, had separate status with an Autonomous Bougainville Government (ABG) although military, external and judicial powers have been reserved by PNG. The first government was established in June 2005 following elections in May 2005 that were overseen by international observers.

The majority of the 175,000 inhabitants of Bougainville (approximately 85%) still survive on subsistence farming. Cocoa and copra are produced for cash cropping. The people live in numerous small, traditional societies and belong to about thirty language groups. Women play strong leadership roles and some degree of customary land rights still exists, supported by ABG policy.

The year 2006 focused on continuing peace efforts and institutionalization of the new Autonomous Bougainville Government (ABG). During the first year of Joseph Kabui’s term as President of the ABG, several avenues for economic development have been explored, including cruise-line tourism and mining.

### Mining

The hopes for a reopening of the rich copper and gold mines in the Panguna area increased shareholder values in Bougainville Copper

Ltd. by 11% in 2006 even though the mine is still closed. The mine created huge surpluses and was the source of almost half of PNG's yearly exports for several years. But the mine was closed following an armed conflict over environmental, control and economic issues that began in 1989 between Panguna landowners, the foreign-owned mining company (Bougainville Copper Ltd/Rio Tinto, 54%) and the PNG government (who had a 20% interest in the mine). A nine-year long war leading to blockades, "care centers" (refugee camps) and PNG mercenary scandals ensued, followed by a long period of unrest. An estimated 15-20,000 people died.

Mining companies are now courting the ABG. They include an Australian company with Chinese interests, as well as the original Panguna mine operators, Bougainville Copper Limited/Rio Tinto. In May 2006, the Canadian company, Invincible Resources, promised the ABG a so-called aid package of almost seven million US dollars to show "good faith" in the re-development of Bougainville – and in the hope of convincing the ABG to let them develop the nation's rich mineral resources.

The Moroni people, whose original homeland is now a contaminated crater, are objecting to any reopening of the mine and, in August 2006, the US 9<sup>th</sup> Circuit Court rejected the mining company, Rio Tinto's attempt to dismiss a law suit raised by Bougainville against them. The suit claims that Rio Tinto and the government of PNG committed genocide in their efforts to suppress resistance to environmental degradation, contamination and property loss, which led to thousands of people being killed in the ensuing armed conflict.

## **Independence, autonomy and land reform**

The war finally ended in 2001. A peace accord outlined the goal of a future referendum on the status of Bougainville and gave Bougainville its autonomous government, which is gradually taking over powers and functions from the national government. One of the central issues for the new government is the drafting of land laws and policies including customary land rights. A land review committee has been

mandated to take into consideration the interests of several stakeholders: the customary landowners, the investors and the general public.

The PNG government's regional member for Bougainville, Leo Joseph Hannett, is a former Bougainville premier and was part of the group of independence activists in the 1970s. He has vowed to work with the ABG, which has become the recipient of the largest development fund grants from PNG.

The ABG continues to seek ways to establish peace and reconciliation. The late Francis Ona and the Me'ekamui group continued a long history of fighting for independence and did not accept autonomous status. Ona lived for 16 years in the so-called no-go zone (an area outside of the control of the ABG) until his death in 2005. A smaller group of Bougainvilleans favors inclusion into the Solomon Islands. The Bougainville province declared its own independence in 1975; however, the quest for exploitation of the rich copper, gold and other resources of Bougainville led to a neo-colonial situation under PNG.

In November 2006, South Bougainville saw the establishment of a re-armed group of Bougainville Freedom Fighters (BFF), with the goal of establishing peace and harmony. They claim that the ABG is not able to control the south. The unrest in the region is closely related to the actions of the charismatic leader of U-Vistract (a fast money scheme), Noah Musingku, operating in South Bougainville in an attempt to make a fortune from the political situation there. His group, for instance, sabotaged the ABG's efforts to create government installations. Noah Musingku even hired Fijian former military officers to train his army and provide security. Throughout 2006, efforts were made to have the four remaining Fijians expelled. The issue threatened to create a serious regional crisis. □

## WEST PAPUA

West Papua covers the western part of the world's second largest island, New Guinea, bordering the independent nation Papua Niugini (Papua New Guinea) and comprising the Indonesian provinces of Papua and West Irian Jaya. 52 % of its 2.4 million people are indigenous, representing about 253 different peoples; the rest are Indonesian migrants.

The recent history of West Papua is a history of betrayal: the agreement of 1962 between two states handing over the territory from one colonial power (Netherlands) to another (Indonesia) without the consultation or consent of the indigenous peoples, a fraudulent "referendum" of 1969, in which a few hand-picked people were made to declare loyalty to Indonesia, and Indonesia's strong military presence suppressing with brutal force any attempts of the West Papuan people to assert their right to self-determination. While still demanding "rectification of history" and an investigation into the numerous human rights violations, the Papuan leaders also see the urgency to address widespread poverty, retarded development and untapped human resources. There are several instruments that can be conducive to both increasing the welfare of the Papuans as well as strengthening Papuan institutions.

### Special Autonomy Law

In response to the clear outcome of the Second Papua Peoples' Congress in 2000 calling for a separation of West Papua from the unitary state of Indonesia through peaceful dialogue, in 2001 the central gov-

ernment in Jakarta provided Papua with a Special Autonomy Law (SAL) to accommodate indigenous aspirations. With the SAL, the indigenous peoples of Papua have an official political instrument to create a unique political space within the existing legal systems of Indonesia. The SAL should mark a new era in Papua in terms of the political, social, cultural and economic aspirations of the indigenous communities.

An important legally binding element within the law is the sharing of revenues from the natural resources in Papua. Out of the government revenues from forestry and fishery, 80% is for Papua and 20% for the central government; the respective share for gold, copper, gas and oil is 70-30. With these revenues the provincial government can give a boost to the development of Papua. In March 2006, Barnabas Suebu was elected governor of Papua. He offered each of the 2,600 indigenous villages in Papua his moral, political and financial assistance to join him in developing their economic potential. As a first deed, he allocated Rp 100 million (about US\$11,000) to each village.<sup>1</sup> Some of the main goals of the village development program are: improving nutrition, education, health, local economies and infrastructure in the villages, as well as addressing issues such as gender equality, sustainable forest management and law and justice.

In addition to handing out the funds, the Papuan provincial administration will build polyclinics in all 2,600 villages next year and supply each with a nurse. In the education sector, the local administration plans to build 10 model boarding schools with a capacity of 2,000 students each. To finance the program, and in response to the call of the *Majelis Rakyat Papua* (Papua Consultative Assembly) to use the SAL-money for empowering the people and not for enriching the new administrators, Suebu has shaken up the provincial budget. In the previous budget, 70 percent of funds were allocated for the state apparatus, 20 percent for infrastructure and public spending and the remaining 10 percent for rural development. In the new budget, the funds for the state apparatus have been slashed to 27 percent, while 25 percent will go for infrastructure and public spending and 45 percent for rural development.<sup>2</sup>

Within the space of the Special Autonomy Law, the governor invited foreign donors such as the World Bank and UN agencies to en-

gage in direct talks and negotiations in the interest of Papua, in the capital Jayapura and not in Jakarta. In November 2006, he hosted a multi-donor meeting in Jayapura.

### ***Majelis Rakyat Papua***

Another important element of the SAL is the *Majelis Rakyat Papua* (MRP), the Papua Consultative Assembly. For several years, the installation of the MRP was thwarted by nationalistic elements in Jakarta, including former president Megawati, because they feared growing separatism in Papua. In his election campaign, however, President Susilo Bambang Yudhoyono promised to end this political ball game between the indigenous peoples and the central government because he understood that if the Special Autonomy Law was not fully implemented then the hardships for the Papua indigenous peoples would continue and Indonesia would be criticised by the international community. After his election and inauguration as president in October 2004, Yudhoyono worked hard to establish the Papua Consultative Assembly (MRP). In November 2005, the 42 elected members of the MRP were installed, representing indigenous peoples, religious institutions and women. The MRP is complementary to the provincial parliament and the governor of Papua. Both entities represent the Government of Indonesia, while the MRP is a specific Papuan institution under the SAL with the task of advising all other institutions on the rights of the indigenous peoples of Papua. Special regulations and advice can be given to both the legislative authority (the provincial parliament) and the executive authority (governor) regarding the wishes and aspirations of the indigenous Papuans.

The MRP is a legal, moral, political and cultural instrument intended to present and represent indigenous interests in Papua as experienced by indigenous communities, women and NGOs. It also acts as a watchdog against corruption, collusion and nepotism. These phenomena are also affecting Papuan administrators who, under the Special Autonomy Law, avail themselves of considerably bigger funds. The lack of good-governance principles and practice and the lack of transparency in design and decision-making processes has contributed to



the ever-widening gap between central government, the province, the MRP and indigenous communities.

In 2006, the chairman of the MRP, Agus Alue Alua, urged both the regional and central governments to design an official Papuan Special Autonomy program charged with improving the welfare of the Papuan people. "The special autonomy fund, intended mainly to improve the welfare of local people, constitutes the government's response to the Papuans' call for freedom. The money should be utilized maximally to empower the people in the kampongs (villages, ed.), and not to finance travel by government officials," he said.<sup>3</sup>

### Revision or implementation?

The implementation of the Special Autonomy Law is still not running smoothly. Although one crucial element, the MRP (Papua Consultative Assembly), was only established in November 2005 and other parts of the law are not yet fully implemented, in July 2006 the central government announced that the SAL and the role and position of the MRP should be revised. The revision of the SAL is fiercely opposed by the

indigenous Papuans and their associates. Papuan Catholic priest Neles Tebay states that the revision has absolutely nothing to do with the welfare of indigenous Papuans.<sup>4</sup> Frans Wospakrik, vice-chairman of the Papua Consultative Assembly, emphasised that the use of the special autonomy funds had not yet had any significant impact on the lives of Papuans because implementing key parts of the law had been held up by the central government in Jakarta for the past five years.<sup>5</sup> To speed up the implementation of the SAL, in November 2006 the MRP submitted a bill on the distribution and use of special autonomy funds to the provincial parliament for deliberation. While responsible public figures in Papua are calling for the full and unconditional implementation of the SAL as an instrument to bring genuine development to the people of Papua, the central government's proposal to revise the law suggests inability and unwillingness to implement its own law.

## Millennium Development Goals

Papua is endowed with abundant forest, water and mineral resources which, combined with its many vibrant cultures, give Papua a unique identity. Although Papua enjoys Indonesia's fourth highest level of per capita GRDP, at over Rp.11 million (US\$1,200), largely from natural resource-related industries, these economic successes have not been shared by most Papuans and have not translated into corresponding levels of human development. Papua is the province with Indonesia's highest incidence of poverty, with 41.8% of Papuans living on less than US\$1 per day.<sup>6</sup>

Alongside an abundance of natural resources, Papua also enjoys an abundance of human resources. The success of native Papuan students in winning prestigious international scientific awards in the past few years "is a hint of the vast, largely untapped potential of Papuans".<sup>7</sup> Because of the discriminatory approach of Jakarta towards the indigenous Papuans, few Papuans have been able to develop their full skills and many have been traumatised by the brutal operations of the security forces. Since the integration of Papua into Indonesia, the Papuans have never enjoyed their rights, liberties or freedoms. The lack of political will and discouraging policies by the Indonesian government

have widened and maintained the lack of confidence and trust between the indigenous peoples of Papua and Jakarta.

In the year 2000, a delegation of Papuan leaders was in New York during the UN Millennium Summit, which launched the Millennium Development Goals (MDGs). The Papuans appealed to the UN for support in eliminating the delayed development in Papua. Just a few years later, the UNDP established an office in Jayapura and undertook a needs assessment to develop an understanding of the Papua situation.<sup>8</sup> In 2005, the Papua Needs Assessment was published.<sup>9</sup> It concluded that "the richness of its resources, the poverty of its people and the diversity of its environment make Papua a development challenge to Indonesia. Key development challenges include widespread poverty, limited economic opportunities, the spread of diseases (such as HIV/AIDS, tuberculosis, and malaria) and the poor level of education."

The timely arrival of the international community and their agencies (UNDP and UNICEF) and the promotion of the Millennium Development Goals in Papua will boost and assist the governor, the provincial parliament, the MRP and civil society in general to develop Papua. A genuine understanding, cooperation and respect is required by all actors to ensure that the indigenous voices in Papua are well heard locally, nationally and internationally. As one of the major groups in sustainable development, indigenous peoples should be given free, full and effective opportunity to be engaged in the MDGs.

### **The *Dewan Adat Papua***

The indigenous peoples of Papua, as sovereign nations and peoples, have never lost their pride, dignity or their sovereignty. The 253 indigenous tribes in Papua have shown the subsequent foreign and colonial regimes that they will protect and promote their very existence. One self-government initiative of the Papuan indigenous peoples was the establishment, in February 2002, of the *Dewan Adat Papua* (DAP - the Papua Customary Council), as one of the results of the second Papua Peoples' Congress in June 2000 in Jayapura. The DAP's mission is to struggle peacefully and democratically on the basis of the Papuan

identity, honour and the right to life. It is focusing on Papuans' basic rights and welfare, concentrating on substantive issues such as improving education, overseeing the provincial budget, police reform and HIV/AIDS.<sup>10</sup>

The DAP avails itself of a network that reaches down to the smallest village so that it can, on the one hand, represent the voice of the indigenous people and, on the other, mobilise the people if correction of government policy is needed (like the massive demonstrations in August 2005<sup>11</sup>).

Annually, the DAP organises a Plenary Meeting in which all the 253 indigenous groups of Papua are invited to participate. Every year, the meeting is held in a different region in order to offer the different indigenous groups an opportunity to participate more extensively (2002-Jayapura, 2003-Sentani, 2004-Biak, 2005 Manokwari, 2006-Jayapura). At these plenary meetings, the DAP reports to the people on its activities of the past year, informs the indigenous people of the international mechanisms and procedures in the promotion and protection of their rights and decides on a program of action for the coming year. In the past four years, each of the Plenary Meetings was attended by more than 300 representatives from the different indigenous Papuan groups.

Despite the ongoing hunt by Indonesian security forces for "separatists" in the highlands<sup>12</sup> (the Jakarta Post reported that thousands of people are fleeing a crackdown on Papuan separatists<sup>13</sup>), the DAP stresses positive opportunities and challenges. In November 2006, it presented an award to former Indonesian president Abdurrahman Wahid<sup>14</sup> who, while in power, authorized the province's name change from Irian Jaya to Papua and allowed the Papuan flag, the Morning Star, to be raised as a cultural symbol.

In July 2006, in his intervention before the UNWGIP in Geneva, the secretary-general of the DAP, Leo Imbiri, proposed a partnership between the Government of Indonesia, the UN agencies in Papua and the DAP.<sup>15</sup> A feasible first step will be a Memorandum of Understanding between the DAP and UNDP with respect to implementation of the Millennium Development Goals, in which bottom-up indigenous perspectives should be fundamental.

Will the indigenous peoples of Papua be given the opportunity to survive and to improve their living standards? Will they be the masters of their own destiny? It will take political courage from all actors to put a realistic policy not only in place but also into motion in order to guarantee the Papuan peoples' right to life and existence. The crucial role to be played by the DAP in this process deserves recognition both nationally and internationally. □

## Notes

- 1 *Jakarta Post*, 4 October 2006.
- 2 *Jakarta Post*, 23 February 2007.
- 3 *Jakarta Post*, 4 October 2006.
- 4 *Jakarta Post*, 31 July 2006.
- 5 *Jakarta Post*, 4 November 2006.
- 6 **UNDP 2004:** *Indonesia Human Development Report, 2004*. Available at: [http://www.undp.or.id/pubs/ihdr2004/ihdr2004\\_full.pdf](http://www.undp.or.id/pubs/ihdr2004/ihdr2004_full.pdf)
- 7 *Jakarta Post*, editorial, 26 July 2006.
- 8 Papua was considered as a region rather than as a separate province since the UNDP assessment was initiated prior to the Constitutional Court ruling on the division of the region into the provinces of West Irian Jaya and Papua.
- 9 **UNDP 2005:** *Papua Needs Assessment, An Overview of Findings and Implications for the Programming of Development Assistance* Available at: [http://www.undp.or.id/papua/docs/PNA\\_en.pdf](http://www.undp.or.id/papua/docs/PNA_en.pdf)
- 10 **International Crisis Group, 2006:** Papua: Answers to Frequently Asked Questions. Available at: [http://www.crisisgroup.org/library/documents/asia/indonesia/b53\\_papua\\_answers\\_to\\_frequently\\_asked\\_questions.pdf](http://www.crisisgroup.org/library/documents/asia/indonesia/b53_papua_answers_to_frequently_asked_questions.pdf)
- 11 **Evelien van den Broek, 2005:** Dewan Adat Papua, an upcoming power. Available at: <http://www.nieuwsbank.nl/papua-lobby/14vdbroek.pdf>
- 12 *Australian Associated Press*, 26 December 2006: "This conflict will cause major casualties, especially amongst the local traditional warriors and members of the local community," Ms Makabory of the Papuan-based human rights agency Elsham said. "The mountain people had a fierce sense of their own identity as West Papuans and did not want to be part of Indonesia."
- 13 *Jakarta Post*, 30 January 2007: 5,137 people are now facing hunger; in the past week alone, 227 children had fallen ill, four refugees have died in the area since Jan. 6.
- 14 *Jakarta Post* 15 November 2006.
- 15 [http://www.docip.org/WGIP06/wgip06\\_167.pdf](http://www.docip.org/WGIP06/wgip06_167.pdf)





## JAPAN

The two indigenous peoples of Japan live in the northernmost and southernmost islands of the country's archipelago. They are not recognized as indigenous by the government. *Ainu* territory stretches from Sakhalin and the Kurile Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20<sup>th</sup> century, tens of thousands migrated to Japan's urban centres for work and to escape the more prevalent discrimination on Hokkaido.

*Okinawans* live in the Ryukyu Islands, which now make up Japan's present-day Okinawa prefecture. Japan forcibly annexed the Ryukyus in 1879 but later relinquished the islands to the US in exchange for its own independence after World War Two. In 1972, the islands were reincorporated into the Japanese state but the US military remained. The US relies on Japan's continued denial of Okinawans' self-determination to maintain its military forces there. Currently, 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory.

### UN Special Rapporteur visits indigenous communities in Japan

A key step toward focusing international attention on indigenous rights issues in Japan was a visit in May 2006 by Mr. Doudou Diene, a United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.



The Special Rapporteur's trip was a follow-up to both an earlier visit in 2005 and the submission of his report in January 2006 to the UN Commission on Human Rights. In his report, the Special Rapporteur concluded that racial discrimination and xenophobia affect the Ainu and the Okinawans, among other groups in Japan. The Diene report was welcomed by NGOs and representatives of discriminated com-

munities as the first UN document to address the issue of racism in Japan, which explicitly calls for such issues to be dealt with through policies that acknowledge their social and historical context.

## The Ainu

The past year saw continued oppression of Ainu at both the institutional and individual levels. Despite the Japanese government's insistence that the Ainu enjoy rights as Japanese citizens, the government's persistent denial of their indigenous identity and right to self-determination prevents them from exercising their rights as an indigenous people.

Given the Japanese government's official efforts to deny the existence of indigenous peoples within its borders, the visit by the UN Special Rapporteur was an important development in Ainu-Japan relations. In his report to the Commission on Human Rights, the Special Rapporteur cited Ainu claims and related evidence that assimilation policies initially implemented by Japan in the 1860s had had long-term detrimental effects on Ainu society and culture. Citing inequalities between Ainu and the majority Japanese in education, social welfare, health, employment and legal services, Diene's report argued that these discrepancies were the result of systemic prejudices sustained over history in Japanese society. He pointed to the related absence of Ainu within the national political arena, with the exception of one Ainu member of parliament in the past.

Diene's assessment also included reference to the increasing danger of the Ainu language becoming extinct, despite the Japanese government's claim that classes to teach the Ainu language are guaranteed under the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, passed in 1997. However, the law does not provide for specific and comprehensive efforts aimed at preventing the Ainu language from disappearing.

The report makes special mention of gender inequality among the Ainu, suggesting that Ainu women should have more positions of power within the Hokkaido Ainu Association. The 60-year old Ainu

Association (*Utari Kyokai*) is the oldest formal organization among the Ainu. It maintains local chapters throughout Hokkaido. Diene's report points out that, of the 20 members of the association, only one is a woman.

Finally, the report introduced two proposals presented by the Ainu. First, that education was key to solving much of the discrimination towards the Ainu. This stems from recognition of the problem of general ignorance regarding the Ainu among the Japanese. The second was a call for the government of Japan to recognize the Ainu as an indigenous people. Japan's Law for the Promotion of Ainu Culture is widely criticized by the Ainu as insufficient because it pertains only to Ainu culture. Moreover, the law ignores the Ainu's right to self-determination by attempting to formally define, from the government's standpoint, what "Ainu culture" entails.

The fragile state of Ainu culture is highlighted by the Ainu's recent loss of one of its most prominent political and cultural leaders. Kayano Shigeru, of Nibutani village in Hokkaido, died in May 2006 at the age of 79. As one of only a few native speakers of the Ainu language, Kayano had dedicated his life to reviving the Ainu language and culture. He was acknowledged as a master of Ainu oral tradition and an expert in its folk art and language. Kayano sought to create opportunities for younger Ainu generations to reconnect with their culture and language in the face of discrimination. He established language classes and wrote numerous books on the language, culture and history of the Ainu. Although persistent discrimination makes it difficult for children to embrace their own culture, Kayano's hard work helped lay the groundwork for current efforts by the Ainu to maintain their language and revive their cultural traditions.

Kayano Shigeru also made history when he became the first Ainu member of Japan's parliament, serving from 1994 to 1998. During his term in office, he worked to realize the enactment of the 1997 Law for the Promotion of the Ainu Culture. He also filed a lawsuit against the Japanese government for building the massive Nibutani Dam in his community. Although the dam was eventually completed, flooding several sacred Ainu sites, the Sapporo District Court handed down a landmark ruling. In direct contradiction with the Japanese government

official stance, the court acknowledged the Ainu as the indigenous people of Hokkaido.

## Okinawa

Special Rapporteur Diene's report also pointed to the now six decades-long US military presence on the small island territory as the source of the most pressing problems facing Okinawans today. In it, he called on the Japanese government to carry out a thorough investigation into the issue of whether the continued existence of the United States of America's military bases in Okinawa was compatible with respect for the fundamental human rights of the people of Okinawa.

Over the past year, the ongoing struggle between Okinawans and the Japanese government as to the current and future presence of US military forces in Okinawa was manifested in the local outcry regarding frequent crimes against Okinawans by US military personnel, the build-up of new weaponry and the threat of the construction of additional military facilities on the islands.

This struggle is dramatically reflected in the widespread opposition of Okinawans to a major agreement between the US and Japanese governments in May 2006, which sets out long-term plans to realign US forces in Japan and in Okinawa. The two governments have spent a great deal of effort publicizing the agreement as a commitment to finally reducing US force levels on Okinawa. In particular, they cite plans to move 9,000 US troops off Okinawa and to close several US military facilities on the islands. In reality, however, the plan is a road map to further entrench and strengthen the US military presence in Okinawa. The pledge to move troops off the island is effectively a bribe since it rests on Okinawans' acceptance of the construction of a massive new air base in Okinawa and several other facilities and training areas.

While not immediately self-evident, it is important to note that the May talks represented a victory for Okinawans. They reflect the success of the long struggle to stop the construction of the new air base, which the Japanese and US governments originally agreed to in 1996. For over a decade, widespread and sustained local opposition to the

project prevented any progress in the construction of the offshore air base, thus forcing the two governments back to the negotiating table. The fact that they merely included an additional incentive (the troop reduction) rather than abandoning the plan altogether is undeniably a blow to the Okinawans' efforts. But the Okinawan reaction to the May agreement – massive protests and calls for continued direct action against efforts to begin construction – indicates that the US and Japan continue to underestimate the will of the Okinawan people.

Opposition to the new base stems not only from a concern about US plans to remain indefinitely in Okinawa but also about the ecological, social and economic impact that several new military facilities would have. The revised project still involves massive landfill in pristine coastal waters widely known to be the primary habitat of the critically endangered Okinawa dugong (sea manatee). Now, not one but two V-shaped 1.8km-long runways will stretch across the tip of Okinawa's Henoko Peninsula and over the surrounding coral reefs, extending into bays on either side.

A large section of one bay will also be filled in to create a deep-water naval pier and to provide land for hangars, maintenance buildings and access to the pier. Although the US and Japanese governments emphasize the proposed closure of three US facilities in the May agreement, related to the offshore air base project is the military's plan to build seven new helipads in Okinawa's Yanbaru Forest (also a habitat to indigenous and critically endangered species). The military plans to house its controversial MV-22 Osprey aircraft at the proposed air base and train using the helipads.

Two additional points worth noting about the changes proposed in the 2006 agreement are, first, that the so-called "new" plan for the offshore base is nearly identical to a 1966 plan designed but never built by the US military during America's formal occupation of Okinawa. In other words, what the US was unable to accomplish in the final years of its occupation of Okinawa, it is now trying to do by relying on Japan's systematic discrimination of the Okinawans. Second, because the troops would be moved to the US colony of Guam, moreover, the plan links the reduction of troops in Okinawa to their significant increase in the island territory of the indigenous Chamorro people. This highlights the colonial dimensions of US military presence overseas.

Further complicating the issue is the fact that the US has tied the closure of its Marine Corps' Futenma Air Station, located dangerously in the middle of Okinawa's crowded Ginowan City, to the completion of the new base. However, even if started immediately, government estimates predict that construction of the new base would not be completed before 2014. The crash and fiery explosion of a large transport helicopter from Futenma Base in Ginowan in 2004 highlights the willingness of the US and Japanese governments to subject Ginowan residents, and Henoko residents in the future, to danger.

Local resistance to the strengthening and modernizing of US military presence in Okinawa was also evident in November when protestors set up an encampment to block the creation of a new US Army arsenal of Patriot surface-to-air missiles on an existing base. The protestors' efforts were ultimately unsuccessful and the new arsenal was activated at the end of November.

Finally, sexual violence and other crimes by US base military personnel against Okinawans continued in 2006, though previous cases of rape resulted in the relatively rare conviction of three US servicemen by Japanese courts. A string of muggings of Okinawan cab drivers and other robberies added to the tensions between the bases and the community. □

## CHINA

According to the last census of 2000, there are 105,226,114 people belonging to ethnic minority groups, and they comprise 8.47 % of the total population of China. The government officially recognizes 55 ethnic minorities. There are 20 ethnic minority groups in China with populations of less than 100,000 people and, together, they number about 420,000 people. The Chinese government does not recognize the term “indigenous peoples”. Although it has not been clearly established which of the ethnic minority groups can be considered as indigenous peoples, it is generally understood that they mainly comprise the ethnic minority groups living in the south-west of the country and a few groups in the north, east and on Hainan Island. Many of these belong to the category of small ethnic groups mentioned. They are mostly subsistence farmers belonging to the poorest segment of the country and they have illiteracy rates of over 50%. Twenty-five of the 55 officially recognized ethnic minorities live in Yunnan province. It is the province with the highest ethnic diversity in China. This year’s report on China will focus on Yunnan Province.<sup>1</sup>

**I**n 2000, the total population of Yunnan was 42.36 million, of which 28.21 million or 67 % are Han Chinese. The ethnic minority groups thus have a total population of 14.15 million. There are 25 ethnic groups with populations of more than 4,000 people.<sup>2</sup>

Eighteen ethnic minority groups are the original peoples of Yunnan: the Achang, Blang, Deang, Dulong, Nu, Jinuo and Pumi, Bai, Bouyei, Dai, Hani, Jingpo, Lahu, Lisu, Naxi, Wa, Yi and Zhuang. The other seven groups, i.e. the Hui (Muslim), Manchu, Mongolian, Tibet-

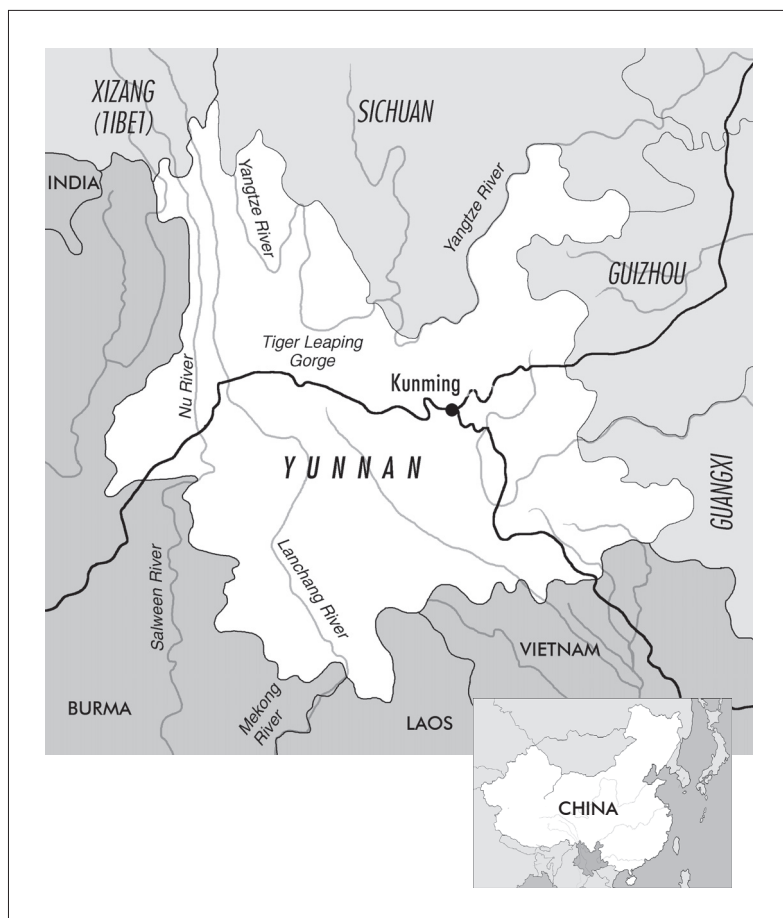
an, Miao, Yao and Shui, migrated to Yunnan during historic times. For those living in the countryside, the main problem is poverty. Yunnan's ethnic minority programs under the National Five-Year Plan launched in 2006 therefore focus on economic development, poverty alleviation and improvement of living conditions.

## **Ethnic Minority Laws**

China passed the "Law on Regional Ethnic Autonomy" in 1984, which was revised in 2001 to keep up with new developments. This law is the most important basis for policies on ethnic minority autonomy. According to article 73, "The People's Congresses and their Standing Committees in autonomous areas and in provinces and municipalities with autonomous prefectures and autonomous counties should determine concrete implementation guidelines". The Yunnan government passed its own supplementary law on regional ethnic autonomy in 2004.<sup>3</sup> It is the first province in China to approve implementation guidelines for this law. In the same year, Yunnan also agreed revisions to the "Yunnan Ethnic Minority Employment Law" to provide guidelines and an organizational framework to protect the jobs of ethnic minorities.<sup>4</sup>

There are currently eight autonomous prefectures and 29 autonomous counties in Yunnan. It was necessary for the province to revise the original law on regional ethnic autonomy due to new developments and revisions of the national laws. As of the end of 2006, Yunnan's People's Congress had approved 32 article revisions, with five more pending approval in 2007.<sup>5</sup>

Overall, these laws are meant to protect ethnic minorities. Through the approval and implementation of these laws, at least in principle, the ethnic minorities will have political control within their traditional territory. The heads of these autonomous minority group regions therefore belong to the local ethnic minority group. However, from a pragmatic viewpoint, while the heads of local governments are indeed persons from local ethnic groups, the real authority rests with the secretary-general of the respective local chapter of the Chinese Commu-



nist Party (CCP). The secretary-generals are appointed by the CCP, and they do not need to be individuals from local ethnic groups.

## Economic development

Seven of the 18 aboriginal ethnic minorities in Yunnan are classified as peoples with small populations,<sup>6</sup> living under poorer conditions than others. Programs for these ethnic minorities focus on economic devel-

opment and poverty alleviation. The official slogan for economic development in 2006 was "Let's Not Leave Out Any Ethnic Minority Brothers". According to official figures, Yunnan is providing total funding of 274 million Renminbi (35.4 million US\$) for the tenth "National Five-Year Plan" period.

The authority has announced that the Jinuo minority group have been fully lifted out of poverty. The Yunnan government expects to lift the six other small ethnic groups out of poverty by the end of the new Five-Year Plan period, in 2010. Priority is given to infrastructure construction and economic development projects for the 22 counties and towns inhabited by these ethnic groups. The state is providing funding of 84 million Renminbi (10.9 million US\$) for these development assistance projects. The main aims are to have paved roads, electricity, radio and TV broadcast services for all the villages. The targets are also to achieve decent levels of housing, clothing, nutrition, financing, and schools for all rural farmers.<sup>7</sup>

"Prosperity for the Hinterland and Wealth for People" is another official slogan of economic development for ethnic minorities. The official guidelines are to establish "Model Villages of Ethnic Unity" and "Model Villages with Prosperity for the Hinterland and Wealth for People". In the coming five years, the government plans to set up about 100 model villages for ethnic minorities each year, and also model villages where several ethnic groups can live together.<sup>8</sup> Each village will receive special grants of 300,000 Renminbi (39,000 US\$). Yunnan will also have corresponding projects in line with China's national programs for "Feeding the Hungry in the Hinterland", "Public Education for the Hinterland", "Technology Development for the Hinterland" and "Cultural Development for the Hinterland". Observers point out that, in recent years, China has achieved good overall results in providing much funding and human resources for its western provinces, thus narrowing the disparity between rich and poor. However, from a pragmatic point of view, the biggest challenge remains that of rooting out corruption, and ensuring that state funding really does reach the poor.

## Hydropower development

While China's ambitious economic national development policy provides considerable resources for direct poverty alleviation programs, one of the top priorities is large-scale infrastructure projects that are meant to ensure sufficient energy sources for China's booming economy.

The Chinese government plans to expand hydropower generation to 250,000 MW by the year 2020, thereby more than doubling its present capacity. Most hydropower dams are to be built in China's south-western provinces, in areas considered as some of China's most pristine and biologically and culturally diverse river basins: the Lancang (Upper Mekong) and Nu (Salween) rivers, and upstream of the Three Gorges Dam in the Yangtze River basin.<sup>9</sup>

The originally planned cascade of 13 dams on the Nu river in Yunnan province would have displaced more than 50,000 people, most of them belonging to ethnic minorities. This would have affected one-sixth of the 300,000 people from thirteen different ethnic groups living in the Three Parallel Rivers Area. Nine of the dams would have been located in or adjacent to the Three Parallel Rivers UNESCO World Heritage Site, which is known to be one of the most ecologically-rich temperate regions in the world. In response to protests from Chinese environmental groups, in 2004 Chinese Premier Wen Jiabao announced the temporary suspension of all projects on the Nu River, pending further scientific study. However, the Huadian Corporation and the Yunnan provincial government are determined to push the project through, albeit on a reduced scale.<sup>10</sup> In April 2006, Chinese activists reported signs of exploration activity near proposed dam sites on the Nu River in Yunnan province. They were hastily covered up before a visit by a UNESCO-IUCN inspection team later that same month, which was investigating the potential impacts of dam construction on the UNESCO World Heritage Site.<sup>11</sup> Following the investigation, at its Annual Meeting of July 2006, the World Heritage Committee expressed its "continuing serious concern over the potential significant impact from proposed hydropower and dam development on the Three Parallel Rivers World Heritage Site and downstream communities", and requested

that the Chinese government submit a report by 1 February 2007 revealing the detailed plans for hydropower and dam construction in the Nujiang, Lancang and Jinsha River valleys, and including the Environmental Impact Assessment report which the Chinese government had hitherto considered a "state secret" and thus refused to make public.<sup>12</sup>

## Education Policy

Yunnan has benefited well from China's national education assistance policy. Under the compulsory education policy, poor rural families do not have to pay for text books and school fees, and can also receive subsidies for school dormitory fees (known as the "Two Free and One Subsidy" policy). On average, elementary students need to spend about 210 Renminbi (27 US\$) on text books and school fees, and high school students about 320 Renminbi (41.5 US\$). Students living in dormitories receive average subsidies of between 200 and 300 Renminbi (26 to 39 US\$). In order to conform to national policies, the Yunnan government has provided a total of 1.5 billion Renminbi (194 million US\$) for education funding, which has allowed many children from poor families to attend school.<sup>13</sup> Out of the seven minority groups with populations of less than 100,000 people, 42,976 students received the full education subsidies, and those living in school dormitories received an additional 250 Renminbi (32 US\$). For non-compulsory higher education, special support is provided for these ethnic minorities to allow them to receive high school and college education. Specific entrance examination levels are set for them, to guarantee that each of these minority groups has at least 20 students attending "Ethnic Nationality High Schools". The seven ethnic minority groups have an average admission rate of 60.67% at these schools, which is 4.42 % higher than the rest of the province's population.

While the government's efforts to provide access to education to disadvantaged groups are commendable, it has to be remembered that overall education policy in Yunnan has been based on Han Chinese education, and that standard national text books are used. There are some teaching materials in ethnic minority languages but there has

been a lack of vigorous efforts to promote them and this runs counter to the official policy to promote and preserve ethnic minority cultures. At present, the protection of ethnic minority cultures in Yunnan is facing a crisis as these cultures are increasingly commercialized and exploited by outside entrepreneurs.

Two important initiatives launched in 2006 brought about major changes in ethnic education. One was the establishment of the "Committee for Yunnan Elementary and High School Textbooks for Ethnic Unity" in May, which planned to finish two sets of official text books for elementary schools by the year's end so that they would be ready for the 2007 spring school term. The text books for high schools will be completed in 2007. The second initiative was the convening of a conference on "50 Years of Yunnan Education and Study Programs on Ethnic Minority Languages" by the Yunnan People's Congress, which took place in Kunming in December. The draft bill on "Yunnan Ethnic Minority Language and Vocabulary Projects" and the related issues and problems were discussed at the conference. Plans were also made regarding the main objectives and programs on ethnic minority languages for the next five years. A major issue was the implementation of the "Yunnan National Language Use Policy" in 2005, which required people to speak Putonghua, the official Chinese national language, in state agencies and public places, and even as a basic standard for employment. This policy has led to a crisis in the use of ethnic minority languages in Yunnan.

According to data from Prof. Lim Siu-theh, Professor of Ethnology at National Cheng Chi University in Taiwan, China's ethnic minority languages can be classified into three categories, according to their vitality.<sup>14</sup> None of the languages of Yunnan's native ethnic groups belong to the category of fully living languages. Eleven belong to the second category, i.e. to languages that will require support for their sustained existence. The languages of all seven ethnic groups with small populations belong to the category of languages that will require strong efforts and a large amount of resources to keep them alive. Of those minority languages only a few are taught in schools, and most are in elementary schools or in an experimental teaching phase. A number of the ethnic minority languages are therefore in crisis. If this trend continues, the draft bill on "Yunnan Ethnic Minority Language and Vo-

cabulary Projects" may be too late, and may only ensure the preservation of these languages in books and ethnographical museums. □

## Notes

- 1 When the PRC was established in 1949, a national project on "Ethnic Minority Identification (or Classification)" was initiated. At that time, Yunnan reported to the national government that there were around 260 "ethnic groups or minority peoples" within the province. On a national level, a total of 400 groups were reported. The government simplified this complexity by merging and classifying various ethnic groups under the 55 ethnic groups that were subsequently officially recognized. Yunnan also has the highest number of "autonomous prefectures" and "autonomous counties" in the country.
- 2 There are 30 ethnic minority groups with smaller populations, some of which are immigrants from other parts of the country (such as, e.g., Ewenki from the north-east, or Uighurs and Kazaks from the north-west). The total population of these 30 ethnic groups is about 7,000 people. There are also several as yet unclassified or not officially recognized peoples, such as the Kucong or Khmu.
- 3 The official name of the law is the "Regional National Autonomy Law of the People's Republic of China".
- 4 Ethnic law and employment law information from reports in Yunnan Daily Newspaper, April 5, 2006.
- 5 From reports in Yunnan government state bulletin publications.
- 6 The Achang, Blang, Deang, Dulong, Nu, Jinuo and Pumi.
- 7 Information on economic development policies as reported in China's People's Daily, July, 12, 2006.
- 8 Yunnan model village project, Yunnan Daily Newspaper July 19, 2006.
- 9 International Rivers Network, <http://www.irn.org/programs/china/>
- 10 Ibid and International Rivers Network: IRN's Nu (Salween) River Campaign, <http://www.irn.org/programs/nu/>
- 11 <http://www.probeinternational.org/tgp/NuRiverGallery2/index.html>
- 12 International Rivers Network: UNESCO World Heritage Committee: "Continuing Serious Concern", <http://www.irn.org/programs/china/>
- 13 Information from <http://www.ynethnic.gov.cn/Info.aspx?inoid=1565>
- 14 **Lim, Siu-theh 2002:** *China's ethnic minority language policies and their vitality levels*. Report presented at the Conference on National Language Policies, Multiculturalism and Ethnic Equality, Taipei, 2002.

## TIBET

Tibetans consider themselves an occupied rather than an indigenous people but share the same characteristics and problems as indigenous peoples around the world. Tibet was brought under full control of the People's Republic of China in 1959. Tibet's political and spiritual leader fled to India, where he and his followers were allowed to settle and establish the Tibetan Government in Exile. Evidence suggests that at least one million Tibetans have died as a result of the occupation, imprisonment and starvation. Currently Tibetans number between five and six million. Around half of them live in what is now China's Tibet Autonomous Region (TAR), the rest in areas that have been made part of adjacent Chinese provinces. All major cities in TAR are now dominated by the Chinese, especially Lhasa.

According to China's Law on Regional Autonomy and the White Book on National Minorities of 2000, Tibetans are a minority with certain rights to autonomy and their own culture. In reality, however, Tibet is totally dominated by China. The Dalai Lama is asking for "real autonomy" for Tibet rather than independence. This approach, though controversial, is believed by most observers to be the most realistic solution for Tibet's future.

### Prisoners in their own country

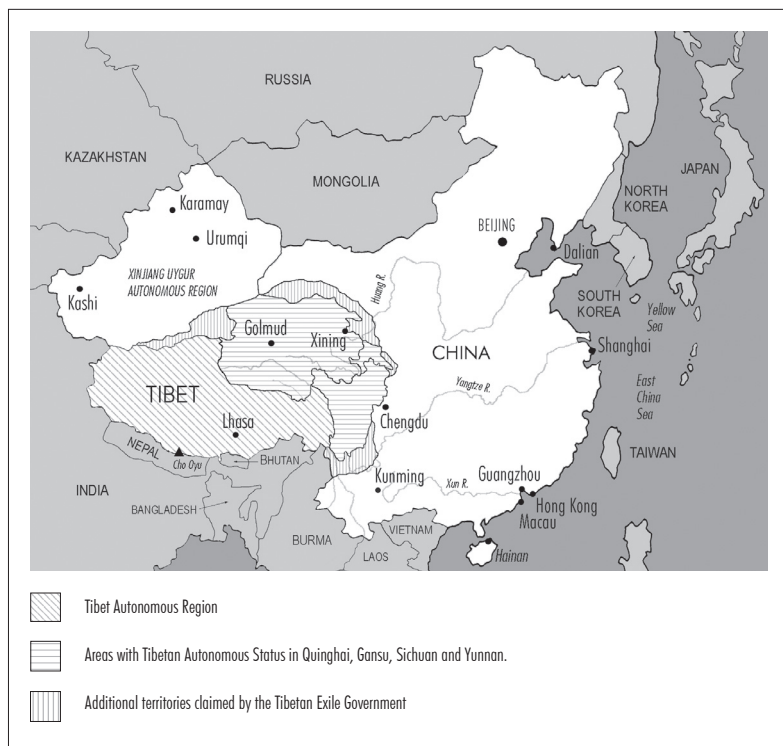
On 30 September 2006, a group of approximately 30 Tibetans were attempting to cross the Nangpa pass between Tibet and Nepal. A Romanian cameraman in the upper base camp on the Tibetan side of

the Cho Oyo mountain filmed how the group was shot at by Chinese security guards. His video clearly shows that the Tibetans were unarmed and that one person failed to get up after the shooting. A 17-year-old nun, Kelsang Namtso, was later found to be dead. The video also shows how the security guards led a group of refugees, many of them children, away from the pass. The incident was witnessed by several mountaineers and caused protests within the international community. Governments protested to the Chinese government, who promised to "look into the case" but also argued that the security guards had to shoot "to protect themselves" and that it was the "usual procedure". Since then, nothing seems to have happened. The refugees were, according to those who later managed to flee, released after having been mistreated in the detention centre where they were held. Their relatives had to pay fines for the release of the prisoners, including the children.

Tibetans are *de facto* prisoners in their own country. It is extremely difficult for them to obtain legal travel documents. Each year, on average more than 2,000 Tibetans attempt the dangerous escape across the Himalayas into exile. Most of them flee because they wish to meet the Dalai Lama, to receive a proper Buddhist education or because they see no hope of a future in Tibet. Many of them are children sent into exile by their parents who want them to be educated as Tibetans. After the incident at Nangpa La, the number of refugees has decreased in the area.

Tibet has unquestionably been developed, especially in terms of infrastructure, as the Chinese government claims. Some Tibetans and many more Chinese settlers have benefited from it but the restrictions on Tibetans continue to be severe.

The Tibetan exile organisation, Gu Chu Sum, released a list of 204 known Tibetan political prisoners in 2006. Among these are long-term prisoners such as Tenzin Deleg Rinpoche, who received a life sentence for his alleged but never proven "terroristic attacks", and the Panchen Lama,<sup>1</sup> who turned 18 in 2006 and whose whereabouts is still unknown to the world. On a positive note, the last of the so-called Drapchi nuns,<sup>2</sup> Phuntsog Nyidron, who was released in 2004, was finally allowed to leave Tibet in 2006.



Human rights violations and the imprisonment of Tibetans on purely political grounds continue. One telling example is the imprisonment of a 29-year-old writer, Dolma Kyab, who was detained in 2005 for working on a book manuscript entitled 'The Restless Himalayas'. He was accused and convicted of espionage in 2006 in a closed trial and is now serving a ten-year prison term. It is likely that he was charged on crimes involving "state secrets" that would, in many countries, be regarded as public knowledge.

A young monk who demonstrated alone near the holiest of Tibet's temples, the Jokhang in Lhasa, with posters calling for the freedom of Tibet was, according to bystanders, taken away by security forces in July. Nobody knows his exact identity but it seems that he was excluded from his monastery for eight years due to "political activities". In other regions of Tibet, several people were imprisoned for similar activities. The arrests

include, among many others, a 16-year-old school girl and two monks in Eastern Tibet who were accused of having distributed flyers demanding the freedom of Tibet. In August, the abbot of an Eastern Tibetan monastery was imprisoned for unknown reasons. It is believed that he may be accused of having something to do with demonstrations for an independent Tibet in the vicinity of the monastery.

The plight of the Tibetan people is perhaps best exemplified by its total lack of freedom of expression, which continues to be documented by many Western visitors to Tibet. People are suspicious and afraid to talk.

According to human rights reports from Amnesty International and others, there were no improvements in 2006. One report on religious freedom by the US State Department identified China as one of the five countries of most concern in the world. The report expresses its worry over the "preservation and development of the Tibetan people's unique religious, cultural and linguistic heritage and the protection of human rights". Religious activities are closely controlled. The level of control is generally higher in the TAR than in the Eastern areas.

At international level, it was a symbolic victory for the Tibetans that the Spanish High Court decided, at the beginning of 2006, to embark on a lawsuit against seven named Chinese leaders on the grounds of seven crimes, including crimes against humanity, genocide and torture of the Tibetan people. The hearing of Tibetan witnesses began in June with the first Tibetan victim, a man who has lived in Spain for 24 years. This is the first time that the suffering of the Tibetan people is being heard in court. The Chinese government has protested against the lawsuit, which the foreign ministry called "a total lie", accusing it of having political motives that "hurt China's international reputation".

## **Discrimination and marginalization**

The Tibetans are discriminated against at all levels. They find it hard to compete with Chinese immigrants for jobs as these are generally better educated, speak Chinese and have closer contacts with the employers. The fact that Tibetans are often looked down upon as "backward" probably also plays a role. The number of Tibetan government employees has apparently once again been reduced. Their numbers have

fallen from almost 72% in 2000 to less than 50% now. Very few Tibetans have high positions within the administration. The general level of income continues to be much lower than in China, especially among rural Tibetans. Western observers have noticed some signs of improvements and greater wealth in the rural areas of the TAR but it seems to be very unevenly distributed.

The level of education continues to be very low. There is particularly a lack of secondary schools in the countryside, education is costly and Tibetan children are forced into the Chinese education system. According to the most recent statistics, the number of Tibetans in the TAR with primary education has fallen in recent years to 55%, and those with secondary education to 14%, as compared to 57% in China.

According to a report by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), published in 2006, rural Tibetan women are in an especially disadvantaged situation in all areas of life. The report voices special concern over the growing number of Tibetan girls who turn to prostitution and their possibly related trafficking. At the CEDAW conference in 2006, there was no Tibetan representative on the Chinese team. China has failed to submit reliable material on the situation of Tibetan women or to reply to the accusations of forced sterilisation and abortion. China has decided to step up its population control in both China and Tibetan areas by a "stick and carrot" method to persuade women to have only the (usually) two children they are allowed by law.

The identity and culture of Tibetans is increasingly being exploited by the Chinese as a "marketing brand" for tourists with no or little involvement of the Tibetans. So-called Tibetan shows are used to attract Chinese tourists in particular. Traditional culture is modified and exaggerated to better suit the Chinese taste for the exotic. This has, among other things, led to an increased use of fur from threatened animals. Lhasa has become a Chinese city with an abundance of karaoke bars, brothels, hotels and Chinese-owned shops.

The disputed railway between Lhasa and Golmud that connects Central Tibet with China was officially opened on the first of July and celebrated by China as a great contribution to development. In reality, the railway seems to justify the worries of Tibetans that it will increase the influx of Chinese into Tibet, increase the export of natural resources

such as illegally traded wildlife products, and benefit the military. A large number of Chinese already use the railway. Last summer approximately 5,000 tourists were arriving in Lhasa each day, most of them Chinese and many of them by train. The railway is much more than a transport system. It is another powerful symbol of Chinese occupation. Its impact may be comparable to the impact of the railway on the plains Indians of North America, built in the 19<sup>th</sup> century.

The number of foreign tourists also increased, but the vast majority of the around 2.6 million to visit the TAR in 2006 were Chinese. The Chinese government has plans to increase their number even further and to make more remote areas accessible through new civil airports, promotion and other means.

The illegal trade in fur continues to be a cause for concern. When the Dalai Lama, in a public speech in July, asked all Tibetans to stop using fur from protected animals, many Tibetans immediately burned their fur and refused to wear it anymore. The Chinese were concerned that the Dalai Lama still had so much power in Tibet. In July, thousands of Tibetans travelled to the Kumbum monastery in Eastern Tibet after rumours swept through the area that the Dalai Lama would be there. They had no way of checking whether the rumours were true and they were very sad to find out that they were not, according to one American witness.

The exploitation of Tibet's natural resources continues unabated. China's hunger for energy has, for example, left very few of Tibet's major rivers untouched by big hydropower projects. The population in the affected areas complain about forced relocations, insufficient compensation, loss of land and unwanted changes to their way of life.

## **Negotiating Tibet's future**

Five rounds of talks that will hopefully lead to a sincere dialogue on Tibet's future have taken place between the representative of the Dalai Lama and his government, and the Chinese government. The last meeting was in February 2006. The Tibetans are currently awaiting a sixth round to take place, preferably in India, though the talks have so

far brought no concrete results. Instead, Chinese verbal attacks on the Dalai Lama have increased.

Despite the plea of the Tibetan Government in Exile for Tibetans and their supporters not to demonstrate during Chinese state visits, Tibetans in exile are increasingly restless. During Chinese President Hu Jintao's visit to India in December, Tibetans staged protests around the country and one activist tried to burn himself in order to draw attention to the Tibetan cause. □

## Notes

- 1 The Panchen Lama is the second highest religious authority in Tibet. He is traditionally identified by the Dalai Lama. The Chinese government did not accept the Dalai Lama's interference in the choice of the new Panchen Lama. It identified its own Panchen Lama and imprisoned the young boy elected by the Dalai Lama and his family in 1997.
- 2 Drapchi is an infamous prison in Lhasa. A group of nuns in the prison became known as the Drapchi nuns after they had taped a number of songs, which were smuggled out of the prison and made known to the world.

## TAIWAN

The officially recognized indigenous population of Taiwan numbers 469,000 people (2006), or 2.1% of the total population. Thirteen indigenous peoples are recognized.<sup>1</sup> In addition, there are at least nine Ping pu ("plains") indigenous peoples who are denied official recognition.<sup>2</sup> Most of these peoples live in the central mountains, on the east coast and in the south of Taiwan.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and negligible political or economic influence. A number of national laws protect their rights, including the Constitutional Amendments (2005) on indigenous representation in the Legislative Assembly, protection of language and culture, political participation, the Indigenous Peoples' Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations Regarding Recognition of Indigenous Peoples (2002) and the Name Act, which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script (2003). Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

### Legislation and self-governance

The Indigenous Peoples' Basic Act, passed on January 1, 2005, demanded that the state amend or redraft other relevant laws to comply with the spirit of the Act within three years. Taiwan's Premier



formed a Basic Act Committee to deal with this issue but there are still wide differences of opinion between various government bodies as to the nature of the Act. The only point of progress has been the transfer of authority for management of indigenous land issues from the Ministry of the Interior to the Council for Indigenous Peoples (CIP).

Regardless of the Act's recognition of indigenous rights to land and resources, the government continued to

feed the needs of the local tourist industry by planning development projects and bringing non-indigenous developers into the traditional territories of the Tsou, Truku, Thao and Amis peoples. Clearly, indigenous peoples cannot rely on the yet-to-be-implemented Act to protect their rights.

Constitutional reform is ongoing, and the new Constitution will contain a chapter on indigenous peoples. The Draft Constitutional Chapter on Indigenous Peoples proposed by the CIP at the end of 2004 defines and guarantees indigenous peoples' rights, which cover sovereignty, land and natural resources, education, culture, language, traditional knowledge, customary law, participation in national policy-making, as well as the recognition and protection of other collective rights. Unfortunately, due to the top-down nature of the reform process and the resulting lack of participation by indigenous peoples, the Draft has yet to receive wide recognition or support from indigenous peoples.

Once more, the drive towards self-governance, inspired by self-determination, was stalled by the intervention of national legislation and administration. Although the tribal community, the fundamental unit for self-governance in the Basic Act, can be interpreted broadly as covering everything from tribal settlements to indigenous nations, the CIP took a conservative stance, adopting the narrower interpretation that it applies to tribal settlements only, thus sidelining genuine promotion of self-governance as indigenous nations. Without getting into the differences that exist between the political practices of each indigenous nation, the CIP endeavor may in the end suppress grassroots efforts towards self-governance and prevent some indigenous peoples from exercising their autonomy. Despite the call for nation-based indigenous self-governance having been stifled, the Truku people have announced a ruku Nation Self-Governance Charter.

## **Education, culture and media access rights**

Despite preferential treatment, a low percentage of indigenous peoples in Taiwan continue on to further education. In 2006, the government amended the entrance examination bonus system by which indigenous students get extra points added to their final exam test scores in order to ease their entry into the next level of education. Whereas all indigenous students previously had 33% points added, now only 25% are added, and only those who obtain a "Certificate of Cultural and Language Proficiency are eligible to have these points added to their test scores. However, the bonus system overlooks the real issue that indigenous peoples have no control over their education, and suffer from limited opportunities and stigmatization of their right to education.

The Indigenous TV (iTV) channel started broadcasting in 2005. In the early days, under the management of a commercial television company, it was unable to develop independently. The programs produced by iTV did not meet the expectations of the indigenous community. However, when control was transferred to a non-profit broadcaster, the Public Television Service (PTS), there was further controversy over the selection of a non-indigenous station director and re-employment of the former staff. After persistent lobbying by indigenous organiza-

tions and media professionals, PTS reselected an indigenous station director and rehired the entire original workforce in 2006. Both selection processes by PTS prompted many fierce debates and remained controversial, especially in the light of the political interference that surfaced during the processes and the questionable independence of some indigenous groups and individuals involved in the dispute. Currently, a draft "Act for the Establishment of the Indigenous Cultural Industry Foundation is being negotiated in the Legislative Yuan (the National Legislature). The bill aims to establish a specialist body responsible for iTV management. The hope is that an independently run and indigenous controlled iTV will guarantee indigenous peoples the right of editorial control and give them a TV station that genuinely serves their interests.

### **Historical scars of political control**

During the last few years of Japanese colonial rule (1895-1945), indigenous peoples in Taiwan were drafted to fight for Japan in World War II as "Takasago Volunteers. In 2006, a memorial to these indigenous soldiers in the Japanese Imperial Army was erected in Wulai Waterfall Park in Taipei County by veterans and their descendents. The memorial immediately fell victim to political interference and misinterpretation, and was forcibly removed by the Taipei County government.

The controversy started on February 17 when the China Times, one of the three leading local newspapers, published a major story that seriously distorted the truth about the memorial, complete with a sensational headline claiming Wulai Park has been occupied by the Japanese. The report caused widespread misunderstanding and general vilification of the Wulai Takasago Volunteers Memorial Association, which was behind the memorial. On the same day, controversial indigenous legislator Gao Jin Su-mei (also known as Giwas Ali) organized a press conference to further criticize the association and pressured local authorities to remove the structure. On February 18, Taipei County Magistrate Chou Hsi-Wei publicly denounced the inscriptions on the memorial as inappropriate, stating that it should be removed. Without proper order and notification, the memorial was forcibly dismantled

and confiscated indefinitely. After the action, a late notification was implemented, which neglected to mention any legal reason for this action. Relatives of the Takasago have tried to defend their right to interpret their own history by filing an administrative appeal. They have decided to launch a lawsuit against the Taipei County government through the administrative courts.

After colonization first by Japan, then by the Chinese nationalists, then by the Taiwanese nationalists, the collective memories of indigenous peoples are being buried or even crushed by the way politicians manipulate interpretations of Taiwan's history, as exemplified in this Takasago case.

## **Non-recognition of Ping Pu indigenous**

There are nine major indigenous groups living in the plains of Taiwan who, up until now, have been denied official recognition by the government. Estimated to number between 150,000 and 200,000, these Ping Pu (lowland) indigenous peoples are not even recognized as ethnic groups, and thus have no minority group status in Taiwan. As a result of a loss of land, culture, language and group identity, and their total exclusion from government and the social security system, they are among the most marginalized groups in the country and it is feared that they will cease to exist as distinct indigenous ethnic groups within the coming decade. Over the past year, activists of the Ping Pu indigenous groups continued to press the Taiwan government for recognition of their indigenous status. The government, however, continues to ignore them.

The court case involving a 32-year-old Siraya man, Mr. Pan Ren-Yong, clearly illustrates the ongoing discrimination of the Ping Pu peoples. On November 28, 2006, Mr. Pan Ren-Yong was sent to the local prison to serve a jail sentence of one year and ten months. He was charged for illegal possession of firearms and hunting of a deer. However, he was hunting in his Siraya village's traditional territory in Hualien County, eastern Taiwan, and hunting wild animals with firearms is permitted under special provisions, with strict regulations, for indigenous peoples of Taiwan.

This case became a rallying point for Ping Pu peoples and human rights activist groups. Like many Ping Pu peoples, Mr. Pan Ren-Yong and his family live in impoverished conditions, barely able to make a living from farm labour. Worse still is the fact that his family depended solely on him for his labour. Pan Ren-Yong's two elderly parents are in frail health, and his indigenous Amis wife takes care of them and their three young children. It was poverty that led Pan Ren-Yong to go hunting game. By sending him to jail, the family has been torn apart and is in dire economic straits.

Ping Pu rights activists organized a public campaign to appeal for leniency in this case, and requested a presidential pardon – but to no avail. Pan Ren-Yong is serving his sentence and will not be released from jail before 2008. The cruel treatment of Pan Ren-Yong at the hands of the state justice system is a reflection of the discrimination and oppression observed against the Ping Pu aborigines in Taiwan. While coming down in a heavy-handed way on Pan Ren-Yong, the many cases of illegal hunting and plundering of natural resources by various groups and company operations are usually ignored by the law enforcers, and seldom prosecuted.

One positive development, however, is that the local government of Tainan County (in southern Taiwan) set up a Ping Pu Siraya Affairs Commission in September 2006. It is to recognize the existence of Ping Pu Siraya people in Tainan and to support their cultural revival efforts. This is, however, confined to Tainan County and there is very limited funding. □

## Notes

- 1 These are the Amis (aka Pangcah), Tayal, Paiwan, Bunun, Pinuyumayan (aka Puyuma or Punuyumayan), Tsou, Rukai, Saisiyat, Tao (aka Yami), Thao, Kavalan, Truku and, since January 2007, Sakizaya.
- 2 These are the Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.

## PHILIPPINES

Of the country's current projected population of 88.7 million,<sup>1</sup> indigenous peoples are estimated to comprise some 10%, or 8.4 million. There is no accurate comprehensive count of Philippine indigenous peoples.<sup>2</sup>

The different indigenous groups in the northern mountains of Luzon (Cordillera) are collectively called Igorot while the different groups in the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively called Mangyan in the central islands as well as even smaller, more scattered groups on Luzon. They generally live in isolated areas with lack of access to basic social services and little opportunity for mainstream economic activities. They are usually the people with the least education and the smallest income. An abundance of valuable natural resources in their areas makes them vulnerable to development aggression.

In 1997, the Philippine Congress promulgated Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA). The law calls for respect for indigenous peoples' cultural integrity, right to their lands, and right to their self-directed development of these lands. The National Commission on Indigenous Peoples (NCIP) was established the following year to ensure implementation of this law.

### Human rights violations

**A**mong the more prominent headlines in Philippine news for the year was the spate of killings of known political activists. This



was seen as an extrajudicial move by the Philippine government to suppress growing protest against the presidency of Gloria Macapagal-Arroyo. With more than 100 killings reported for the year 2006, the number has doubled in comparison with the previous year. At least 26 were indigenous, mainly in the Cordillera. The most noted indigenous victim was the wife of a prominent leader from the Cordillera, Alice

Omengan-Claver, whose assassination in June sparked widespread outrage, including criticism from the European Union. Task Force Usig (meaning "to be held accountable"), a group created by President Macapagal-Arroyo to investigate the killings, has only come up with suspects for less than half of the admitted cases, and has filed even fewer charges.<sup>3</sup>

Killings are not the only form of human rights violations endured by indigenous peoples and other poor sectors of the country. Among other incidents, there are reports of beatings and burning of houses. Many of these human rights violations arise out of the indigenous peoples' defence of their ancestral lands in the face of various forms of encroachment.

## **Escalation of mining**

A major area of contention is the Philippine government's determination to increase mining activities in the Philippines. And since the majority of indigenous groups live in mineral-rich territories, mining is not only an environmental issue but also one directly pertaining to indigenous peoples' right to self-determination, as supposedly upheld by the Indigenous Peoples' Rights Act (IPRA). Of the 24 priority mining project sites identified by the government, at least 14 are on indigenous peoples' lands. The case of TVI Resource Development Philippines, a Canadian mining company, is an example.<sup>4</sup> TVI is operating open-pit mining in the lands of the Subanon in Sibugay Province on the south-western peninsula of Mindanao island. This indigenous territory was granted a Certificate of Ancestral Domain Title (CADT) in 2003<sup>5</sup> but the title has not prevented TVI from pursuing its mining, despite strong protests from the Subanon and non-indigenous communities severely affected by the mining operations. TVI has the support of the Philippine National Police (PNP) and the newly formed Special Civilian Armed Auxiliary (SCAA), led by a retired military general to counter the people's protests. This includes intimidation and an economic and food blockade. A prominent community leader has even been blocked from entering his own territory.

In April 2006, the Subanon decided to resort to legal recourse in their ongoing dispute over the mining activity, filing a case against TVI calling for the cessation of its mining activities. According to the Subanon, TVI has violated at least three national laws – the IPRA, the 1995 Philippine Mining Act and the 1991 Local Government Code. It was felt that legal action had to be taken after the government had failed to address their interests by protecting them against development aggression.

In the second half of the year, the Subanon filed two local cases. One was against SCAA members for the arbitrary demolition of a Subanon couple's house in June 2006. The husband was beaten up, while villagers were held at gunpoint and forced to watch helplessly. The other case was against TVI-supported local officials, and it claimed that in May 2006, session records of the *barangay* council (*barangay* being the smallest administrative unit of the Philippine government, roughly equivalent to a village) that had given its agreement to the mining had actually been falsified, because the council had not held any such session.

The case of TVI and the Subanon has attracted international attention, with a protest being filed by the Subanon against the Philippine government in the United Nations Permanent Forum on Indigenous Issues in 2004. The plight of the Subanon under TVI is being closely watched as it has two significant implications. One is: how effective can a land title (CADT) be in upholding indigenous peoples' control and management of their ancestral domains? The other is: how effective is the IPRA's assurance that indigenous peoples have the right to grant or withhold Free, Prior and Informed Consent to entities with interests on their territories?

## Revised consent guidelines

Recognized as one of the significant provisions of the IPRA is the stipulation that any entity which intends to engage in any project on indigenous land must secure the Free and Prior Informed Consent (FPIC) of the indigenous peoples in that area. The IPRA defines FPIC as a consensus among the members of an indigenous people's community that is to be affected by a development project, in line with its culture, following

full disclosure of the facts about the said project and without manipulation or coercion.

In 2003, the National Commission on Indigenous Peoples (NCIP) issued its first guidelines on the process of how to get the free, prior and informed consent of indigenous communities for intended projects there. These guidelines were revised in 2006, as the NCIP came out with Administrative Order No. 01, Series of 2006, *The Free and Prior Informed Consent (FPIC) Guidelines of 2006*, published 24 September 2006. The revised guidelines are criticized for favouring corporations over indigenous communities.

Dissatisfaction with the 2003 guidelines came from two opposing sides. On the one hand, indigenous peoples felt that the guidelines did not go far enough in ensuring the culturally appropriate consensus of community members. On the other, mining companies felt that the guidelines hindered them too much from operating as they wished. When the government aggressively pushed for an escalation of mining activities in the Philippines some three years ago (see previous issues of *The Indigenous World*), it listened to the complaints of the mining companies and put pressure on the NCIP to revise the guidelines. Indigenous peoples and their support groups took this opportunity to advocate and campaign for guidelines that were more supportive of the indigenous people.

The revised FPIC guidelines are criticized by indigenous peoples and their advocates. The following are among the major contested changes: while both guidelines impose conditions of time and process which may not be respectful of the traditions of indigenous peoples, there is more rigidity in the processes of the new guidelines. In direct opposition to the spirit of consensus, negotiations are limited to being between the council of leaders and the applicant for the FPIC. Another change for the worse is that only officially recognized indigenous lands (indigenous territories included on the NCIP's so-called primary list) may undergo the process. Under the previous guidelines, an area was always assumed to have indigenous residents and a certificate of pre-condition had to be issued stating that there were no indigenous peoples there. If an indigenous community is not on the said list, it now has to assert its right to be there. Furthermore, an applicant may now appeal against a negative decision of the community. In addition, some

activities do not require a certificate of precondition, including small-scale projects (small-scale is, however, not defined).<sup>6</sup>

The revised guidelines came out almost two years after the central government pressured for them. Yet the series of consultations held, some of them sponsored by the World Bank, were deemed insufficiently consultative, not only in terms of indigenous peoples' representation but also in the sense that practically none of the revisions suggested by indigenous groups and advocates were taken up. Hence, it is feared that the new guidelines essentially weaken the IPRA and again bring into question the government's political will to implement this law.

### **The Philippine government's stand on indigenous rights**

The year 2006 also showed the extent of the Philippine government's support for indigenous peoples on the international scene. In the 61st Session of the United Nations General Assembly, members voted for a non-action motion on the draft Declaration on the Rights of Indigenous Peoples. The Philippines abstained even though, ironically, the Declaration was one major reason why the country's Indigenous Peoples' Rights Act came to be promulgated in the first place.

The government's stand on indigenous peoples' rights can further be observed in two other ongoing national issues. One is the right of indigenous peoples to their ancestral territories vis-à-vis the entitlement of land-hungry farmers to their own piece of land. Much of indigenous peoples' lands are officially categorized as public lands, which the government supposedly has the right to dispose of. The other issue is how indigenous peoples in the Autonomous Region of Muslim Mindanao will fare in the negotiations taking place between the Government of the Republic of the Philippines and the Mindanao Islamic Liberation Front (MILF), in which the MILF is insisting that the definition of indigenous territory should be in accordance with Islamic interpretation, even though the indigenous peoples assert that they were there before Islam arrived in that area. As always, it is a matter of whose voice will be heard and why. It is unfortunate that the indigenous peoples' smaller number compared to other sectors gives them less voice in the eyes of vote-hungry politicians.

The NCIP's performance fared better regarding the granting of land titles (CADTs). In 2006, the NCIP approved 17 CADTs, up from 10 approved the year before. These 17 CADTs comprise 180,000 hectares, 16% of the total hectares covered by the 56 CADTs granted since 2002.

## The indigenous peoples' movement

The cultural diversity that gives indigenous peoples their vibrancy and significance can also make the achievement of a single unified movement difficult, exacerbated by their small numbers. The process of setting up a Consultative Body of indigenous leaders to the National Commission on Indigenous Peoples mandated by the IPRA has been completed only at the provincial level and not up to the national level (see previous issues of *The Indigenous World*). And there is a looming danger that the Provincial Consultative Bodies are being co-opted by various government units and agencies.

There can be dissension among indigenous peoples as well. For instance, TVI is supporting a Subanon organization not formed according to tradition. This group is supportive of its mining activities and is claiming that its operations are sanctioned by that organization's leader.

Still, the struggle for unity goes on. The call for a strengthening of regional and national networks is being emphasized, especially with national elections looming in 2007 and 2010. There is the possibility of forming a political party for indigenous peoples so that they can run as candidates to the House of Representatives through a party list system. To respond to this call for consolidation, indigenous peoples and many of their support groups are gearing development assistance towards strengthening indigenous peoples at their most basic level – at the community, within their own territories. □

## Notes and references

- 1 Figure from the National Statistics Office.
- 2 Much of the data in this section is taken from **Sabino Padilla, Jr. 2000: *Katutubong Mamamayan***. Manila/Copenhagen: International Work Group for Indigenous Affairs (IWGIA).

- 3 Different sources cite differing figures for totals. The government admits to only 111 killings in total under the Macapagal-Arroyo presidency since 2001, while human rights groups say there were over 700 over the same period. Data for this section comes mainly from the Indigenous Peoples Human Rights Watch-Philippines, Human Rights Watch (<http://hrw.org/english/docs/2006/09/29/philip14283.htm>), Amnesty International (<http://web.amnesty.org/library/Index/ENGASA350062006>), Karapatan (Alliance for the Advancement of Human Rights) (<http://stopthekillings.org/?q=node/10>), news from the *Philippine Daily Inquirer* (<http://inq7.net>) and other sources ([http://www.delphl.cec.eu.int/docs/IPDay\\_clavier.pdf](http://www.delphl.cec.eu.int/docs/IPDay_clavier.pdf)).
- 4 Sources regarding the Siocon Subanon and their struggle against TVI are mainly the DIOPIM Committee on Mining Issues' press releases in 2006. DIOPIM is an acronym formed from the names of 6 Dioceses, Archdioceses or Prelatures of the Catholic Church in north-western Mindanao. Another reference is **Gil C. Cabacungan Jr. and Blanche S. Rivera, 2006:** Philippines: No new mining permits. *Philippine Daily Inquirer*, 4 February 2006.
- 5 The IPRA provides for the official recognition of indigenous peoples' territories with the granting of a CADT by the NCIP to indigenous communities. An indigenous community has to go through an NCIP-prescribed procedure of applying for the CADT, which has been criticized for being too bureaucratic and expensive.
- 6 The analysis regarding the revised FPIC guidelines was raised by the Legal Rights Center-Friends of the Earth Philippines (LRC-KsK) during the "Forum on the New Free and Prior Informed Consent Guidelines of NCIP", October 27, 2006, University of the Philippines Diliman, Quezon City. LRC-KsK Luzon Regional Office co-sponsored this with the University of the Philippines Paralegal Volunteer Organization.

## INDONESIA

Indonesia has a population of around 220 million people. The government officially recognizes 365 ethnic and sub-ethnic groups as so-called *komunitas adat terpencil* (geographically-isolated customary law communities). They number about 1.1 million. However, there are many more peoples that consider themselves, or are considered by others, as indigenous. The national indigenous alliance, Aliansi Masyarakat Adat Nusantara (AMAN), uses the term *masyarakat adat* (customary law/adat peoples). A conservative estimate of the number of indigenous peoples in Indonesia amounts to between 30 and 40 million people.

Until recently, the Indonesia has not had any official government policy concerning the recognition and the rights of indigenous peoples. Government officials argued that the concept is not applicable in Indonesia, as almost all Indonesians (with the exception of the Chinese) were indigenous and thus entitled to the same rights. Consequently, the government rejected all calls for special treatment by groups identifying themselves as indigenous, which prevented many communities from maintaining control over their land and resources. In more recent legislation there is an implicit, though conditional recognition of some rights of people referred to as *masyarakat adat* or *masyarakat hukum adat*.

### Decentralization and access to land and resources

One of the main effects of the Regional Autonomy introduced in Indonesia in 1999 was the need for local governments to raise their own revenues. These efforts have been clearly demonstrated in growing relationships and collaboration between local governments



and various investors and development agencies. This familiarity between local governments and the business sector has driven the local policy to become ironically counter-productive from the perspective of peoples' prosperity. In Central Kalimantan, for example, where the population is only 15 people per square kilometer, most still live in poverty. This condition is clearly related to the lack of access to land and natural resources.

In 2003, the provincial government of Central Kalimantan issued *Perda* (Local Regulation) No. 8 on Provincial Spatial Planning. The *Perda* provides for only two kinds of land use: Production Development Areas (Kawasan Pengembangan Produksi – KPP) and Settlement Areas (Kawasan Pemukiman dan Peruntukan Lainnya – KPPL). The combined total area of these types of land is 4.7 million ha but most of this, about 2.5 million ha, has been given to big plantation corporations, particularly palm oil plantation companies. Only 2.2 million ha are left for the 1.9 million people of Central Kalimantan. This situation can be compared to the macro-situation of Indonesia, which shows similarities in the distribution of access to land and natural resources.

Data from JATAM (an NGO Network on Mining) demonstrates that, on a national level, 35% of the country's 1.9 million km<sup>2</sup> of land, or around 67 million ha, has been handed over legally to mining concessions. Forest concessions and industrial timber plantations cover 44 million ha and land-use concessions for other business 15 million ha. The allocation of land for other sectors, such as education and health, agriculture and settlement, is very limited. All that is left is around 70 million ha for the 210 million people of Indonesia. Data gathered by the NGO Consortium for Agrarian Reform shows that, on average, there is only 0.5 ha of land available per peasant family in Indonesia.

In late 2006, the Head of the National Agrarian Body (Badan Pertanahan Nasional – BPN) publicly announced that the Government of Indonesia would distribute more than 8 million ha of land to peasants and poor people. This has triggered an intensive discussion among NGOs and indigenous peoples' organizations, particularly AMAN, over the last few months. One agenda item the indigenous peoples have agreed on is that of urging the BPN to adopt their concept of land tenure as the basis for land distribution. This concept stresses the collective nature of traditional land tenure in indigenous communities.

Communities and their territories are socio-political entities within which part of the area is recognized as communal land while individual rights of community members exist over other parts. These individual rights are, however, still subject to control by the community, i.e. individually owned land cannot be freely transferred.

Responding to the impact of such so-called development projects on people, the indigenous peoples of Central Kalimantan held their Congress from 6 – 8 November 2006. The central message that came out of the Congress was the need for civil society to consolidate in order to stand up to the violations of human rights, particularly indigenous peoples' rights. The participants came from various districts in the province, and they jointly delivered the congress resolution. The twelve-point resolution stresses the importance of promoting local values and indigenous "customary" law systems, the need for peace and harmony in the social relationship between the various social groups in Central Kalimantan, the urgent need to end natural resource degradation, and the need to promote gender equality among the indigenous peoples of Central Kalimantan.

### **Study on impact of oil palm plantations on indigenous peoples**

The report of a study on the impact of oil palm plantations on indigenous peoples and local communities, jointly conducted by the Forest Peoples Programme, Perkumpulan Sawit Watch, HuMA and the World Agroforestry Centre, was published in both English and Bahasa Indonesia last year.<sup>1</sup> According to the report, Indonesia now has about 6 million hectares of land under oil palm plantations. Some 18 million hectares of forests have been cleared in the name of oil palm expansion, mainly to allow speculators access to the timber. Existing regional development plans have already allotted a further 20 million hectares to oil palm plantations, mainly in Sumatra, Kalimantan, Sulawesi and West Papua, and new plans are currently under discussion to establish the world's largest palm oil plantation of 1.8 million hectares in the heart of Borneo.

The study concludes that customary rights are only weakly recognized and that government agencies therefore have a great deal of dis-

cretion in deciding whether to respect them or not. Customary institutions, which have been severely weakened during the three decades of Suharto's repressive regime, have only been restored in some parts of Indonesia. A similar gap between legal principles and practice is also found with respect to land rights and, while laws recognise the customary land rights of communities, there are no procedures for titling such lands. State policies clearly favour large-scale plantations. The laws allow the reallocation of lands for state purposes and for private sector use in accordance with national development plans. The result is that community rights are all too easily subordinated to private sector expansion. A complex web of laws has evolved to promote plantation development. Although designed to ensure sound investment, coordinated planning, the public interest and the resolution of conflicting rights, these laws make little provision for community rights and interests. Too often, the law treats what are in reality indigenous peoples' lands as state lands. These state lands are either considered to be unencumbered with rights or are allocated to companies through a process that strips communities of the few rights that the government does recognise. Indigenous peoples' rights are thus extinguished and the land is allocated to companies on the basis of 90-year leases on state land.

Case studies were conducted in six areas of three provinces where oil palm companies are operating (Lampung and West-Sumatra on Sumatra, and West-Kalimantan on Borneo island). The research shows clearly that indigenous peoples in the six case study areas do enjoy rights to their territories and to self-governance through customary authorities, in accordance with customary law. Clearly identified groups control land as collectively-owned areas subject to well-developed rules regulating land ownership, land transfer and group membership. However, the research shows that provinces vary greatly in the extent to which local governments accept the land rights of local communities, despite operating within the same national legal framework. In West Kalimantan, customary land rights are given little recognition, at the most being treated as ill-defined use rights on state lands. In Lampung, customary rights are accepted in court adjudications but the administration rarely recognises community rights in land, preferring to issue individual titles to villagers. In West Sumatra, by contrast,

the provincial government does recognise the collective land rights and jurisdiction of customary institutions, as self-governing authorities and communities are treated as rights holders.

The case studies reveal that local communities face serious problems and most are in conflict with companies over land. There is a widespread feeling that communities have been cheated of their lands, inveigled into agreements through false promises and denied a voice in decision-making. The many irregularities in the way lands have been acquired and held by companies include the establishment of plantations without licenses, information not provided to communities, non-payment of compensation, non-delivery of promised benefits, use of coercion and force to crush community resistance and serious human rights abuses.

The research substantiates, in considerable detail, the oft-made claim that oil palm plantations have been established in Indonesia without respect for the rights of indigenous peoples and local communities. Yet international standards such as those set out in international law, elaborated in international jurisprudence, adopted in "best practice" codes, consolidated in the United Nations' Declaration on the Rights of Indigenous Peoples and recently adopted by the Roundtable on Sustainable Palm Oil, do require respect for such rights. Furthermore, the Constitution of the Republic of Indonesia also requires respect for the rights of customary law communities.

The National Assembly, the highest body in Indonesia's legislature, has already recognised the need for an overhaul of Indonesian laws related to land and natural resources. The study thus concludes with a number of concrete suggestions about the main legal reforms needed.

## **The impact of foreign debt**

At the Annual Meeting of the Governors of the Central Bank of Indonesia with the World Bank and the International Monetary Fund (IMF) in September 2006, the Indonesian government successfully negotiated for new loans. This means that the Indonesian state will be trapped even longer in the "loan scenario" which puts the country under the control of the two lending institutions.

Various megaprojects funded by such loans have resulted in serious human rights violations. One of the big infrastructure projects funded by the World Bank and the Asian Development Bank (ADB) is the gas pipeline in Sumatera. The Japan Bank for International Cooperation (JBIC) funds the Kotopanjang Dam in West Sumatera and Riau, and the Bili-Bili Dam in South Sulawesi. These projects have been met with opposition and protest from the people affected due to the severe impact they have on them. NGOs have played a significant role in the protests in terms of awareness raising, advocacy and legal support.

## **President attends the International Day of the World's Indigenous Peoples**

9 August 2006 was celebrated in Indonesia, as it was internationally, as Indigenous Peoples' Day. The event that took place in the capital Jakarta was unprecedented. Never before in Indonesia had the celebration been conducted on such a level. The President and representatives of various government institutions and development agencies attended. It was organised by the National Commission on Human Rights (Komnas HAM) with the support of the Department of Social Affairs, the Home Affairs Department and the Constitutional Court.

The most important message was delivered by the President, who stated that there should be more efforts to strengthen the protection and respect of indigenous peoples' rights in Indonesia. A similar statement was made by the Chief of Komnas HAM. In his speech he referred to the United Nations Declaration on the Rights of Indigenous Peoples, which failed to be adopted by the UN General Assembly last year. He also pointed to the importance of making an inventory of indigenous peoples in Indonesia as this could be the basis for obtaining legal status for indigenous peoples in accordance with Article 52 of Act no. 24/2003 on the Constitutional Court. The Act gives the Constitutional Court a mandate to ensure that laws are in line with constitutional provisions, and thus to amend or even cancel any law that it considers in violation of the Constitution. It was now time, he said, for the protection of indigenous peoples' rights to be addressed in a more systematic way.

AMAN's response to the outcome of the celebrations was a call for caution. While appreciating the government's declared intention to address indigenous peoples' rights, there is a danger in letting the state assume control of the definition of the concept of indigenous peoples. To avoid this, indigenous peoples' organisations and supporters need to engage in a discourse on, and promote the concept of, indigenous peoples in line with the principle of the right to self-definition. Indigenous organizations also need to analyse the government's strategy more closely, along with the possible motive behind its apparent openness towards indigenous peoples in recent times. □

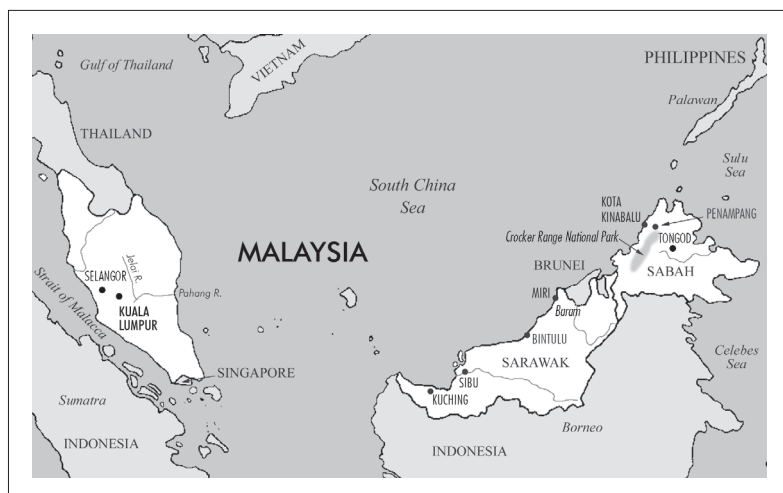
## Note

- 1 **Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo, Herbert Pane, 2006:** Promised Land: Palm Oil and Land Acquisition in Indonesia - Implications for Local Communities and Indigenous Peoples. Available as PDF at: [http://www.forestpeoples.org/documents/asia\\_pacific/bases/indonesia.shtml](http://www.forestpeoples.org/documents/asia_pacific/bases/indonesia.shtml)

## MALAYSIA

Overall, the indigenous peoples of Malaysia represent about 12% of the 28.6 million people in Malaysia. The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. They number 145,000, representing a mere 0.5% of the national population. Anthropologists and administrators have traditionally regarded the Orang Asli as consisting of three main groups comprising several distinct tribes or sub-groups. The main groups are the Negrito (Semang), the Senoi and the Aboriginal-Malay. In Sarawak, indigenous peoples are collectively called *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. The 39 different indigenous ethnic groups in Sabah are called natives or *Anak Negeri*, and make up about 60% of the 2.4 million population of the state. In Sarawak and Sabah, laws introduced by the British during their colonial rule, recognizing the customary land rights and customary law of the indigenous peoples, are still in place. However, they are not properly implemented and even outright ignored by the government, which gives priority to large-scale resource extraction and plantations of private companies over the rights and interests of the indigenous communities.

In 2006, the indigenous peoples of Malaysia continued their uphill struggle to gain recognition through various means. Although Malaysia voted in favour of the adoption of the Declaration on the Rights of Indigenous Peoples at the UN Human Rights Council in June, indigenous peoples were disappointed when it abstained in the vote on the Namibian Resolution during the UN General As-



sembly in September, which essentially delayed the adoption of this important international standard.

### In the courts

In April 2006, at the Kuala Lumpur Federal Court, the hearing of the government's application for leave to appeal against the landmark judgment recognising Orang Asli native land rights under common law earlier in 2006 had to be postponed because one of the judges, Justice Richard Malanjum, said he could not hear the case as he had made a similar judgement in 2005.<sup>1</sup> It was a bitter disappointment after the Court of Appeal had upheld a High Court's landmark ruling stating that the government, the Malaysian Highway Authority (MHA) and construction giant United Engineers Malaysia Bhd (UEM) should compensate Sagong Tasi and six others from the Temuan tribe under the Land Acquisition Act 1960 for the loss of their 38-acre customary land in Bukit Tampoi for the construction of the highway linking the Kuala Lumpur international airport to the national capital. Justice Malanjum was referring to the Court of Appeal in Sarawak which overturned the decision of another landmark case at the Kuching (Sarawak) High Court in 2005. This decision had recognized the Na-

tive Customary Rights of the Iban communities over land where the Sarawak government has issued two provisional 60-year leases to two companies involved in tree plantation and pulp making. What is most sad for indigenous peoples in Malaysia is that Justice Malanjum himself is an indigenous person.

Other court cases in the three distinct regions of Peninsular Malaysia, Sabah and Sarawak found no success this year, though indigenous peoples continue to use legal redress as one way of gaining recognition of their rights.

### **Sustainable forest management or timber certification?**

Discussions on timber certification have continued to dominate the debate in Malaysia since 2001 when 14 NGOs and community organisations withdrew from the Malaysian Timber Certification Council (MTCC) process because of its failure to fully recognise and protect the customary land rights, tenures and user rights of indigenous communities over their forests. During a public hearing conducted by the Parliamentary Select Committee on Integrity in Sarawak in August 2006, the MTCC was again criticized for being more interested in securing a market for local wood products than promoting social and environmental justice.<sup>2</sup> Indigenous groups told the MTCC that the fundamental problem in implementing the Forest Management Units (FMU) certification scheme was that it requires the creation of Permanent Forest Estates (PFE). The establishment of PFEs and tree plantations, and the development of sustainable management and community forestry, among other things, were an attempt by the federal government in 1999 to keep up with changing times and to “green” the National Forestry Policy. It has now become apparent that the nature of the PFEs is not so “permanent” after all, and, in fact, they were used to extinguish rights over the lands and resources of affected indigenous peoples. The sustainable forest management approach in Malaysia has subsequently focused more on timber certification than forest certification. The timber certification process that the MTCC developed in 1998 involves an elaborate verification process. The process calls for, among other things, transparency, accountability, public consultations, peer review

and public disclosure of information. In order to project the image that they are following the required procedures, the MTCC invited social and environmental groups and indigenous organisations to be involved in the process of reviewing, discussing and improving the Malaysian Criteria and Indicators for “sustainable forest management”. However, concerns expressed by indigenous peoples were not adequately addressed. A serious mistake was made when the MTCC granted a Certificate for Sustainable Forest Management in October 2004 to Samling Plywood (Baramas) Sdn. Bhd. – a Malaysian timber company belonging to the Miri-based Samling group – for its logging operation in the Sela’an-Linau Forest Management Unit (FMU) in Sarawak. This FMU encroached upon an area over which the Penans claim to have Native Customary Rights, and which had already been submitted to the court in 1998.<sup>3</sup> In the months to come, the situation of the Penan in this area is expected to become serious. Indigenous peoples continue to bring this to the attention of the international community, while Samling is demanding that the MTCC remove the blockade that was put up by the Penans to stop logging of their forest. Since the 1970s, the police have been used to break Penan blockades, clearly showing that they are on the side of the timber companies.

As of 2006, FMUs covering an area of 4.73 million hectares had been certified by the MTCC, and 83 companies from the timber-based industries were holders of MTCC certificates. Meanwhile, the MTCC has formed a technical working group to develop a certification standard for plantation forests based on the international FSC standard’s principles and criteria for sustainable production.

In Sarawak, indigenous communities continue to face a tough battle to protect their lands as the state government continues to disregard their appeal. There is very limited participation of indigenous communities in forest management, and their voice is, at best, regarded as informal input. Environmental impact assessment legislation does not adequately protect water catchment areas from being logged as the timber licensing process continues to be controlled by those in power. As Ross<sup>4</sup> wrote:

*Politicians in Sarawak typically received shares in license-holding firms, or in timber processing firms, rather than licenses themselves; many have*

*paid only nominal sums as little as one Malaysian ringgit – to receive these shares. In the 1990s, the chief minister's typical "gift" to a member of the assembly was worth 5 to 10 million ringgit (2 to 4 million US dollars). Besides members of the assembly, Rahman Ya'akub and Taib (Sarawak's Chief Minister) gave concession shares to other important state and local officials; to Sarawak's representatives in the federal parliament; and to members of their own families.*

All these developments are in direct contradiction to the recommendations of the International Timber Trade Organisation and other international standards. As a result, indigenous peoples have resorted to numerous court battles and are putting up their own resistance in the form of blockades. In 2006 alone, four blockades were set up in Long Benali, Ba Abang, Bario and Limbang in the northern part of Sarawak.

Many Sarawak logging companies are responsible for destroying forests all over the world. According to the World Rainforest Movement and Forests Monitor report of 1998, between 1990 and 1997, Malaysian logging operations were found in Africa (Gabon, Cameroon, Democratic Republic of Congo, Malawi, Zimbabwe, Madagascar, Liberia, Equatorial Guinea), Central and South America (Belize, Brazil, Guyana, Suriname), Asia (Cambodia, Myanmar, Indonesia, Laos), the Pacific (Papua New Guinea, Solomon Islands, New Zealand, Vanuatu) and Russia. The Malaysian ventures include aborted, proposed and exploratory leases, log supply agreements, and concessions. At least two loggers rank among the top twenty richest Malaysians. Tiong Hew King of Rimbunan Hijau, Malaysia's largest logging company, ranks ninth with some 1.528 billion Ringgit (325million) in wealth and Yaw Teck Seng, alias Hiew Teck Seng of Samling, ranks seventeenth with some 589 million Ringgit (125million).<sup>5</sup>

## **Mega plantations**

It is the experience of many indigenous communities that, after logging, plantation industries take over, effectively denying any hope of the indigenous communities recovering the lands that were given as

concessions to the logging companies. The Malaysian Oil Palm Board Director General boasts:

The Malaysian oil palm industry recorded an impressive performance in 2006. Export earnings of oil palm products rose to a record RM 31.8 billion, while palm oil stocks declined and prices firmed up sharply especially during the last quarter of the year. The industry also saw exciting developments shaping up in the local biofuel industry with the Honourable Prime Minister launching the Envo Diesel (palm oil blend with diesel) and the first integrated palm oil biodiesel were established in March and August 2006 respectively.

The total oil palm planted area increased by 2.8% to 4.17 million hectares in 2006. The area expansion occurred mainly in Sabah and Sarawak with a combined growth of 4.5% compared to 1.6% in Peninsular Malaysia. Sabah remained the largest oil palm planted State with 1.24 million hectares or 30% of the total planted area. The production of crude palm oil increased further by 6.1% to 15.9 million tonnes in 2006 from 15.0 million tonnes the previous year.<sup>6</sup>

In his statement, there is no mention about the suffering of the indigenous peoples whose lands were taken for the plantations.

The Tongod case in Sabah, although still pending, is receiving a great deal of attention from the government (see *The Indigenous World 2005, 2004*). The communities continue to build up their strength in the face of ongoing efforts by the oil palm company to encroach on the area. In 2006, they held a special ceremony to commemorate "*Tinom-pok*", the special stone boundary markings made during the British period that now represent important evidence of their relationship with this area.

In April 2006, the Iban headman, Tuai Rumah Ladon, and 14 others from Bawan-Balingian River, Mukah (in the mid-western part of Sarawak), received a high court order to dismantle their five-month-old blockade against the operations of Sarawak Plantation Agricultural Development Sendrian Berhad. The dispute dates back three decades when, in the mid 1970s, the communities were persuaded to lend about 5,600 hectares of native customary rights land to the Sarawak Land Development Board (SLDB) to establish an oil palm plantation. They came to an agreement for a term of 25 years with a payment of 50 Ringgit (about US\$14) per acre. In 1998, before the term's expiry in

2000, Sarawak Plantation took over the project without the consent of the owners of the land. Several attempts by the communities to have their lands returned yielded no result. Eventually, the community decided to take legal action against the state government as well as Sarawak Plantation in 2005. At the same time, they started a peaceful protest by blocking the road. The communities refused to take down the protest banners which have been erected at the entrance to the plantation road since 25 November 2005 and vow to continue the 24-hour vigil until the dispute comes to a settlement.

## **Bakun dam**

For the five communities who opted to remain when the Bakun dam was constructed in the interior north-eastern part of Sarawak, preparations for the court hearing scheduled for November 2007 have begun in earnest. The communities are claiming more compensation for the crops and heritage destroyed when the dam was built. Ongoing community mapping to collect evidence and artefacts is being organized as people contend that the survey conducted on the ground was not properly carried out. Meanwhile, legal representatives were in chamber for a case management discussion because the Sarawak Land and Survey Department failed to produce relevant documents.

## **Positive Developments**

Some positive developments can be reported with regard to the indigenous peoples affected by the Crocker Range Park in Sabah, who had hitherto been strictly prohibited from accessing resources within the park boundaries. Indigenous peoples have been actively negotiating with the state's Sabah Parks authorities for the last three years to allow a more progressive park management, i.e. more collaboration between communities and the Park authorities. In 2006, a project of the Regional Collaborative Management Learning Network under the Asia Indigenous Peoples' Pact (AIPP), locally implemented by PACOS Trust, Sabah Parks and indigenous communities, as well as other initiatives

in the Crocker Range Park, resulted in an initial agreement to recognise Community Use Zones. This would imply amending the Parks (Amendment) Enactment 2002 to include the formal participation of indigenous communities in the management of the Park. Having a Community Use Zone would mean that communities can continue to have access to the designated traditional areas for hunting, fishing, collection of forest products etc., and at the same time exercise responsibility over the conservation of the area. One contention that remains is the designated area – the communities want their traditional areas that they have conserved, and not areas designated by the Park authorities

Another positive development is the recognition and financial support from the Danish International Development Agency (DANIDA) for the promotion of indigenous issues and participation of indigenous peoples in biodiversity conservation. The Danish Environmental Assistance to Malaysia, which is implemented under the Malaysia-Danish Environmental Cooperation Programme now has a Civil Society Sub-Component to supplement the Biodiversity Component for 2006-2009. This necessitated the identification of and subsequent support for a full-time indigenous focal point to help improve coordination and knowledge management between indigenous organisations, women's NGOs, environmental NGOs and other stakeholders. The Malaysian Indigenous Peoples' Network (IPNM-JOAS) has taken this opportunity to strengthen its network. □

## Notes

- 1 [www.coac.org.my](http://www.coac.org.my)
- 2 [www.rengah.c2o.org/](http://www.rengah.c2o.org/)
- 3 **Yong, Carol, 2006:** *Forest Governance in Malaysia: An NGO Perspective*. A report produced for FERN by JOANGO Hutan.
- 4 **Ross, Michael L., 2001:** *Timber Booms and Institutional Breakdown in Southeast Asia*. Cambridge: Cambridge University Press, p. 153, citing INSAN 1989, Pura 1990, Leigh 1991.
- 5 Yong, Carol op. cit.
- 6 [http://econ.mpob.gov.my/economy/EID\\_Review06.htm](http://econ.mpob.gov.my/economy/EID_Review06.htm)

## THAILAND

The indigenous peoples of Thailand live in two geographical regions of the country: indigenous fisher communities (the *chao-lae*) and a small population of hunter-gatherers in the south of Thailand, and the many different highland peoples living in the north and north-west of the country. With the drawing of national boundaries in Southeast Asia during the colonial era, many peoples living in highland areas were divided. Nine so-called “hill tribes” are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu. According to the official survey of 2002, there are 923,257 “hill tribe people” living in 20 provinces in the north and west of the country.

All indigenous peoples of Thailand share a similar experience of discriminatory policies from the government. A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Although over the past decade there have been positive developments away from this approach, it continues to underlie the attitudes and actions of government officials.

### Political situation

In 2006, Thailand plunged into a deep political crisis which had a considerable impact on the indigenous peoples’ movement. The key factors leading to the crisis were: 1. the political conflict between sup-



porters and opponents of the former Prime Minister Thaksin Shinawatra; 2. the conflict of interests between national policy and business development; 3. the partiality and corruption of supposedly independent constitutional bodies such as the Constitutional Court and the Election Commission; 4. the increasing control of the media by the

Thaksin administration; 5. the armed conflict in the southern provinces.

The conflict between supporters and opponents of Thaksin had the severest impact on indigenous communities since it divided friends, families and communities. The political crisis culminated in the coup of 19 September 2006, when the military took over the government and abolished the 1997 Constitution. Since then, the country has been ruled by the Council of National Security (CNS), which appointed a new Prime Minister and replaced the 200 members of the National Assembly.

Indigenous communities faced harsher conditions after the country came under Martial Law and intensive militarization. It resulted in more check points in some border areas and more surveillance of NGOs, peoples' movement leaders and anti-coup activists. Since the coup, forced or attempted forced evictions on the pretext of forest conservation have been reported in at least two indigenous communities in Chiangmai and Chiangrai provinces in the north. The eviction operations were jointly conducted by military personnel and other state agencies. This, however, does not represent a new development since forced evictions also took place during the previous democratic governments.

## **Indigenous peoples' citizenship rights**

The lack of citizenship has been a long-standing cause of human rights violations committed against indigenous people in Thailand. Without citizenship, there is no guarantee of fundamental rights. Freedom of movement is limited, health care is limited, and children and university students without citizenship cannot obtain proper education certificates. A solution to the citizenship problem has not yet been reached. There are currently 480,000 stateless indigenous persons in Thailand. Of these, 120,000 persons have been granted permanent resident status, 300,000 are awaiting a decision on their request for permanent resident status, and the remaining 60,000 are stateless children who attend school. However, these figures do not account for those left out of the national census.

A cabinet resolution of 18 January 2005 outlined a plan to speed up the processing of citizenship applications in order to eliminate the lack of citizenship among the so-called "hill tribe population" of Thailand. In practice, however, the resolution has not been implemented fully since the National Security Council and the Interior Ministry did not show their support, and many local officers have not worked sincerely to solve the existing problems. Furthermore, the 2006 nationwide political conflict led to a complete standstill.

The process of granting citizenship is complex and frequently delayed. Throughout the whole of 2006, there was no attempt to improve the citizenship application process, and the number of pending applications in 2006 remained the same as in 2005, in spite of the Cabinet Resolution of 18 January 2005. The national Network of Indigenous and Highland Peoples, of which the Highland Peoples' Taskforce runs the secretariat, submitted a petition to urge all relevant government agencies to implement the plan according to the Cabinet Resolution. However, its implementation seems to have been left unattended so far.

There was some progress, however, with respect to stateless children. The respective Cabinet Resolution of 5 July 2005 seems to have had some results. The Cabinet Resolution provides free education for all stateless children in Thailand until high school level. The Ministry of Interior and the Ministry of Education jointly conducted a survey of stateless children in all schools in Thailand and set up a program through which they can apply for Thai citizenship.

In 2006, all schools at district level were surveyed and the results show that there are at least 40,000 stateless children attending schools. 50% of these have already obtained the 13-digit ID number. The applications of the other 20,000 are in the process of approval. However, it has been estimated that there are at least another 20,000 stateless children that will still be left undocumented.

In the above-mentioned Cabinet Resolution of 18 January 2005, indigenous people are subsumed into the same category as migrant workers from neighboring countries. As a result, the rights of these indigenous peoples are not recognized. Even worse, a cabinet resolution of 20 December 2005 stated that the "migrant workers' policy will emphasize the strategic plan to solve immediate problems but not rec-

ognize the principle of human rights in this case". It is believed that this utterly problematic phrase opened the door to abuse by local authorities, including police, military, forestry officials and others in a more strict enforcement of the regulations and laws.

## **National and local policies and plans**

Several national policies have both a negative and positive impact on Thailand's indigenous peoples.

### **Free Trade Agreements**

Thailand has signed Free Trade Agreements (FTA) with a number of countries. However, unlike lowland farmers, indigenous peoples from the highlands do not seem to be negatively affected by them. The FTA with China brings a lot of cheap fruits and other commodities into Thailand. The indigenous seem to benefit from the cheap goods rather than lose market share since they produce products, such as coffee, that do not as yet face any competition.

### **Natural resource management policies**

In 2004, the government launched the New National Policy on Forestry and Natural Resource Management and the 3<sup>rd</sup> Master Plan on Highland Resources Management (2004-2006). Both projects aim to relocate people in forest and highland areas for the sake of national security, environmental conservation and drug suppression. The 3<sup>rd</sup> Master Plan clearly states that, "The communities which are not 'state-recognized villages' as defined by government agencies will be considered for relocation". 1,115 communities belong to this category of non-state-recognized villages, a large percentage of which are indigenous communities. In implementation of these policies, more cases of forced eviction and attempted forced eviction of indigenous communities in the northern provinces of Thailand took place in the year 2006. Two examples will illustrate the government's prevailing approach.

On 10 September 2006, district officers together with Forestry Department officials and other joint operators (approximately 300 persons in total), armed with weapons, came to a Lisu and Akha village in Huay-kon, Pa-tum Sub-district, Pharo District, Chiangmai Province. They arrested and charged 34 heads of household with forest encroachment offences. The authorities then forced all the inhabitants to leave the village area immediately. The actions of the state authorities on that day were very brutal and constituted a severe violation of the indigenous villagers' rights. There was no preparation of a new resettlement area or other facilities for those who were forcibly evicted.

On 29 November 2006, eight state officials<sup>1</sup> went to Na-On village in Pieng-luang Sub-District, Vienghaeng District, Chiangmai Province. They told the 13 families (52 persons) of the village that they had to leave by 9.00 a.m. the next day. They were told that if they did not leave, their houses would be destroyed and they would all be criminally charged and legal action would be taken against them. Although Na-on village is 42 years old, the state authorities cited the recent problem of increasing deforestation as the reason why the villagers had to evacuate immediately. No preparations were made for the displaced villagers. There were no provisions made for cultivable land or adequate housing in the resettlement area. However, due to some publicity and the intervention of the Highland Peoples' Taskforce, the eviction was postponed.

### **National health care scheme**

In 2006, the government continued with its 30-Baht national health care scheme (which is a *de facto* free health care service, with patients having to pay only a fee of 30 Baht or about 75 US cents). This scheme is, however, not fully available to the indigenous people, especially those who do not have Thai citizenship.

A Cabinet Resolution tried to address the problem of lack of health care services for indigenous and migrant people in Thailand. The Network of Indigenous and Highland Peoples and the Northern Farmers Federation have submitted several petitions to the Thai government through the National Health Care Committee, demanding equal access to health services and for an overall review of the discriminatory

policies against indigenous people who have no citizenship. The then Thaksin government ignored the call and affirmed that non-Thai citizens were not eligible for free medical treatment.

## **War on drugs and migrants continues**

During the government-sponsored "War on Drugs" campaign in 2003, a large number of bandits and drug traffickers, but also many innocent people, were extrajudicially killed by police officers. So far, there has been no criminal investigation into the War on Drugs. There have been no cases filed against the authorities committing these extrajudicial killings, and no compensation given to the innocent victims. Many of the innocent people who were targeted under this policy were indigenous. The victims' relatives have been too afraid to file complaints, given that in this case the criminal justice system has not operated in accordance with the rule of law. The lack of a monitoring mechanism for Thailand's criminal justice system has compounded the problem. In 2005 and 2006, according to the Drug Suppression policy, there is still suspicion that indigenous people are involved in the drugs trade along the long Thai-Burma border.

## **Indigenous peoples and the democratic movement**

The Highland Peoples' Taskforce (HPT) has participated in the national movement promoting a participatory national democratic process. Indigenous peoples have for years been part of general NGO networks and issue-based networks addressing concerns related to land and resource management, community forests, the AIDS epidemic or health care.

The Highland Peoples' Taskforce (HPT) also participated in the Thai Social Forum in 2006 and took part in the National Campaign against the Thaksin government under the leadership of the People's Alliance for Democracy (PAD). Together with the NGO Coordination of Thailand (NGO-Cord), the Highland Peoples' Taskforce (HPT) participated as a key member of the northern region and is also a member

of the national NGO-Cord Committee. NGO-Cord has initiated a people's movement for participation in the upcoming drafting of the new Constitution of 2007. A number of indigenous peoples' networks, including IMPECT, CONTO, the Alliance of Indigenous and Tribal Peoples of Thailand, the Northern Farmers Federation and Academics for Marginalized Groups, have formed the "indigenous peoples' network for the Constitution". The Highland Peoples' Taskforce (HPT) is performing the role of secretariat to this network. The network aims to create a democratic space for indigenous peoples' participation in the forthcoming drafting of the new Constitution.

We stand in opposition to the military coup and administration by a military government, and condemn the abolition of the 1997 Constitution. Although it ended the 2006 political crisis, it is an unacceptable solution because it has destroyed all democratic means and institutions and disempowered the people.

Wiwat Tamee is a Lisu from Chiangrai Province. He presently works as the Project Manager of the Highland Peoples' Taskforce (HPT), a secretariat office of a network of 12 indigenous and highland peoples in Thailand. HPT aims to promote and protect the human rights of indigenous and highland peoples in Thailand. □

## Note

- 1 Consisting of military officers, officers from the Pae-sam Royal Project, Chiang Dao district forestry officers and village headmen of Pae-sam Moo 6 and Pieng Luang Moo 1. A *moo* is the smallest administrative unit of the state.

## CAMBODIA

Compared to its neighbours in Southeast Asia, Cambodia has the smallest indigenous minority population, both in relative and absolute terms.<sup>1</sup> The country's majority ethnic Khmer account for approximately ninety percent of the population.

The 1998 Cambodian Population Census identified 17 different indigenous groups. Based on spoken language, the census estimated the indigenous population at around 101,000 people, or 0.9 percent of the then total population of 11.4 million. Empirical research, however, suggests that the figure is most likely underestimated and could be as high as 190,000 people, or 1.4 percent of Cambodia's population.<sup>2</sup>

The Cambodian Constitution (1993) guarantees all Cambodians<sup>3</sup> the same rights, regardless of race, colour, language or religious belief. There is little recognition of the specific rights of indigenous peoples in Cambodian legislation, however. Nonetheless, the promulgation of the 2001 Cambodian Land Law has marked an unprecedented period of explicit legal recognition of collective indigenous land rights on the part of the state. The 2002 Forestry Law also makes explicit reference to the rights of indigenous communities.

Cambodia is a signatory to a number of international instruments that protect the rights of indigenous peoples.<sup>4</sup> Cambodia is also a party to the Convention on Biological Diversity (1992), which recognizes the role of indigenous peoples in protecting biodiversity.



## Land concessions

During 2006, land alienation among indigenous communities continued to worsen and spread to other areas of Cambodia. New commercial land concessions for the development of plantations, covering more than 100,000 hectares, were granted on indigenous communities' land or land that they use in Kratie, Stung Treng, Oddar

Meanchey, and Preah Vihear provinces. This is in addition to existing land concessions in Ratanakiri, Mondulakiri and Kompong Thom. Many of these concessions have been actively resisted by the local indigenous communities.

Wuzhishan, a Chinese company, continues to work on a large pine plantation in Mondulakiri province, on land belonging to Punong communities; as a result of resistance by communities, the Government has asked the company to reduce the size of its concession somewhat. In Preah Vihear, a Chinese Company (Sui Gang) announced that it would not develop a rubber plantation (which would have impacted on Kui communities) as planned because the plan was so unpopular. Conversely, development of a tourism concession in an area sacred to the Suoy people in Kompong Speu province by a Chinese Company (New Cosmos) continues, despite local resistance.

A World Bank project (Land Allocation for Social and Economic Development - LASED) to help the Cambodian government distribute land to landless families through a mechanism called "social concessions" has moved forward in areas of indigenous communities in Kratie and Kompong Cham provinces. The potential impact on the communities is unclear. In many other areas, indigenous communities are being told by government officials and business people that they will have their lands taken for social concessions (or other reasons). They are told they would do best to sell illegally now rather than have land taken in the future with no compensation at all. This has been fuelling very socially disruptive corruption.

## **Land title registration**

The 2001 Land Law includes a chapter on registration of the communal lands of indigenous communities, providing a mechanism to safeguard this land in the form of communal land titles. However, no such titles have yet been granted.

In 2006, the Ministry of the Interior worked on developing by-laws for indigenous communities that would serve as the basis for guidelines, to be applied across the country, enabling them to register their

lands. These communities are expected to be recognised as legal entities by early 2007.

Many observers are now of the opinion that the government is using the process to *appear* committed to indigenous peoples' land rights – making it slow, while allowing illegal land alienation (many officials being involved in this) and issuing more and more industrial land use and mining concessions. Some within government, however, are supportive.

In the interim, some indigenous communities in Preah Vihear and Kompong Thom provinces have begun mapping their own lands in preparation for making claims for communal title.

### **Illegal land alienation**

Despite the favourable regulations for indigenous communities in the 2001 Land Law, lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and state interests, which are increasingly attracted to exploiting the economic potential of the forests and upland areas traditionally used and managed by indigenous communities. Alienation of indigenous land rights as a result of illegal land transactions has been plaguing many of the indigenous communities in the country, especially those in the North-east. In some areas the problem is acute, resulting in the dissolution of a number of communities. The onset of widespread social disintegration is being predicted by many.

Road development continues to impact seriously on indigenous communities. Massive land grabbing has been associated with the construction of a road from Mondulkiri to Ratanakiri province, and from Kratie to Stung Treng province. News of a planned road development to be funded by the World Bank in Preah Vihear province has led to increased land grabbing in Kui communities by outsiders.

The trading of land has also involved many indigenous persons. Some have not known about the laws, some have been encouraged to sell and broker sales by outsiders, others have again lost hope in the social and legal system and decided to follow the lead of thinking short term rather than following indigenous traditions. In some cases the

problem has become so severe that the majority of indigenous villagers have been involved in selling off their community land and, occasionally, even the land of neighbouring communities.

Indigenous peoples' attempts to tackle land grabbing have been frustrated by the courts and many in government. In a notable case in Ratanakiri province (in Ekapheap commune), a court upheld a land grab on land belonging to a Tampuen community. In 2007 there will be a major legal challenge to a land deal in Gong Yu village in Ratanakiri. This deal, by the family of the Minister of Economics and Finance and the Secretary of State for Land, is clearly illegal and has involved threats, coercion, corruption and the transformation of indigenous peoples' land into a private rubber plantation.

## Forestry issues

In January 2002, the Royal Government of Cambodia imposed a moratorium on logging in forest concessions. However, it has now begun to allocate logging areas to companies for annual harvesting rights, in some cases in areas used by indigenous communities. One annual *coupe* was granted over an area in Ratanakiri province, used by Kreung communities, in order to produce luxury timber for a new National Assembly building. Logging was approved without adequate consultation of indigenous communities residing in and around the allocated forest area. Communities and NGOs, after finally receiving a copy of the logging plans, investigated adherence to the plan and found significant departures and mismanagement.

Despite the moratorium on logging, uncontrolled logging continues under the umbrella of the land concession system. Commercial land concessions for large agro-industry projects frequently involve clearcutting in forest areas. Anarchic logging also continues in much of the country. In some areas of Kratie, Mondulkiri and Preah Vihear provinces, indigenous communities have patrolled forest areas themselves when the official structures proved ineffective.

The Forest Administration has implemented a new policy this year of "reclaiming forest land for the state". In Stung Treng and Kratie provinces, officials have tried to take away land that indigenous peo-

ple have cleared for farming. In Kratie, three members of a Stieng family were arrested and held in jail for several months, charged with clearing forest land. The community claim that the family were community activists settling their previously farmed land in an attempt to halt land grabbing and concessions.

## **Mining**

In 2006, the Government announced that 100,000 hectares of land was being granted to Japanese and Australian companies for mineral exploitation in north-eastern Cambodia. Most of this would be in areas owned or used by indigenous communities, and overlapping with areas previously granted to the Wuzhishan pine plantation concession. This is in addition to mines already existing on indigenous communities' land in Ratanakiri and Preah Vihear provinces. In Stung Treng, development of an iron mine on indigenous land has slowed recently.

The continued granting of mining concessions over areas of indigenous peoples' lands is a relatively recent trend, and one that indigenous communities have not yet found ways to deal with effectively. The Land Law provides no protection against this and there has been significant growth in the idea that indigenous peoples' land must be industrialised "in the national interest".

## **Hydro-electric dams**

Extreme problems have been reported since mid-1996 as a result of hydropower dams located on the Sesan River in Vietnam, which flows through Ratanakiri and Stung Treng provinces in the north-east of Cambodia. Many of the communities located along this river are indigenous. The dams have resulted in deaths from flooding, erratic river levels, worsened water quality, increased health problems and a severe decline in fisheries and riverine biodiversity, and they continue to threaten the livelihoods and lives of the people who depend on the river.

While these problems continue, they are likely to be exacerbated by more dams, which have already been commenced or are being planned in Vietnam and Lao PDR, on the Sesan, Srepok, Sekong and Mekong rivers. These dams are being planned or built without adequate impact assessments having been undertaken for those dams already built, without any rectification of the problems and without first conducting serious environmental and social impact assessments. International donor agencies and multilateral banks continue to support and validate their construction by supporting associated projects such as power line construction and feasibility studies.

In addition, it has been announced over the past year that the Cambodian and Vietnamese governments have signed agreements for the construction of two hydropower dam projects, to be built on the Sesan and Srepok rivers inside Cambodia. Like the Sesan, many of the communities along the Srepok are indigenous. There are very strong local concerns that industrial power generation and the model of industrial development that it supports have profound and long-term negative impacts on the lives of indigenous people. All of these dams are being built despite the opposition of the communities who live along these rivers.

## **Culture and language**

Indigenous people continue to be ridiculed and looked down upon, and many prefer assimilation into the dominant Khmer culture to resistance. Cultural assimilation continues to be an important issue confronting many indigenous groups. A "Cultural Village" near the Angkor Wat temple complex draws tens of thousands of visitors, and its attractions include mock Punong and Kreung villages that portray them as primitive people.

In some areas, however, indigenous people have begun to become more aware of the importance of reaffirming their ethnic identity. Language classes in the Por, Stieng and Kui languages have been held to help children learn their parents' language.

## Education

There are still very few indigenous people with high levels of formal education. There are at present only around 20 university students who are indigenous.

In 2006, indigenous university students set up the Cambodian Indigenous Youth Association, one of the roles of which is to support indigenous students in their efforts to pursue higher education and to support indigenous culture and society. The expansion of bilingual education into north-eastern provinces continues.

## Indigenous peoples' organizations and networking

Indigenous peoples have continued to organize themselves into networks at different levels. They have organized at district level in a number of districts in Preah Vihear, Kratie and Monduliri provinces. The Highlanders Association in Ratanakiri province, Cambodia's oldest indigenous organization, continues to function. A Kui organization working in Preah Vihear and Kompong Thom provinces (the Organization to Promote Kui Culture, or OPKC) continues.

Indigenous people in the north-eastern provinces have begun to organize into a network, and a national-level Indigenous Minorities Network continues to function. Through these networks, indigenous people are working together to develop joint advocacy strategies on the rights of Cambodia's indigenous peoples to their lands and to self-determined development.

In 2006, indigenous people in Cambodia made more contact with indigenous people in other countries through the Asia Indigenous Peoples Pact (AIPP), a regional indigenous peoples' organization. In early 2007, Cambodia will host several regional events for indigenous peoples, also with the aim of allowing regional indigenous advocates to see the situation in Cambodia and take the concerns up at international level.

## Security

Of increasing concern is the number of indigenous (and non-indigenous) activists being arrested, often illegally, for resisting attempts at land and forest alienation on the part of rich and powerful people and companies. Cases in several provinces have shown how this has played a role in targeting intimidation against indigenous activists, who have had to resort to non-violent protest in attempts to get forest and land issues addressed.

## Conclusions

Many indigenous communities in Cambodia are at a critical juncture, particularly with regard to land and natural resource rights. Cambodia has policies and regulations that provide for the recognition and protection of the rights of indigenous peoples to their lands. There is a unique opportunity to prevent and reverse the process of land alienation and impoverishment of indigenous communities. It is imperative that the challenges are taken up in order to avoid the worst possible consequences.

Unfortunately, indigenous land issues are just one part of a general degradation of poor people's rights to resources within a general context of what some say is a worsening human rights situation throughout the whole country. Unless there is serious international attention given to this situation, the outlook for indigenous peoples is bleak. □

This article draws upon a document prepared by the NGO Forum on Cambodia

## Notes and references

- 1 **Ovesen, J. and I.-B Trankell, 2004:** Foreigners and Honorary Khmers. Ethnic Minorities in Cambodia. In: Duncan C.R. (ed.): *Civilizing the Margins. Southeast Asian Government Policies for the Development of Minorities*, pp. 241-269. Ithaca: Cornell University Press.

- 2 According to the Statistical Year Book, Cambodia's total population was 13.8 million in 2005.
- 3 In the English translation, the term used in the Constitution is "Khmer citizens", but it is generally recognized that this term applies to Khmers and minority groups alike.
- 4 This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

## LAOS

Laos is the most ethnically diverse country in mainland South-east Asia, with a population approaching 6 million. The ethnic Lao, comprising around 30%, dominate the country. Around one third of the population have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-Ieu Mien families. These groups are sometimes considered to be the “indigenous peoples” of Laos. Officially all ethnic groups have equal status and therefore the concept of “indigenous peoples” is not generally recognized. The Lao government recognizes over 100 ethnic sub-groups within 49 ethnic groups. Some researchers have estimated there to be well over 200 ethnic groups throughout the country.

The indigenous people of Laos reside predominantly in mountainous areas.

They are generally economically worse off than Lao groups, and dominate almost all of Laos’ 47 poorest districts. They experience various livelihood related challenges, and their lands and resources are under increasing pressure from government development policies and industrial natural resource exploitation (tree plantations, mining concessions and the construction of large hydroelectric dams). There is no specific legislation in Laos with regard to indigenous peoples.

### Opium cultivation officially eradicated but problems remain

Opium cultivation was officially eradicated in Laos by March 2005 (see *The Indigenous World* 2006) but the government estimates that there are still 11,000 untreated opium addicts in the country,<sup>1</sup> and 1,000



villages reportedly require immediate assistance to prevent them from returning to opium cultivation.<sup>2</sup> According to Amnesty International, approximately 65,000 people have been displaced as a result of the opium eradication campaign, to places where their basic needs are not being met.<sup>3</sup>

The Chair of the Lao National Commission for Drug Control and Supervision, Souban Srithirath, told the Vientiane Times that many villages would need to be consolidated into larger villages, in order for the government to be able to promote economic growth and provide access to education and health care.<sup>4</sup> However, it has been clearly dem-

onstrated that resettling villages, including consolidating them, can result in serious livelihood, health and socio-cultural problems for indigenous people, who make up the vast majority of former opium growers (see *The Indigenous World* 2006, 2005, 2004, 2002-2003).

Many former opium addicts, and others, have become addicted to amphetamines, and it is now estimated that there are 35,000 amphetamine addicts in the country.<sup>5</sup> A drug control official from Xieng Khouang province was quoted as saying that the amphetamine problem was spreading to villagers in remote areas around the province.<sup>6</sup> It is certainly more than a coincidence that the amphetamine problem emerged at virtually the same time as the government began pushing hard, with foreign donor assistance, to eradicate opium cultivation.

## **Conflicts with Hmong continue to attract attention**

During the Vietnam war, the US provided various forms of air support to the Royal Lao Army in its secret war against the communist Pathet Lao and North Vietnamese. As a result of the 1954 and 1962 Geneva Accords that officially declared Laos' neutrality, the US was not allowed to base any ground forces in Laos. Instead, America's Central Intelligence Agency (CIA) helped train, support and finance ethnic minorities willing to fight the communists. The Hmong in northern Laos, led by Vang Pao, were the most important CIA-supported military force in Laos. After many years of fierce fighting, a peace agreement was signed in 1973 that allowed the US to withdraw from the war. However, by 1975 the Pathet Lao had orchestrated the take-over of Laos, forcing Vang Pao's Hmong to face their enemies. The result was a mass exodus of Hmong to refugee camps in Thailand and China, and many Hmong became insurgents in Laos and continued fighting the Pathet Lao. A low-level insurgency continues to this day.

In January 2006, Xaysomboun Special Zone, a military-administrated part of central Laos that was set up in order to suppress Hmong rebel activity, was dissolved, with its two districts being reintegrated into Vientiane and Xieng Khouang provinces.<sup>7</sup> This administrative change could be interpreted as representing an improvement in the security situation, including a reduction in rebel activity. However, in

December 2006 there were reports of heavy fighting between Hmong rebels and Vietnamese army units supporting the Lao Army in Phoukout district, Xieng Khouang province, indicating that problems are far from over.

Amnesty International reported that on April 6, 2006, about 20 km north-east of the tourist destination of Vang Vieng, at least 26 Hmong, mainly unarmed women and children, were killed by Lao government troops, apparently due to their links with Hmong insurgents.<sup>8</sup>

Amnesty International also expressed concern at the whereabouts of 27 Hmong, most of them children, who had been held by the government in Laos since December 5, 2005, after the group was forcibly returned to Laos from Thailand.<sup>9</sup> A large number of Hmong insurgents, including women, children and the elderly, surrendered to the government in 2005 due to a lack of food and basic medical care, and their whereabouts is presently unknown.<sup>10</sup>

Over the last year, assassins in Thailand have also killed a number of Hmong believed to be connected with rebel activity in Laos.

## **Swidden agriculture rhetoric continues to decline**

In 2006, government rhetoric surrounding the need to eradicate or substantially decrease swidden agriculture almost disappeared from the Lao media, particularly from communications of the Ministry of Agriculture and Forestry. However, in October 2006, Tong Yeutho, the Hmong Vice President of the Lao Front for National Construction (LFNC), the government body responsible for ethnic affairs, stated that the government still expected to eradicate "slash and burn agriculture" in Laos by 2010. Contradicting previous studies indicating that efforts to reduce swidden agriculture in Laos had actually increased poverty (see *The Indigenous World* 2006, 2005, 2002-2003), Tong Yeutho was quoted as saying, "People will be able to produce sufficient rice if they give up slash-and-burn cultivation." He also said that the LFNC intended to work hard to convince people in rural areas to abandon swidden agriculture.<sup>12</sup>

## Internal resettlement still occurring

Government rhetoric in support of resettling villages to lowland areas and adjacent to large roads also subsided in 2006, probably due to the increased recognition that much of the resettlement implemented in previous years has resulted in serious problems for local people. Criticism of internal resettlement by donor agencies and others working in Laos (see *The Indigenous World* 2006, 2005, 2004; 2002-2003) has probably also contributed to government sensitivity regarding this controversial issue.

However, while the government position regarding internal resettlement in Laos appears to have moderated in recent years, some internal resettlement continued to take place in 2006, and more is planned in the coming years. It appears that the government is continuing to support the idea that internal resettlement, including village consolidation, can help reduce poverty.

## New large hydroelectric dams

In 2006, there was a substantial increase in foreign investment in large hydropower dam development in Laos, driven by higher international oil prices and increased demand for electricity in the growing economies of neighbouring Thailand and Vietnam, after most dam projects in Laos came to a halt following the Asian financial crisis of the late 1990s. Over the years, a large number of feasibility studies have been initiated, some projects have been approved, and the construction of others has begun. These dams include the Xekong 4 and 5 (Xekong province), the Xepian-Xenamnoi, the Xekatom (Champasak province), the Nam Kong 1 (Attapeu province), the Nam Tha 1 (Luang Nam Tha province), Nam Khan 2 (Luang Phrabang), the Nam Ngiep 2, the Nam Theun 1 (Bolikhamxay province), Nam Lik 1, the Nam Ngum 2 (Vientiane province),<sup>13</sup> and others (see *Indigenous World* 2006). With many serious environmental and social problems caused by previously built projects, including the Nam Leuk, Nam Song, Nam Mang 3 (Vientiane province), Houay Ho (Champasak province) and Theun-Hinboun dam (Khammouane province), still unresolved, it seems likely that this new

push to make Laos into the “battery of Asia” will likely be at the expense of the indigenous communities.

### **Tree plantation concessions increase**

2006 also saw a considerable increase in foreign investment in industrial tree plantation development in Laos, in line with the government’s push to convert state assets into capital.<sup>14</sup> While investors from many countries were involved, the increased importance of Chinese investment in this and other sectors was particularly notable.<sup>15</sup>

Investments in eucalyptus, agar wood, teak and rubber were substantial and plantation development has been occurring in every province in the country, surpassing government targets.<sup>16</sup>

However, in June 2006, the Lao-German Land Policy Development Project reported that the current system of allocating state land for development by domestic and foreign investors was not generating the expected state revenues. Problems with monitoring and enforcement of contracts, and coordination among line agencies, were also reported.<sup>17</sup> In fact, difficulties associated with tree plantations go well beyond the above-mentioned deficiencies. Increases in plantations represent a significant threat to natural forest resources and rural livelihoods where food security is directly related to forest health.<sup>18</sup>

In Bachiengchaleunsouk district, Champasak province, a large Vietnamese-initiated rubber project has led to the confiscation of thousands of hectares of both common lands and productive agricultural fields, without compensation, leading to increased poverty and livelihood insecurity amongst the largely indigenous population. While some farmers in other areas control small rubber plantations,<sup>19</sup> in Bachiengchaleunsouk the Vietnamese investors are the exclusive owners of the plantations. Large rubber plantations are also being developed in other parts of the country, leading to similar problems.

In Luang Nam Tha province, one of the most important provinces for rubber development, heavy typhoon rains in August 2006 caused greater than expected flooding and serious damage to villages. An owner of a local guesthouse in Nam Tha district wrote, “Large areas of these watersheds had been cleared during the last dry season for planting

rubber. Inadequate forest cover was left to sufficiently retain and slow down the runoff."<sup>20</sup> It has also been reported that a large part of Nam Ha National Protected Area is being converted into rubber plantations.

## **Mining boom**

The mining sector is booming in Laos, and investment in 2005 was US\$194 million, as compared to US\$674,000 in 2000.<sup>21</sup> And yet, as with industrial tree plantation concessions, many investments in mining may benefit investors and central government coffers but represent serious threats to the environment and the livelihoods of indigenous communities.

Chinese investors have shown significant interest in iron mining in various parts of the country<sup>22</sup> while, in Attapeu and Xekong provinces, Chinese gold dredging in the Xekong River has caused serious environmental impacts and disrupted local livelihoods. Chinese and Australian investors are also jointly developing a major bauxite and aluminium processing industry on the Bolovens Plateau in Champasak province.<sup>23</sup> People from the Heuny (Nya Heun) people have reported that these investors have already drilled thousands of holes throughout the homeland that they were resettled from as a result of the construction of the Houay Ho dam (see *The Indigenous World* 2005). "We were told that we had to move from the area in order to protect it, but now it is being taken over by outsiders. That is not right," commented one Heuny elder.

## **NGO workers accused of inappropriate sexual relations with Akha women and girls**

In early 2006, Akha from northern Laos accused the staff of two major international non-governmental organizations (NGOs), Norwegian Church Aid (NCA) and *Action Contre la Faim* (ACF), of sexual abuse and the exploitation of Akha women and girls.<sup>24</sup>

These allegations, which were recorded using videotaped testimonies from Akha, prompted NCA to commission an inquiry. Although

the impartiality of the investigators was questioned, since the principal investigator was previously an employee of NCA,<sup>25</sup> the investigators determined that those working or associated with NCA were indeed asking villagers to provide young women for them to have sex with. Surprisingly, however, they tried to play down the significance of the allegations by claiming that this traditionally occurs in Akha society, and that the accusers were not familiar with the social customs of the Akha in Laos.<sup>26</sup> However, the anthropologist Eisel Mazard suggested that the investigators had ignored ethical issues. He also heavily criticized the investigators for understating the importance of power relations between indigenous people and outside NGO workers.<sup>27</sup> □

## Notes and references

- 1 **Thammavongsa, P., 2006a:** Former opium growers, addicts need support. *Vientiane Times*, July 22.
- 2 **Phouthonesy, E., 2006:** Opium may return. Govt has set up plans to prevent return of opium. *Vientiane Times*, October 18.
- 3 **Amnesty International, 2006a:** Laos report 2006. <http://web.amnesty.org/report2006/lao-summary-eng>
- 4 **Thammavongsa, P., 2006b:** Highlands seek support for post-opium farmers. *Vientiane Times*, November 28.
- 5 **Thamavongsa, P., 2006a:** *Ibid.*
- 6 **Noradeth, M., 2006.** Amphetamines overtake opium in drugs battle. *Vientiane Times*, February 23.
- 7 **Nadonhai, S., 2006:** Xaysomboun administration dissolved. *Vientiane Times*, February 28.
- 8 **Amnesty International, 2006b:** Laos: massacre of unarmed Hmong women and children. AI Index: ASA 26/002/2006 (Public), May 4.
- 9 **Amnesty International, 2006b:** *Ibid.*
- 10 **Amnesty International, 2006a:** *Ibid.*
- 12 **Latsaphao, K., 2006a:** Lao Front urges end to slash and burn cultivation, *Vientiane Times*, October 23.
- 13 Various articles from the *Vientiane Times*, 2006.
- 14 **Vaenkeo, S., 2006:** Govt to strengthen land lease management. *Vientiane Times*, June 8.
- 15 **Vongsam-Ang, M., 2006:** Lao-China trade, cooperation booms. *Vientiane Times*, September 29.
- 16 **Syvongxay, K. 2006:** Plantations expand throughout the country, *Vientiane Times*, October 27.
- 17 **Vaenkeo, 2006:** *Ibid.*
- 18 **Latsaphao, 2006b:** Families invest in rubber trees. *Vientiane Times*, July 4.

- 19 **Latsaphao, 2006b:** *Ibid.*
- 20 **Tuffin, W., 2006:** Luang Nam Tha residents flee to high ground. *Vientiane Times*, August 30.
- 21 **Phonpachit, S., 2006a:** Govt to monitor mining operations, *Vientiane Times*, July 3.
- 22 **Phonpachit, S., 2006b:** More iron mine investment in Laos. *Vientiane Times*, August 28.
- 23 **Gauld, L., 2006:** Bauxite deposits hold great promise. *Vientiane Times*, October 25.
- 24 **Ryska, T., 2006:** Aid agency staff sexually abuse and exploit women and girls in Laos. Mimeo 2 pp.
- 25 **Ryska, T., 2006:** *Ibid.*
- 26 **Ingebrightsen, K. and C. Lyttleton, 2006:** Investigations of alleged sexual exploitation and abuse of Akha girls and women by Norwegian Church Aid (NCA) in Laos. NORAD, 48 pp.
- 27 **Mazard, E., 2006:** Observations on an aid-worker sex scandal in Laos: a brief analysis of the Norwegian Church Aid report on allegations of rape and sexual misconduct by their staff in Muang Long district. Mimeo October 2006, 12 pp.



## BURMA

Burma is a very ethnically diverse country, with over 100 different ethnic groups. The Burmans make up an estimated 68 percent of Burma's 50 million people. Other major ethnic groups include the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. The country is divided geographically into seven, mainly Burman-dominated, divisions and seven ethnic states. It is usually the non-Burman ethnic groups that are considered Burma's indigenous peoples. In accordance with more general usage in the country itself, in this article they will be referred to as "ethnic nationalities".

Burma has been ruled by a succession of military regimes dominated by ethnic Burmans since the popularly elected government was toppled in 1962. After decades of low-intensity conflict in ethnic nationality areas, the military regime negotiated a series of ceasefire agreements with various groups in the early and mid 1990s. While these ceasefires resulted in the establishment of special regions with some degree of administrative autonomy for the ethnic nationalities, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas.

### Growing militarization and displacement

Ever since it took power, the military regime has justified the increased militarization of ethnic nationality areas by the need to battle armed opposition groups that did not enter a ceasefire agreement. The current junta, the State Peace and Development Council



(SPDC), has followed its predecessors by also basing its counter-insurgency strategy on targeting the civilian population. The regime's so-called "Four Cuts" policy aims to undermine the armed opposition's access to recruits, information, supplies and funding by forcibly relocating villagers from contested areas into the military regime's controlled areas.

During 2006 alone, 82,000 people were forced to leave their homes as a result of military offensives and human rights abuses committed by the SPDC army in ethnic populated areas.

While the distribution of forced migration was widespread, the most significant concentration was in eastern Burma, namely Northern Karen State and Eastern Pegu Division. At the end of 2005, the SPDC embarked on the largest military offensive in eastern Burma since the 1996-1997 campaign. The regime mobilized 204 infantry and light infantry battalions – 40% of the regime's frontline troops nationwide – to carry out military operations allegedly aimed at fighting the armed opposition group, the Karen National Union (KNU). During 2006, the SPDC army's military operations in eastern Burma reportedly resulted in at

least 39 civilians killed, 27,000 others displaced and a total of 232 villages destroyed, forcibly relocated or abandoned.<sup>1</sup>

To prevent villagers from remaining in militarily contested areas, the SPDC army resorted to summary executions, torture, forced labor and the use of landmines. In addition, the military threats to human security came in the form of destruction of agricultural fields, housing and the confiscation of land, property and food supplies.

In September 2006, the relief group Back Pack Health Worker Team (BPHWT) released "*Chronic Emergency*", a report illustrating how several human rights abuses, including forced relocation, forced labor and food destruction, are closely linked to the abysmal health conditions in eastern Burma. According to the report, forced relocation doubles the chances of childhood death and increases the risk of a landmine injury by almost five times. In addition, food insecurity not only increases the risk of malnutrition but also increases the chances of landmine injuries and malaria, as people are forced to forage in the jungle.<sup>2</sup>

## Humanitarian work hindered

In addition to being directly responsible for the acute humanitarian crisis that is unfolding in eastern Burma, the military regime has increased restrictions on the delivery of humanitarian assistance, particularly to vulnerable people living in conflict-ridden areas.

In February 2006, the SPDC issued new restrictive guidelines for humanitarian organizations operating in Burma. The new guidelines sanctioned SPDC controls over approval of programs, project implementation, hiring of staff, procurement of supplies and equipment and internal movements. The new restrictions added to the difficulty humanitarian workers experience in accessing project areas and operating independently, in accordance with internationally accepted standards.<sup>3</sup>

In November 2006, the SPDC ordered the closure of five field offices of the International Committee of the Red Cross. Four of these offices were located in ethnic nationality areas ( Mon, Shan and Karen states) and served as the bases for ICRC programs providing clean water, sanitation, health and protection to civilians in sensitive border regions, including conflict zones where the SPDC army operates.

## Denied political dialogue

Despite the country's first multiparty elections in 1990, which saw the National League for Democracy (NLD) winning over 80% of the seats in Parliament, the junta refused to honor the result and hand over power. Since then, the UN General Assembly and the UN Commission on Human Rights (now Human Rights Council) have been calling annually for democratization, the restoration of human rights and tripartite dialogue between the military junta, the democratic opposition and ethnic nationality representatives. Twenty-nine resolutions emanating from the two UN bodies have been completely ignored by the SPDC.

The SPDC's answer to the reiterated calls for dialogue and democratic reforms was embodied in its so-called seven-step "road map" to democracy. However, the junta-sponsored process remains stuck at the first stage of drafting a new constitution through the junta-sponsored body, the National Convention, which was first convened in 1993.

On 31 January 2006, after meeting for nearly two months, the National Convention adjourned once more. It resumed on 10 October and again adjourned on 29 December without making any substantial progress towards completing the draft constitution.

Several ethnic groups boycotted or expressed their strong opposition to the National Convention because of its lack of inclusiveness, transparency and freedom. The ethnic ceasefire group, New Mon State Party (NMSP), downgraded its participation in the National Convention from a full delegation to observer status at the last two sessions.<sup>4</sup>

Several ethnic political groups expressed their dissatisfaction with the National Convention's failure to address their concerns over the leading role of the military in the country's future government, as guaranteed by the new constitution's framework. Constitutional proposals submitted by various ethnic nationality groups were repeatedly rejected or not raised for open debate.

During the last session of the National Convention, in October 2006, the Kachin Independence Organization (KIO) delegation complained that their proposal for greater sharing of legislative powers in the areas of the economy, health and education had been ignored.<sup>5</sup> The

NMSP expressed the dissatisfaction of several ethnic ceasefire groups over the junta's refusal to discuss their proposed amendments to the defined constitutional principles set by the junta.<sup>6</sup> The NMSP also complained about the convention's failure to clearly outline the essential rights of ethnic nationalities in the future constitution of Burma.<sup>7</sup>

With the latest sessions of the National Convention, the junta has increased the number of army troops as well as the level of hostilities in ethnic nationality areas. This has been part of an intimidation campaign to ensure the ethnic nationalities' compliance with the junta's constitution-drafting agenda. The Kachin Independence Army (KIA), the armed wing of the ceasefire group the Kachin Independence Organization (KIO)<sup>8</sup>, warned that the future of the National Convention may be in jeopardy following the unprovoked killing of six Kachin nationals by SPDC army soldiers in early January 2006.<sup>9</sup>

## Human rights violations

Reports of widespread and systematic violations of human rights in ethnic nationality areas continued to emerge throughout 2006. Forced labor involving portering, sentry and patrol duty, military and SPDC infrastructure construction projects, and commercial agriculture activities, has continued unabated across Burma's ethnic areas over the course of the past year.<sup>10</sup>

Reports of rape, sexual abuses and violence against women committed by members of the SPDC armed forces also continued to surface. In 2006, the UN Special Rapporteur on the situation of human rights in Burma received information on 30 cases of rape against Chin women.<sup>11</sup>

With regard to economic rights, in 2006 local SPDC authorities across eastern and southern Burma confiscated thousands of acres of land without payment of any compensation to its owners, as the junta intensified its nationwide effort to promote castor oil plantations to produce bio-diesel as a potential fuel substitute. The imposition of procurement quotas and forced labor for the cultivation of seedlings was also associated with castor oil cultivation.

In western Burma's Arakan State, the Rohingya Muslim minority continues to face discrimination on the basis of their ethnicity. Burma's 1982 Citizenship Law does not consider the Rohingya minority an ethnic nationality of Burma, thus rendering them effectively stateless. The SPDC has yet to authorize the issuance of temporary resident's cards to those sections of the Muslim population in northern Arakan State who remain without formal identification papers. Discriminatory practices they frequently face include: imprisonment for traveling within or outside the state without an official travel permit; problems in obtaining permission to marry; difficulties in birth registration due to high fees and unauthorized marriages; difficulties in accessing education; and restrictions on taking up many civil service positions.<sup>12</sup> As a result, Muslim minority asylum seekers continue to flee to Bangladesh and Malaysia. It is estimated that as many as 250,000 Rohingya have sought refuge in Bangladesh, while approximately 25,000 live in exile in Malaysia.

### **Infrastructure projects**

Junta-sponsored infrastructure projects continued to be a primary cause of human rights abuses and displacement during 2006 and served to consolidate military control over the local population. Burma's energy sector is the largest recipient of foreign direct investment. However, gas pipelines and the proposed hydroelectric dams along the Salween River have also been significant causes of human rights abuses over the past year.

Villagers along the edge of the Yadana gas pipeline in Tenasserim Division and the Kanbauk-Myaingkalay gas pipeline in Mon State have been forced to provide security guards without payment from the local SPDC authorities. When there was an explosion in this latter pipeline in February, villagers were punished with fines, restrictions on movements and the arrest of leaders for allegedly cooperating with the armed opposition.

Similarly, proposed hydroelectric dams along the Salween River are linked with incidents of forced relocations, forced labor and the logging of forests.<sup>13</sup> In April 2006, a Memorandum of Agreement was

signed between MDX, a Thailand-based infrastructure development firm, and the Myanmar Electric Power Enterprise. In June, the state-owned Sinohydro Corporation of China also expressed an interest in investing in dams along the Salween River. The Weygyi dam, one of the proposed dams to be built along the Salween River,<sup>14</sup> is a project of particular concern among local communities. The dam's reservoir will submerge over 640 square kilometers of land along the most important farming valley and transportation route of Karenni State. Even though much of the area has already been cleared by military offensives and forced relocations, approximately 30,000 people will be affected. Moreover, an entire tribe of people – the Yintalai, who number a mere 1,000 – will have to flee the rising waters and permanently lose their homelands. In addition to 26 villages, two entire towns will be submerged; both are important trading centers that provide education and medical services for the surrounding rural population.<sup>15</sup> □

## Notes and references

- 1 **Thailand Burma Border Consortium (TBBC), 2006:** *Internal Displacement in Eastern Burma - 2006 Survey*, November 2006.
- 2 **Back Pack Health Worker Team, September 2006:** *Chronic Emergency – Health and Human Rights in Eastern Burma*. Available at: [http://www.geocities.com/maesohtml/bphwt/chronic\\_eng.zip](http://www.geocities.com/maesohtml/bphwt/chronic_eng.zip)
- 3 UN General Assembly, 61st Session, Situation of human rights in Myanmar - Report of the Special Rapporteur on the situation of human rights in Myanmar, UN Doc. A/61/369, 21 September 2006.
- 4 **Democratic Voice of Burma (DVB), 2006:** Peace group NMSP won't attend Burma's convention, 5 January 2006; Kaowao News 2006 New Mon State Party on the Way to National Convention, 27 September 2006.
- 5 **Irrawaddy**, 13 October 2006: Ethnic delegates complain they're ignored at National Convention.
- 6 **Irrawaddy**, 20 October 2006: Delegates Demand Rights in Burma's National Convention.
- 7 Democratic Voice of Burma (DVB). SPDC's convention not encouraging for ethnic nationals – NMSP, 21 October 2006.
- 8 The KIO was allowed to retain arms and troops after the signing of the cease-fire agreement.
- 9 **Democratic Voice of Burma (DVB), 2006:** KIO warns killing of its members jeopardises Burma convention, 5 January 2006.
- 10 **ALTSEAN-Burma, November 2006:** *Forced labor in Burma: Time for action* .

- 11 UN General Assembly, 61st Session, Situation of human rights in Myanmar - Report of the Special Rapporteur on the situation of human rights in Myanmar, UN Doc. A/61/369, 21 September 2006.
- 12 UN Commission on Human Rights, 62nd Session, Situation of human rights in Myanmar - Report of the Special Rapporteur, Paulo Sérgio Pinheiro, UN Doc. E/CN.4/2006/34, 7 February 2006.
- 13 **Thailand Burma Border Consortium (TBBC), 2006:** *Internal Displacement in Eastern Burma - 2006 Survey*, November 2006.
- 14 Building of the Weygyi dam is planned near the border of Burma's Karen and Karenni's states, and in a section of the river that marks the border between Thailand and Burma.
- 15 **Karenni Development Research Group (KDRG), 2006:** Damned by Burma's generals.

## NAGALIM

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of Northeast India and Northwest Burma. The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. In the absence of democratic mechanisms and platforms to address their demands, Nagas residing in the federal units of Northeast India – (Assam, Arunachal Pradesh, Nagaland and Manipur) and in Burma (Kachin state and Sagaing division) forged a pan-Naga homeland, Nagalim, transcending modern state boundaries to assert their political identity and aspirations as a nation.

The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas armed opposition forces began in the early 1950s and is one of the longest armed struggles in Asia. A violent history has marred the Naga areas since the beginning of the 20<sup>th</sup> century, and undemocratic laws and regulations have monitored the Nagas for more than half a century.

### Peace process and civil society initiatives

Throughout 2006, people's dialogues and meetings were initiated around reconciliation, unification of Naga homelands and the repeal of the Armed Forces Special Power(s) Act, 1958.<sup>1</sup> Various Naga organizations, church groups and the Naga public in general reiterated their commitment to support the peace process and campaigned



against militarization. Several Nagas voiced concern over factional fighting between various Naga armed opposition groups and the Indian government's non-committal measures to address the Naga people's aspirations. After nine years of Indo-Naga cease-fire between the National Socialist Council of Nagalim under the leadership of Isaak and Muivah (NSCN-IM, a section of the Naga armed opposition), 2006 witnessed the NSCN-IM rais-

ing several political proposals for the government of India to deliberate upon: there were talks about a Naga federation with a special working relationship with India, shared sovereignty and shared competencies on governance. Although other Naga armed opposition groups protested against these propositions, the Naga people organized rallies and political demonstrations in support of the ongoing negotiations.

The call for unification of Naga-inhabited areas and the emphasis on the cessation of hostilities between Naga armed opposition groups were equally important events in 2006. There was an increase in factional conflicts and violence. In the absence of democratic mechanisms to monitor and negotiate for peace, Naga indigenous institutions, student committees, entrepreneurs' associations, human rights organizations and women's groups rallied against violent confrontations between warring factions and called for a cessation of hostilities. As an initiative to study and understand international peace processes and negotiations, representatives of the Naga Hoho, the apex Naga indigenous institution, and a section of the Naga armed opposition – the NSCN-IM – visited Papua New Guinea to learn about the Bougainville

peace process and interacted with the political actors and civil society groups.

The Naga churches also addressed issues of justice, peace and reconciliation. On 29 September, the Nagaland Baptist Church Council organized a session on healing and reconciliation and initiated dialogues among the Nagas. In a similar move, on October 25 the Naga Hoho held a day-long interaction between various Naga organisations to dialogue about the prevailing political situation. Continuing the Naga people's efforts to appeal for peace, the Naga Peoples' Movement for Human Rights (NPMHR) observed 10 December, International Human Rights Day, under the theme of "Harmony through Culture". This event brought together various indigenous neighbours of Nagalim to participate and share through songs, dances and discussions. It aimed to sustain and promote constructive processes of social, political and historical dialogues among various indigenous peoples in India's Northeast region. Highlighting the need to fight together against anti-democratic state policies on development, exploitation of mineral resources and the continuance of the draconian law – the Armed Forces Special Power(s) Act of 1958, the NPMHR initiative reflected the presence of a strong solidarity among indigenous movements in the region.

The NPMHR also participated in a fact-finding team called the "Civil Society Team". This group looked at the human rights violations of the internally displaced people from Tipaimukh Sub-Division in Manipur. It documented the displacement due to landmines and rapes of Hmar women by the United National Liberation Front (UNLF) and the Kangleipak Communist Party (KCP). Also recognizing India's Northeast as an area with a violent political history, with people internally displaced due to state violence and a situation of armed conflict, the NPMHR - in collaboration with the Calcutta Research Group (CRG) - organised a three-day workshop on "Internally Displaced Persons (IDPs) in India's Northeast" from 24-26 August in the Nagaland state capital, Kohima. Issuing a resolution, the CRG and NPMHR appealed to the government of India to "formulate new peoples'-oriented rights-based resettlement and rehabilitation laws and policies in order to address the humanitarian crisis generated by displacement."<sup>2</sup>

Naga civil society also condemned the human rights violations against civilians in Chattisgarh by the Naga (Indian Reserve Battalion) soldiers, a counter-insurgency institution established by the government of India. The NPMHR demanded an unqualified official apology from the Nagaland state government and stated:

*By (the) government complicity and silence on the issue, Naga people are being made wilful co-violators in the suppression of different nationalities and oppressed people's struggles in India, whereas we ourselves have lived the horror and pain in our own resistance to the Indian military occupation of our homeland.<sup>3</sup>*

Besides civil and political rights campaigns, several Naga organizations from Naga-inhabited areas demonstrated against the practice of paying house taxes to the state government in Manipur. On 18 June, 2006, as part of the "Non-cooperation and Civil Disobedience Movement", a delegation of the United Naga Council (UNC) handed over the Manipur Hill House Tax for the year 2006 for 94,894 households, withheld from the Manipur state government, to the Prime Minister of India's Office (PMO).

## Health

2006 continued to be another challenging year for thousands of Nagas who required basic health care. Nagas have struggled with two major health issues – HIV/AIDS and malaria. Militarised situations in which security forces have taken charge of civil administration, accompanied by a corrupt government machinery, have led to a breakdown in the basic health care system. Besides the malpractice of government doctors and nurses who stay away from their work on perpetual "leave of absence", government health officials also stressed the failure of the government on various levels – technical, administrative and operational. There were shortages of anti-malaria drugs, malaria insecticides, and lack of funds for outreach anti-malaria programs in several villages with poor communication and transportation. Under such circumstances, the Indian security forces launched mobile medical camps

in hundreds of Naga villages. 2006 witnessed Naga public organizations, especially various youth forums, initiating public outcry against such practices, as the medical camps function as part of the counter-insurgency operation and under the "National Integration" theme, an assimilation program of the government of India..

Ongoing HIV/AIDS campaigns in 2006 also resulted in several government awareness forums, workshops and non-governmental organisations' initiatives. However, Naga health activists criticised the existing national policy on HIV/AIDS as an inadequate instrument with which to address the present health crisis. Although government activities were carried out in urban areas, an absence of local initiatives and discussions, and non-existent health centres in remote villages were seen as challenges in terms of coping with the crisis. Government policy makers often excluded communities while developing programs for their villages and towns. Several health activists voiced concerns that non-governmental organisations working on HIV/AIDS awareness programs concentrated on spreading "fear-based information". In 2006, Nagas experienced several HIV/AIDS information workshops and much medical jargon, which failed to empower them but further created isolation and trepidation.

## Education

Education remained a contentious issue in 2006. Ongoing demonstrations and protests against existing structures were mainly centred on curricula, educational policies and text book contents. Education has always been considered an important instrument with which to raise and address issues of justice and peace. Naga civil and political rights groups have protested against the systematic erasure of people's histories from text books. In this context, there was a series of demonstrations, protests and demands to recognise the importance of imparting a democratic and just education, one that is inclusive of the Naga indigenous worldview.

The All-Naga Students' Association of Manipur (ANSAM) and the Naga Students' Federation (NSF) spearheaded a protest against the imposition of *Meitei Mayak* (the script of the politically and economi-

cally dominant ethnic group in Manipur) in the curriculum, and rejected books prescribed by the Manipur Board of Secondary Education. The student organizations argued that these books contained discriminatory content and a biased worldview against Nagas and other indigenous communities. Various private educational institutions in the hills of Manipur campaigned to affiliate their schools with the Board of School Education of neighbouring Nagaland state. Launching a non-cooperation movement, students boycotted schools, burned text books and called for road blocks. Emphasizing the historical and political domination of the Nagas in the hills of Manipur, ANSAM reiterated the fact that policies, funds and state development were concentrated around the Meitei-dominated Manipur valley, thus denying basic human rights such as the freedom to nurture and learn one's own language. The NSF initiated equally important activities in Nagaland University (NU). There was a long-drawn out protest by university teachers and students against the NU Vice-Chancellor. Viewed as an incompetent educationalist and more a politician, along with the Post-Graduate Students' Union of Nagaland University, the Naga Students' Federation mobilized a series of meetings and staged a ten-day demonstration in April 2006 demanding his resignation.

The Naga Students' Federation also carried out a survey under the *Sarva Shiksha Abhijan*, a project on universal elementary education. Under this project, the NSF conducted surveys in several Naga village schools in order to check the drop-out rates in these educational institutions and initiate a process of enabling these children to go back to school.

### **Naga women in peace-building initiatives**

Women and children have been the worst hit by processes of militarization and the continuing situation of armed conflict. An absence of democratic spaces and the presence of militarized governance have led to the establishment of institutions which are not only tyrannical towards society in general, but are particularly oppressive and violent towards women and children. Naga women have not only spoken out against domestic violence and discriminatory practices regarding in-

heritance and child custody, they have also ceaselessly campaigned on wider issues of peace, justice and reconciliation. In 2006, the Naga women's organizations – the Naga Mothers' Association (NMA) and the Naga Women's Union Manipur (NWUM) – initiated numerous grassroots projects to address issues of health, education and women's rights. The NMA continued to lend support and focus on an HIV/AIDS hospice in Nagaland while conducting HIV awareness campaigns. They also carried out a "Door to Door" awareness campaign on educating girl children. The NMA and the NWUM collaborated with Meitei women's organizations in Imphal to network on peace-building initiatives among different communities.

The NWUM activities in 2006, which were supported by IWGIA, focussed on: gender and customary practices, and peace-building. Emphasizing the importance of recognizing the manner in which customary laws in Naga society have affected women, the NWUM sponsored workshops among the Naga Women's Union of Chandel district and the Mao Naga Women's Welfare Association, which included the Church, youths, students, women's organizations and government employees in Tahamzam, Senapati. Continuing with their peace-building efforts, the NWUM initiated discussion forums under the theme "Peace Building" with the Zeliangrong Naga Women's Union. □

## Notes

- 1 The Armed Forces Special Power(s) Act of 1958 was originally passed as an anti-insurgency measure against the Naga resistance movement. It is now imposed on most states of Northeast India. The act has been criticized by many human rights organizations since , among other things, it grants complete impunity to the Armed Forces. During the Human Rights Committee hearing on the International Covenant on Civil and Political Rights in New York in 1991, India was criticised by the Committee members in particular with respect to Article 4 (a) of the Act, which gives the security forces broadly defined powers to shoot to kill, contravening the requirements of the international standards for the protection of the right to life, which stipulate a strict limitation and precise definition of the circumstances in which people may be lawfully killed.
- 2 **Naga Peoples Movement for Human Rights, 2006:** *Harmony Through Culture: A Musical Celebration of Indigenous Peoples*. NPMHR, December 2006.
- 3 Ibid.



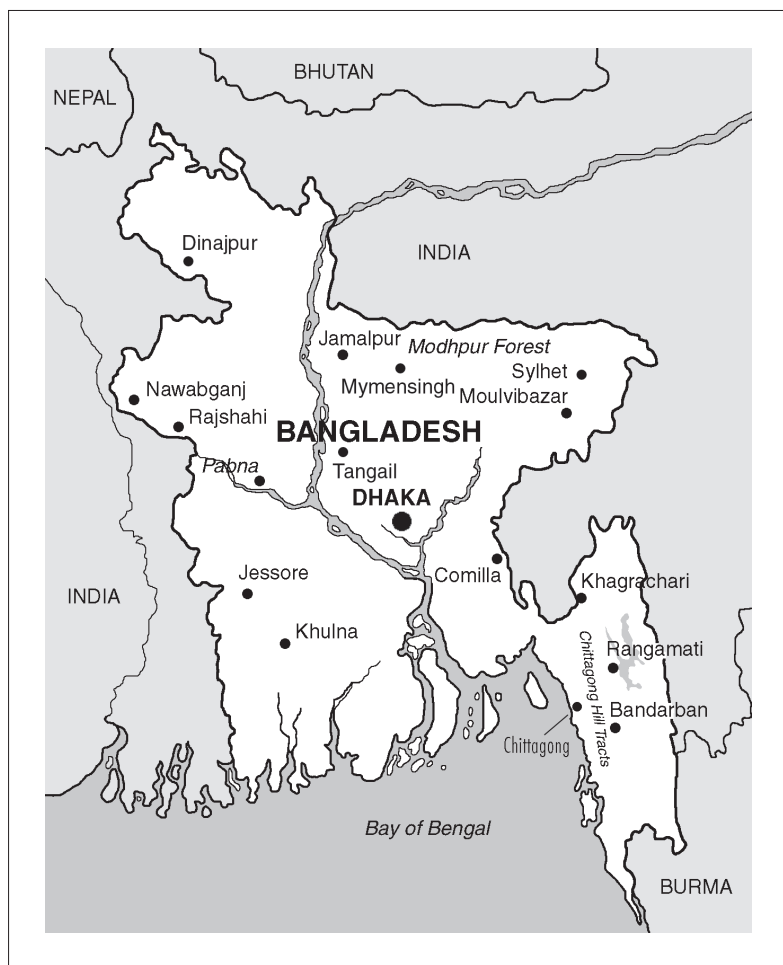
## BANGLADESH

Bangladesh borders India and Burma to the east, west and north, and is bordered by the Bay of Bengal to the south. The majority of its 143.3 million large population are Bengalis, but it is also inhabited by approximately 2.5 million indigenous peoples, belonging to 45 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts in the south-east of the country. There is no constitutional recognition of the indigenous peoples of Bangladesh. They are only referred to as “backward segments of the population”.

Indigenous people remain among the most persecuted of all minorities, facing discrimination on the basis of their religion and ethnicity. In the Chittagong Hill Tracts, the indigenous peoples took up arms in defence of their rights and, in December 1997, the 25-year-long civil war ended with a Peace Accord between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti (PCJSS, United People’s Party), which has led the resistance movement. The Accord recognises the Chittagong Hill Tracts as a “tribal inhabited” region, its traditional governance system and the role of its chiefs, and it provides building blocks for indigenous autonomy.

### Elections and declaration of a State of Emergency

**E**lections are traditionally a time of concern among minorities and those caught up in political activities in Bangladesh. A neutral caretaker government was formed in October 2006 to oversee the election process. This is normal in Bangladesh, as no political party is deemed able to carry out this task with the required neutrality. Na-



tional elections were originally planned for 2006/early 2007; however, due to political unrest and the perceived partiality of the Election Commission, violence erupted in Bangladesh as the opposition Awami League organised a series of national strikes or *hartals* during November 2006. Two people were reported dead and over fifty injured in the run-up to the proposed elections.

## **BNP split and formation of Liberal Democrat Party**

In October 2006, a group of 24 dissidents from the ruling Bangladesh Nationalist Party (BNP) split to form a new Liberal Democrat Party, accusing the government of corruption and vowing to eliminate it and establish a clean and transparent government. Mani Swapan Dewan, BNP Minister for Chittagong Hill Tracts Affairs, was one of those to join the new breakaway party. Mani Swapan Dewan is a Chakma, ex-guerrilla fighter and past mayor of Rangamati town.

## **National Consultation on ILO Convention No. 107**

Bangladesh is a signatory of Convention No. 107 on Indigenous and Tribal Populations of the International Labour Organisation (ILO). However, it is not being implemented. A National Consultation on ILO Convention No. 107 was organized by the Bangladesh Adivasi Forum on 20 June 2006 in Dhaka. The consultation meeting was supported by the ILO Project to Promote ILO Policy on Indigenous and Tribal Peoples. Its main objectives were to raise awareness of ILO Convention No. 107 and ILO standards on indigenous and tribal peoples among indigenous organisations, government and other stakeholders, to identify needs and gaps in the implementation of Convention No. 107 and to provide recommendations for future activities. More than 100 people, including government representatives, indigenous leaders and activists, and civil society members attended the consultation. The specific outcome of the consultation is that two regional consultations will be held on ILO Convention No. 107 in the Chittagong Hill Tracts and Mymensingh in 2007.

## **Ongoing conflicts over forests**

2006 saw an increase in conflicts between the government and indigenous communities over forests throughout the country. The Garos in Modhupur forest are still under threat of forcible eviction from their

land due to the planned establishment of an eco-park.<sup>1</sup> They continue to suffer serious human rights violations such as killings, torture, oppression through filing of false cases, detention, etc. On 22 October 2006, the Divisional Forest Officer published a tender notice in the *Daily Inqilab* for the construction of a boundary wall in Modhupur forest. The wall construction has already been started and, according to local indigenous leaders, work is being carried out only at night, under the supervision of the divisional forest officer. Furthermore, the nationwide State of Emergency prevents the communities from holding protest rallies.

On 21 August 2006, Ms Sisilia Snal, a 25-year-old mother of two was seriously injured when forest guards in Tangail district opened fire on village women collecting firewood (probably because of "violation of forest laws"). She had to be sent to Mymensingh Medical College hospital for treatment. Sisilia's husband Niranjon Simsang filed a case against the Modhupur range forest officer, Moharraf Hossain, and forests guards Nuru, Abdul Malek and Badshah. The police, however, did not arrest any of them. The indigenous organizations Joyenshahi Adivasi Council and Bangladesh Adivasi Forum jointly organized a protest rally and barricaded the Mymensingh-Tangail highway for three hours in protest at the forest guards firing on their women. They demanded a proper investigation of the incident and prosecution of those responsible. The Bengali Daily newspaper *Jai Jai Din* wrote on 29 August 2006 that after the incident the Forest Department filed 37 cases against 150 indigenous men and women in Modhupur forest.

The Khasis and the Garos in Moulvibazar district too are facing the threat of eviction from their ancestral homeland by forest conservation and social forestry projects, which will occupy more than 1,500 acres of their land for tourism and entertainment parks. Seven indigenous hill villages will be affected and 1,000 Khasi and Garo families will face forced eviction. A meeting was held between government officials and indigenous communities in Kulaura, Moulvibazar district on 14 August 2006 to solve the land problem of the Khasis and Garos. The conflict between the forest department and Khasi communities is a long-standing one. The Khasis do not have any documents as proof of their land ownership. At the meeting, government officials told the Khasis to participate in the social forestry programme but the indigenous

leaders replied that they would take the decision only after receiving the project document.

On 29 July 2006, hundreds of indigenous Barmans of Bhaluka district Mymensingh province prevented the forest officials and guards from planting tree saplings under a "community afforestation programme" on 75 acres of their land. Indigenous leaders said the forest officials had been pressing them for three months to participate in the programme without any partnership deeds or written documents. A case has been filed against 31 indigenous villagers for "foiling an afforestation programme".

## **Chittagong Hill Tracts**

### **Concern over upcoming elections**

The upcoming elections are of particular concern for the indigenous peoples of the Chittagong Hill Tracts. The use of existing voter lists is still contested by indigenous groups within the Chittagong Hill Tracts, and is likely to lead to further clashes between the more radicalised right-wing groups representing settlers and the PCJSS (Parbattya Chattagram Jana Samhati Samiti / United People's Party) and indigenous people. The PCJSS and indigenous peoples have complained that the current electoral rolls still include non-permanent Bengali residents, such as Bangladesh Army and Bangladesh Rifle Division personnel stationed in the region, settlers, seasonal workers and more than 30,000 Rohingya refugees from Burma. There is a need to revisit the electoral register and determine criteria, including whether the military and paramilitary are eligible to vote. The region remains one of the most highly militarised in the world, and the votes of over 100,000 troops would have a significant impact on the results in the election of the members of parliament from the districts in the Chittagong Hill Tracts.

The prospect of renewed communal violence in the run-up to the elections is a real possibility. The stakes are very high as the government will seek to consolidate its hold on power in the region, using the elections to claim legitimacy for further policies that continue to marginalise the indigenous people and alienate them from their land.

### **Closure of indigenous NGOs**

The targeting of indigenous leaders and political opponents of the government has gathered speed. It has already been reported that, in spite of the level of Islamic extremism and terrorist activities in Bangladesh, the government has largely failed to tackle the problems, and left-leaning parties and those from minorities continue to face difficulties, arrests and false charges of terrorism.

While it is important the Security Forces are allowed to clean up corrupt politicians, it is essential that they do not target indigenous peoples' representatives, working for legitimate democratic movements.

Last year, the government has also closed down indigenous peoples' NGOs in the CHT or threatened them with closure. Among them were Taungya and the Rangamati NGO Forum in Rangamati district, and Eco-Development, a partner of Manusher Jonno Foundation and the British Department for International Development in Bandarban district. In Khagrachari district, the NGO Trinamul was informed by the District Social Welfare Department that it was being closed due to its "anti-state and anti-peoples' interest activities". Other NGOs representing indigenous peoples still face grave difficulties in registering their organisations.

### **Militarisation, communal violence and human rights abuses continue**

The continued presence and expansion of the military bases, and the ongoing influx of settlers has contributed to the unabated human rights abuses in the CHT. The complete impunity that exists for such crimes has led to a culture of violence becoming acceptable within the military. The lack of access to justice for indigenous people has long been recognised as a serious issue by international human rights organisations. The Bengali settler attacks on Mahalchari village in August 2003, which saw Jumma villages destroyed, temples ransacked and nine women raped, were carried out with the collusion and active participation of the Bangladesh military. The fact that the Lt. Col. involved in the violence had recently returned from peacekeeping duties in Sierra Leone added a disturbing dimension to these events. Six

Bangladeshi peacekeepers were also repatriated from duty in Sudan following allegations of sexual exploitation and abuse of young girls. It is unclear whether any of those repatriated have faced prosecution for the crimes.

At the meeting of the Permanent Forum on Indigenous Issues in New York in 2006, over 30 indigenous peoples' organisations from around the world called for greater accountability of UN Peacekeepers from countries with histories of gender-based violence.

The heavy militarization of the Chittagong Hill Tracts and gender-based violence perpetrated by the military have been cited by representatives of the indigenous peoples of Bangladesh when pointing to the need for greater monitoring and screening of UN Peacekeepers recruited from Bangladesh, as well as improved training prior to serving on missions. They are also calling for input from indigenous peoples, women's groups and human rights organisations into a "blacklist" of personnel not suitable for peacekeeping duties. These are already recognised problems within the UN Department of Peacekeeping, and steps are being taken to address them. However, it is difficult for the UN to meet all its peacekeeping demands, and thus it relies heavily on troop-contributing countries, such as Bangladesh, India and Nepal.

In 2006, there were again disturbing reports regarding the collusion of security forces with migrant settlers in violent actions against indigenous communities. On 3 April 2006, over two dozen Chakma and Marma people were injured when their villages at Joy Sen Para, Nua-para and Massyachara under Khagrachari district of Chittagong Hill Tracts of Bangladesh were attacked by illegal Bengali settlers and the security forces. Sixteen were seriously injured and admitted to Khagrachari district hospital, while one Chakma man in a critical condition was moved to Chittagong Medical College Hospital. Four Marma women, including one aged 16 and one aged 20, were raped. The Buddhist monk, Reverend Sumonalankar Bhikkhu of Bouddha Shishu Mono Ghar at Kutting Tila, was reported missing. The attack was thought to be a reprisal for protests the previous day by the indigenous peoples against Bengali settlers planting jackfruits on the premises of the Buddhist temple. The settlers returned and, with the alleged collusion of the security forces, attacked the temple and the surrounding villages.

The Legal Aid Research Association in Khagarachari has been campaigning for greater accountability on the part of the military in Khagarachari, who are alleged to have invaded the Khagarachari Court House and paid several Jumma people to hold weapons and guns and have their photographs taken as alleged terrorists. This resulted in strong protests from the Khagarachari Bar Association. This blatant disregard for the rule of law in the area is symptomatic of the impunity with which the military continues to operate in the region, with no fear of accountability. The actions of the army were thought to be related to their collusion in the attacks against indigenous villagers and the Buddhist temple on 3 April 2006. It is alleged that the Bangladesh Army intended to justify the actions by framing some indigenous peoples with weapons as terrorists.

Another proof of the deteriorating civil liberties in the country, and the government's particular sensitivity with respect to the Chittagong Hill Tracts, was the recent banning of renowned Bengali Director Tanvir Mokammel's film "Teardrops of the Karnaphuli", which charts the history of the Chittagong Hill Tracts and the flooding of the land by the formation of the Kaptai Dam. The Government of Bangladesh claimed that the film might affect the "social and political harmony" of the region. □

## Sources

Amnesty International (<http://amnesty.org/>)  
 Asian Centre for Human Rights (<http://www.achrweb.org/>)  
 Jumma Peoples Network UK (<http://www.jpnuke.org.uk/>)  
 Parbatya Chattagram Jana Samhati Samiti (PCJSS) (<http://www.pcjss.org/>)  
 Peace Campaign Group <http://www.unpo.org/article.php?id=6380>  
 Unrepresented Nations and Peoples Organisation (<http://www.unpo.org/>)  
 Vanishing Rites (<http://vanishingrites.com/>)

## Note

- 1 Read more about the eco-park and the indigenous response in *The Indigenous World 2006, 2005, 2004, 2002-2003, 2001-2002, 2000-2001*. Ed.

## NEPAL

Nepal is a pluralistic country with many castes and ethnicities, cultures, languages, religions and practices. The total population of Nepal is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the Census 2001. Indigenous nationalities (*Adivasi Janajati*) comprise 8.4 million, or 37.19% of the total population. However, indigenous peoples' organizations claim they have been under-represented in the census, and their actual populations comprise more than 50% of the total population. Fifty-nine indigenous nationalities have been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002.<sup>1</sup> Numerous indigenous communities are yet to be recognized. Nepali society is highly stratified, with the state imposed and protected Hindu caste system's self-declared upper castes (*Bahun* and *Chettri*) holding key positions in the state, and indigenous nationalities, Dalits and Terai caste groups experiencing subjugation, exclusion, discrimination, oppression and exploitation.

### Political status

Indigenous peoples have very limited access to the decision-making level of Nepalese society. The right to form a political party is legally prohibited for *Adivasi Janajati*. There is only limited or symbolic representation and participation of indigenous peoples at every decision-making level due to the long-standing preferential policy towards the Hindu (*Bahun* and *Chettri*, the so-called highest castes in the four-fold Hindu caste system). Official data indicates that 77% of judges are



from the Bahun and Chetri castes and only 1.7 % are from indigenous nationalities. Similarly, in the Council of Ministers (*Mantry Parisad*), Bahun and Chetri represent 62% and indigenous peoples represent only 12.5%, excluding Newar (9.2%). In the legislative assembly, 62% are from Bahun and Chetri and 13% are from indigenous nationalities, in the Civil Service Administration Bahun and Chetri represent 84.5% and indigenous people represent 2.3%, excluding Newar.<sup>2</sup>

### Participation of Adivasi Janajati in existing political parties

Indigenous nationalities' participation in the governing bodies of major political parties in the government is as follows: in the *Nepali Congress* (NCP) it is 16.7%; in the *Communist Party United Marxist and Leninist* (CPN UML) it is 21.1%; and in *Nepal Sadbhawana* it is 20.7%.<sup>3</sup> The figures show clearly that indigenous nationalities are under-represented while Hindu castes, on the other hand, are over-represented. It is important, too, to notice that these indigenous representatives are accountable to their political parties rather than their own indigenous peoples. They are not formally recognized as indigenous representatives, and thus they do not have a mandate to raise indigenous issues and problems. They are symbolic representatives that have failed to raise indigenous nationalities' concerns, so it is crystal clear

that there is no place in which indigenous peoples can raise their voice. The current political system has a policy of divide and rule over indigenous peoples and prohibits them from organising politically.

## Economic status

The major subsistence strategies of indigenous peoples are foraging, horticulture, pastoralism and agriculture, which all depend on lands and natural resources. Landlessness is an acute problem among indigenous nationalities. Census 2001 data on operational landholdings reveals that huge proportions (45.8 to 58.6%) of indigenous households are landless. The Land Reform Act of 1964, and the Land (Survey and Measurement) Act of 1963 abolished and displaced indigenous peoples from their traditional lands and natural resources (known as the Kipat System) and transferred them to Hindu people (*Bahun* and *Chetri*) without their consent or compensation. Indigenous nationalities who were displaced from their customary land are over-represented in poverty statistics, with 71% of *Limbu*, 56% of *Rai* and 59% of *Tamang* living below the poverty line.<sup>4</sup>

Similarly, the Pastoralist Land Nationalization Act of 1974 nationalized the grazing lands and allocated them to profit-oriented corporations and companies owned by Hindu (*Bahun* and *Chetri*), thereby displacing indigenous peoples from their highland pastures, and from their traditional occupation of pastoralism. Many of the displaced were compelled to become involved in illegal businesses such as drugs trafficking. Likewise, the provision of Community Forest User Groups in the Forest Act of 1993 displaced indigenous peoples from their traditional homelands and transferred ownership/ possession to community forest user groups, which are more often than not dominated by non-indigenous peoples, basically *Bahun* and *Chetri*. Section 59 of the Forest Act authorizes forest guards to shoot anyone found displacing trees and grass from a forest, and this prohibits indigenous peoples from carrying out their subsistence activities.

## **Educational status**

Indigenous peoples' right to education is not fully guaranteed by existing laws, including the Constitution. These laws are inconsistent with international standards. The right to education in one's mother tongue is crucial since only 31% of the country's indigenous people have fluency in the Nepali language.<sup>5</sup> On average, the literacy rate of 26 indigenous groups is 34.24%, and only up to 1.1% of indigenous nationalities have attained higher education (Bachelor's degree or above - except among the Newar (23.7%)), whereas the national average is 37.9%. It is thus clear that there are wide disparities in educational status between indigenous peoples and Hindu. The main reason for this disparity is due to the Nepali language being the language of education.

## **Religion**

Despite the resistance of indigenous nationalities, suppression and discrimination by non-Hindus still prevails. The religions of indigenous nationalities were not reported in the Census 2001. On the contrary, data is "manufactured" to show a majority of the Hindu religion.

## **Peoples' Movement II 2006 against King's regressive political move**

The eleven-year-long armed conflict led by the Maoist Party under the name of the "Peoples War" began in indigenous territories in Rolpa District on February 13, 1996. Indigenous peoples were highly involved in the conflict for several reasons: firstly, the conflict was focused on rural indigenous areas; secondly, Maoists identified one of the ills of Nepal as being oppression of indigenous nationalities.<sup>6</sup> Thirdly, they also raised the issue of indigenous peoples' right of self-determination. Fourthly, during the conflict the Maoist organization had a higher proportion of Janajati representation.<sup>7</sup> Indigenous peoples were massively

mobilised and faced irreparable damage, including killing, abduction, use as human shields, displacement, cultural violence, etc.<sup>8</sup>

In April 2006, a Seven Party alliance (SPA) and the Maoists organized the "Peoples' Agitation II" movement against the King's regressive regime. The king had dissolved parliament and the elected government on October 4, 2002, after which he appointed a new Prime Minister. On February 1, 2005 he ousted the prime minister and took absolute power. The main agenda of the Peoples' Agitation II was the formation of a republican state (abolition of the monarchy) and reconstruction of the state on the basis of proportional representation. Every sector of society, including indigenous peoples' organizations, participated in the people's agitation, which continued for 19 days and succeeded in demolishing the king's absolute regime. On 27 April 2006, the King stepped down from his absolute power and appointed the unanimous choice of the Seven Party Alliance, Nepali Congress Leader Grijā Prasad Koirala, as Prime Minister. The following day, the reinstated House of Representatives convened for the first time since 2002.<sup>9</sup> The House of Representatives declared Nepal a secular country, and declared the restructuring of the nation as a national agenda item. It also unanimously passed a "Directive Resolution" requiring the government to ratify Convention No. 169 on August 28, 2006. Ironically, the government is delaying ratification of this Convention.

## Ceasefire

On 26 April, the Maoists changed their strategy and declared a ceasefire. They decided to join the peaceful movement (Peoples' Movement II) against the king's absolute power. The major impact of the ceasefire was the king's step down from absolute power and reinstatement of the parliament, which again paved the way for comprehensive agreements on a peace accord and arms management, signed between the government and the Maoists in November 2006. The Comprehensive Peace Agreement of November 2006 between government and Maoists made a commitment to address excluded groups', including indigenous peoples', issues and problems by ending the unitary political system through inclusion, democracy and restructuring of the nation.

## Interim Constitution

In June 2006, the government formed a committee to draft an Interim Constitution based on an agreement of the Seven Party Alliance and the Maoists. The Constitution failed to address indigenous issues and problems, despite the strong efforts of indigenous members, given their lesser number in the committee. When the topmost leaders of the Seven Party Alliance and the Maoists signed the Interim Constitution, some of the prominent provisions relating to indigenous peoples, such as the restructuring of the state based on the right to self-determination, were diluted. The Interim Constitution prohibits indigenous peoples from forming a political party (Art. 12.3, 141, 142.3); Art. 5 allows oral use of mother tongue languages in local administrations but translations into the national Nepali language for documentation are mandatory. This provision is problematic because it does not recognize the use of indigenous languages at all levels of public office, and thus does not prevent continued exclusion based on language. Article 17 of the Constitution limits mandatory mother tongue education to the primary level. The Interim Constitution perpetuates Hindu supremacy by declaring Hindu cultural symbols, such as the cow, crimson, the Coat of Arms, etc., national symbols (Art. 6 and 7).

Indigenous peoples have been organizing a peaceful movement to defy the continuation of Hindu domination and demand reform of the Constitution. The prime minister and other party leaders have verbally given a positive response but they have taken no action. The Parliament passed the Interim Constitution in January 2006, ignoring the proposal of indigenous members of parliament to reform it. The Prime Minister confessed that many national issues, including indigenous peoples' issues, needed to be addressed constitutionally but that this would be done through Constituent Assembly Elections in 2007.

Lowland people (*Madhesis*) and indigenous peoples are continuing their movement, organizing various Nepal *Bandhs* (strikes) to mount peaceful pressure to reform the Interim Constitution with provisions guaranteeing the restructuring of the nation around federalism and proportional representation based on ethnicity.

## Conclusion

The legal and policy framework based on preferential treatment of Hindu people (Bahun and Chettri) has been perpetuated since the state was formed. No substantial changes have occurred. The laws and policies discriminate, exclude and marginalize indigenous peoples, indigenous women, Madhesi lowlanders, women and Dalit, and create enormous disparities between these groups and the Hindu. This defective state policy has fostered structural violence and fuelled conflict.

To ensure social justice and establish everlasting peace, the state should be reconstructed and political power transferred to the excluded groups, including indigenous peoples, for example by applying a federal model. The identity of and historical injustices towards indigenous peoples should be recognized. Discriminatory and racial laws, policies and practices should be repealed. International laws that have been ratified by Nepal should be complied with, and inconsistent provisions of laws should be standardized. ILO Convention No. 169 should be ratified immediately according to the Directive Resolution of Parliament. □

## Notes and references

- 1 The 2002 National Foundation for Development of Indigenous Nationalities (NFDIN) Act defined Indigenous Nationalities (*Adivasi Janajati*) as communities who perceive themselves as distinct groups (having a feeling of “we”) and have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas, and egalitarian social structures. The Foundation for Development of Indigenous Nationalities (*Janajati Utthan Ras-triya Pratistan*) is a focal governmental organization under the Ministry of Local Development with a mandate to make suggestions to the government for the development and upliftment of the indigenous peoples of Nepal. The NFDIN mainly works in the areas of preserving cultures, language, belief system, history. It also provides scholarships for education and works for the economic development of indigenous peoples.
- 2 **Newpane, Govinda. 2000:** *Nepalko jatiya prasna: Samajik Banot ra Sajhedariko Sambhanwana* (Nepal’s National Question: Social Composition and Possibilities of Accommodation). Kathmandu: Center for Development Studies. Lawati, Mahendra 2005. *Towards a Democratic Nepal. Inclusive Political Institutions for a Multicultural Society*. New Delhi: Sage Publications. London: Thousand Oaks.

- 3 **Institute of Integrated Development Studies (IIDS) 2000:** Adivasis/Janajatis in National Development. Major Issues, Constraints and Opportunities. Plan of Action Proposed for the Tenth Plan, 2000-2007. Kathmandu (unpublished report), p. 108.
- 4 Adapted from **Gurung, Harka 2006.** From Exclusion to Inclusion. Socio-Political Agenda for Nepal. Kathmandu: Social Inclusion Research Fund Kathmandu, page 19.
- 5 Gender, Caste and Ethnic Exclusion in Nepal 2006, supported by DFID and World Bank. Summary published and distributed by Word Bank Nepal office, Drbar Marga, Kathmandu.
- 6 **Bhattarai, Baburam, 2003:** Political Economy of the People's War; in: Arjun Karki & David Seddom, *The People's War in Nepal: Left Perspectives*. Delhi: Adroit Publishers.
- 7 **Gurung, Harka 2005:** Social Exclusion and Maoist Insurgency, in: Sarah Webster and Om Gurung (ed.), *ILO Convention 169 and Peace Building in Nepal*. Kathmandu: Nepal Federation of Indigenous Nationalities (NEFIN) and International Labour Office Nepal, p.147.
- 8 Report communicated to Special Rapporteur by LAHURNIP in 2006.
- 9 *Report of the United Nations High Commissioner for Human Rights on the human rights situation and activities of her Office, including technical cooperation in Nepal A/61/374*, 15 September 2006.

## INDIA

In India, 461 ethnic groups are recognized as so-called Scheduled Tribes, and it is these “tribals” that are considered India’s indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called “central tribal belt” stretching from Rajasthan in the west to West Bengal in the east. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples’ rights to land and self-governance. These laws have numerous shortcomings, however, and their implementation is far from satisfactory. India therefore has a long history of indigenous peoples’ movements aimed at asserting their rights, which have often provoked violent repression from the state.

### Legal rights and policy developments

India’s indigenous peoples continue to live on the lowest rung of the political, economic and social ladder. Apart from human rights violations perpetrated by the security forces and the armed opposition



groups, Adivasis in mainland India also face violations of their rights at the hands of non-tribals. Non-implementation of constitutional safeguards and impunity create a vicious cycle of violence against indigenous peoples.

Apart from violations of civil and political rights, indigenous peoples continue to face land alienation, displacement, and false prosecution for accessing minor forest produce. As India's booming economy requires more resources, indigenous peoples' land and resources have been further targeted. Forcible acquisition of the lands of indigenous peoples has led to frequent protest and the state has often silenced such protests through the indiscriminate use of fire-arms, as was evident from the massacre of 14 Adivasis by the Orissa Police at Kalinga

Nagar, Orissa on 2 January 2006. Policies such as the Orissa Rehabilitation and Resettlement Policy, adopted in May 2006, have failed to address the plight of the displaced indigenous peoples as this policy, *inter alia*, excluded over 1.4 million persons displaced in Orissa by the state government between 1951 and 2006.<sup>1</sup>

The forest laws also victimise indigenous peoples. The adoption of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in December 2006 has been marked by controversy, among other things because of the inclusion of "other traditional forest dwellers". Initially, the Draft Bill referred only to the Scheduled Tribes, the indigenous peoples of India. However, the joint parliamentary committee recommended inclusion of "other traditional forest dwellers" i.e. non-tribals who have been living for at least three generations prior to the 13 December 2005 in forest areas and who depend on the forest or forest land for bona fide livelihood needs. As stated in the foregoing paragraphs, non-tribals too have been responsible for atrocities against tribals. Many of these other traditional forest dwellers are landlords and have been responsible for the pauperization of the Adivasis in many areas.

A national policy only outlines the intent of the government and is not legally binding. It cannot therefore address the shortcomings of any law, which are legally binding. On 21 July 2006, the government of India made the revised Draft National Tribal Policy<sup>2</sup> public but only gave until 10 August 2006 to comment on it. With the assistance of IWGIA, the Asian Indigenous and Tribal Peoples' Network organized a National Consultation on the Revised Draft National Tribal Policy on 6-7 August 2006 and made comments. The Ministry of Tribal Affairs, however, failed to come up with a final draft during 2006.

Following a public outcry, especially in Manipur, against the Armed Forces (Special Powers) Act of 1958, which empowers members of the Armed Forces to search and arrest suspects without a warrant or to use force against persons or property even to the point of causing death, the government of India established a Committee to Review the Act under the chairmanship of Justice Jeevan Reddy. In June 2005, the Justice Jeevan Reddy Committee submitted its report, urging a repeal of the Armed Forces (Special Powers) Act and its replacement "by a more humane Act". In November 2006, the central government sent the re-

port to the relevant state governments for their comments. This was despite the fact that the Review Committee had already taken the views of these into consideration before finalizing its recommendations, and it thus seemed to be a way of further delaying the implementation of the Review Committee's recommendations.

### **Indigenous peoples engulfed by increasing armed conflicts**

In 2006, the government of India and various state governments in north-east India continued peace processes with a number of armed opposition groups seeking varying degrees of autonomy and the right to self-determination. Cease-fire agreements have been in force with the National Socialist Council of Nagalim (Issac-Muivah group) since 1 August 1997, the National Socialist Council of Nagaland (Khaplang group) since 28 April 2004, the National Democratic Front of Bodoland since 1 June 2005, the United People's Democratic Solidarity of Assam since 1 August 2002, Diga Halim Daoga of Assam since 1 January 2003 and the Achik National Volunteer Council in Meghalaya since 23 July 2004. However, a lack of substantive progress in the peace processes is omnipresent.

While the peace processes continue in the north-east, more and more indigenous peoples are finding themselves engulfed in increasing low-intensity armed conflicts. At present, 20 out of 28 states of India are afflicted by armed conflicts. The seven north-eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura have been afflicted by armed conflicts over demands for self-determination. By December 2006, 13 other states – Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal in mainland India were under pressure from the Naxalites, ultra-left wing armed opposition groups also commonly known as Maoists. The Naxalites claim to represent the poor, Dalits and Adivasis and demand establishment of a proletarian state in India. All these areas afflicted by Maoist conflicts are mainly inhabited by indigenous peoples.

The Naxalite movement is neither an Adivasi movement nor is it led by the Adivasis but Adivasis do form a majority of its cadres. The state governments, especially the Chhattisgarh government, also involved the Adivasis in the anti-Naxalite *Salwa Judum* peace campaign. The Adivasis have therefore been both victims and perpetrators.

## **Human rights violations against indigenous peoples**

According to the 2005 Annual Report of the National Crime Records Bureau of the government of India, a crime against indigenous people was committed every 29 minutes. A total of 5,713 cases of atrocities against indigenous peoples were reported in the country in 2005 as compared to 5,535 cases in 2004, showing an increase of 3.2%. These included 1,283 cases reported under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 and 162 cases under the Protection of Civil Rights Act. Of the 7,981 persons who stood trial after being charged with crimes committed against Scheduled Tribes, only 1,934 or 24.4% were convicted.<sup>3</sup>

### **Human rights violations by the security forces: the Kalinga Nagar killings**

Each year, a large number of tribals are killed by the security forces. Human rights violations, including arbitrary deprivation of the right to life, have been a common feature of law and order enforcement, especially in armed conflict situations or during the forcible acquisition of indigenous peoples' lands for industrial projects. The killing of 14 Adivasis at Kalinga Nagar, Orissa on 2 January 2006 symbolised the use of disproportionate force against the Adivasis. According to a fact-finding team of the People's Union for Civil Liberties, when the Tata Iron and Steel Co Ltd - with the help of the district administration - undertook the leveling of the land where their industrial plant was to be established on 2 January 2006, about 300-400 Adivasi protestors, including women and children, wanted to enter the rope cordon. The

police tried to stop them and used “stun shells”, along with tear gas shells and rubber bullets. Later, in the melee, one policeman, Gopabandhu Mohanty, slipped and fell into the hands of the protesting tribals and was killed by the angry crowd.

In order to avenge the killing of Mr. Mohanty, other policemen ran amok and fired indiscriminately.<sup>4</sup> All this happened in the presence of the District Collector Saswat Mishra and Superintendent of Police Binoytosh Mishra.<sup>5</sup> Of the victims, two were shot in the back apparently while trying to flee, and two more were shot in the forehead at point-blank range.<sup>6</sup>

Out of the 14 persons killed, the bodies of six of them were sent for autopsy. In a further act of barbarism, the five dead bodies handed over to the Adivasis following post mortem had had their hands chopped off at the wrist without the consent of their relatives, on the pretext of taking fingerprints.<sup>7</sup> In addition, the genital organs of all six, including a woman, had been mutilated during the post mortem.<sup>8</sup>

The state government of Orissa ordered a judicial inquiry headed by Justice A S Naidu into the killings at Kalinga Nagar<sup>9</sup> but, by the end of 2006, the inquiry was still not completed.

### **Violation of humanitarian laws by the armed opposition groups: massacre of Adivasi civilians by the Naxalites**

The armed opposition groups were also responsible for gross violations of international humanitarian laws such as “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; and passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples” as provided under the Geneva Conventions.

In 2006, the Naxalites committed chilling massacres of the innocent tribal civilians in Chhattisgarh for their participation in the anti-Naxalite *Salwa Judum* campaign, irrespective of whether they had partici-

pated of their own volition or by force. Civilians were often targeted indiscriminately, as shown by the following three major massacres.

On the morning of 28 February 2006, 27 Adivasis were killed and at least 32 others injured in a landmine blast and subsequent attack by the Naxalites at Darbhaguda village under Konta Tehsil of Dantewada district in Chhattisgarh. The victims were returning to the relief camp at Errabore set up by the state government as a counter-insurgency measure. They were returning after attending a *Salwa Judum* meeting at Dornapal relief camp. According to the survivors, around 150-200 Naxalites emerged from the forests on both sides of the road and clubbed or stabbed to death 17 of those injured in the explosion.<sup>10</sup>

On 25 April 2006, the Naxalites kidnapped 52 tribals, including 13 women, from Manikonta village in Dantewada district of Chhattisgarh as they were returning to the relief camp at Dornapal. The victims had gone to their village to retrieve their personal belongings. The Naxalites killed 15 Adivasis in custody and released the rest. While the bullet-ridden bodies of two abducted villagers were recovered on 28 April 2006, the bodies of 13 other villagers were recovered from a deep forest with their throats cut. The bodies also bore multiple wounds.<sup>11</sup> According to the survivors, the Naxalites "selected" 13 of the hostages, tied their hands behind them, blindfolded them and then repeatedly stabbed them before slitting their throats in front of the other hostages. The hostages were allegedly denied adequate food and were forced to drink urine when they demanded water.<sup>12</sup>

In a pre-dawn strike on 17 July 2006, around 1,000 armed Naxalites swooped down on the Errabore relief camp in Dantewada district and massacred 31 civilians, including an infant and a 6-year-old girl, and injured 21 others.<sup>13</sup> Five victims were burnt alive while others were hacked to death.<sup>14</sup> The Naxalites also abducted 41 tribals, including 32 women, from the relief camp. On 18 July 2006, the Naxalites killed six of those abducted<sup>15</sup> while the rest were later released.

## **Violence against indigenous women**

Indigenous women are vulnerable to violence, including rape, from non-tribals, the security forces and the armed opposition groups.

In its 2005 Annual Report, the National Crime Records Bureau recorded a total of 640 cases of rape of tribal women in India in 2005 as against 566 cases in 2004, thus showing an increase of 13.1 per cent in 2005. Out of these 640 rape cases, 294 cases or 45.9% were reported from Madhya Pradesh alone.<sup>16</sup> Non-tribals were responsible for these rapes. On the night of 28 May 2006, two tribal women, one of whom was identified as Rekha Bai of Khargaon district of Madhya Pradesh, were allegedly raped by activists of Bajrang Dal, a Hindu fundamentalist group, as punishment for converting to Christianity. When the victims went to the local police station to file a complaint, the police refused to register the complaint, alleging that it was false.<sup>17</sup> On 1 June 2006, a counter complaint was filed against the victims and their husbands. The police registered the First Information Report under Section 3 of the Madhya Pradesh Freedom of Religion Act of 1968 against the victims and their husbands for allegedly converting or attempting to convert others to Christianity by use of force or by inducement or by any fraudulent means.

Indigenous women were also meted out inhuman and degrading treatment. On 21 August 2006, a group of upper-caste youths, including Mukesh Rawat and Raghuvir Rawat, allegedly stripped four tribal women at Bhevad in Punchi hills in Shivpuri district of Madhya Pradesh. The victims, who were returning home after collecting firewood from the forest, managed to escape from the clutches of the non-tribal youths and ran home naked.<sup>18</sup>

In May 2006, three persons identified as Hiralal, Sitaram and Rajesh reportedly molested a tribal woman named Munnibai, wife of Jagdish Parahi, resident of Raipura village of Kasrvad block under Khargone district of Madhya Pradesh. The accused tore her clothes, stripped her and paraded her naked in the village. Her only fault was to enquire as to why her son, Veeru, was beaten up by Sitaram, one of the accused.<sup>19</sup>

The security forces were responsible for violence against indigenous women as well. On 8 February 2006, a group of soldiers of the 36<sup>th</sup> Battalion of the Assam Rifles, a para-military force, allegedly gang raped four tribal women at Sachindraroazapara village under Gobindabari block in Dhalai District of Tripura during a search operation. One of the victims was the pregnant wife of one Pradhanjoy Tripura

who subsequently suffered a miscarriage and had to be rushed to hospital at Kailashahar.<sup>20</sup> On 15 February 2006, two of the three rape victims recorded their statements before the Chief Judicial Magistrate, confirming sexual assault by the soldiers.<sup>21</sup>

The armed opposition groups were also accused of the rape of indigenous women. In January 2006, Hmar civil society groups alleged that cadres belonging to the armed opposition group, the United National Liberation Front (UNLF), had raped 21 Hmar tribal girls aged between 13 and 17 years at Lungthulien village in the Tipaimukh division of Churachandpur district of Manipur.<sup>22</sup> In March 2006, the state government of Manipur ordered a Judicial Commission of Inquiry<sup>23</sup> headed by retired Justice SP Rajkhowa to conduct the investigation.<sup>24</sup> On 3 June 2006, a lone-member fact-finding panel from the National Commission for Women stated that though there was no direct medical evidence of rape, secondary evidence in the form of trauma, depression, psychological disorder and various other signs associated with rape and molestation had been enough to conclude that the girls had been raped.<sup>25</sup>

## **Land alienation**

The Constitution of India, under the 5<sup>th</sup> and 6<sup>th</sup> Schedules, protects the land rights of the indigenous peoples. In addition, various state governments have adopted state-level laws prohibiting the transfer of lands from indigenous peoples to “non-tribals”. Some of these laws were adopted during British rule. Yet such guarantees have proved ineffective in preventing widespread land alienation.

### **Land alienation in Andhra Pradesh**

Tribal lands have been alienated by force, allurement and deception. The state government of Andhra Pradesh informed the State Assembly in March 2006 that non-tribal individuals had adopted dubious methods by which to illegally occupy tribal lands in the names of tribal women, after marrying them. As many as 57,367 acres of land earmarked for the tribals in the Scheduled Areas was under the illegal occupation of non-tribal individuals in West Godavari district.<sup>26</sup>

According to present estimates, non-tribals hold as much as 48 per cent of the land in Scheduled Areas of Andhra Pradesh. Since the Andhra Pradesh Scheduled Areas Land Transfer Regulation came into effect in 1959, and as of September 2005, 72,001 cases of land alienation had been detected involving 321,685 acres of land in the state. These were stated to be only half of the actual land alienations in Scheduled Areas. Out of these 72,001 cases registered under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 70,183 cases were disposed of and 47.47% of the cases involving 162,989 acres were decided against the tribals.<sup>27</sup> The state-government sponsored *Giri Nyayam*, Legal Assistance Programme for Land, had been able to restore only some 106,477 acres of land to tribals in 29,873 cases as of June 2006.<sup>28</sup>

The main reasons for the majority of the cases going in favour of the non-tribals were attributed to a lack of understanding of the laws on the part of the implementing authorities, an absence of legal support to tribals and, in most cases, the tribals not being a party to the proceedings.<sup>29</sup> In one such case of alienation of tribal land, it took 37 years for Ms Kumra Munku Bai, a Gond tribal of Jaongon in Adilabad district of Andhra Pradesh, to recover her father's land from B Shankar, a non-tribal money lender, and not without the help of Member of Parliament, Mr. Jairam Ramesh. Her father, Todsam Gangu, who owned 18 acres of agricultural land, took a loan of Rupees 1400 in 1969 (today approximately US\$32) from the money lender, and agreed to lease out his land for three years. But the money lender refused to return the land. Gangu approached the authorities but, for lack of guidance and legal help, the case dragged on and Gangu passed away in the meanwhile. In March 2006, after due enquiry, the local authorities passed eviction orders against the non-tribal money lender, and handed back possession of the land, now valued at 300,000 Rupees (US\$6,800), to Manku Bai's family.<sup>30</sup>

## Indigenous internally displaced persons

Indigenous peoples have disproportionately been the victims of development and conflict-induced displacement. While by 2001 they constituted 8.2% of the total population, they comprised 55.1% of the 8.54

million persons displaced in India by development projects or conflict between 1950 and 1990.<sup>31</sup>

### **Development-induced displacement**

The case of the Narmada Dam exemplifies the issue of the displacement of tribals without proper rehabilitation. Following the Narmada Control Authority's permission, given on 8 March 2006, to raise the height of the Sardar Sarovar Dam from 110.64 metres to 121.92 metres, *Narmada Bachao Andolan* (NBA – a people's movement against the dam) activists started a hunger strike in April 2006 to demand the rehabilitation of over 35,000 project-affected families who were yet to be resettled. A Group of Ministers comprising the Union Minister of Water Resources, Saifuddin Soz, the Union Minister of Social Justice and Empowerment, Meira Kumar, and the Minister of State in the Prime Minister's Office, Prithviraj Chauhan, visited the resettlement and rehabilitation sites, as well as the submergence sites at Khalghat, Dharampuri, Lakhangaon, Borlai 1, 2 and 3, Awalda, Piplud, Nisarpur and Picchodi in Madhya Pradesh on 7 April 2006. In their report, "A Brief Note on the Assessment of Resettlement and Rehabilitation Sites and Submergence of Villages of the Sardar Sarovar Project" to Prime Minister Dr. Manmohan Singh on 9 April 2006, the Group of Ministers held that the rehabilitation and resettlement of the project-affected families had not taken place in consonance with the orders of the Supreme Court. In order to re-write the reports of the Group of Ministers, the Prime Minister constituted the Oversight Group, headed by V.K. Shungulu. The Oversight Group euphemistically held that the lack of relief and rehabilitation and other deficiencies in most sites could be removed by developing under-developed plots and proper maintenance and repair of roads and buildings, etc. These tasks, which appeared quite simple to the Oversight Group, have not been undertaken by the authorities in the last two decades. On the basis of the Oversight Group's report, the Prime Minister of India submitted before the Supreme Court on 10 July 2006 that the construction of the dam should not be stopped and the Supreme Court allowed the raising of the height of the dam up to 119 meters in all blocks.

Various state governments have been signing Memoranda of Understanding (MoUs) for the establishment of industries, often on the lands of indigenous peoples, to attract much-vaunted foreign direct investment and investment by national corporate bodies. The Jharkhand government has reportedly signed over 42 MoU with investors since it became a state in 2000. Approximately 47,445 acres of land would be required for projects in mineral-rich Kolhan Region, which was likely to affect about 10,000 families.<sup>32</sup> A study by the People's Union for Civil Liberties has shown that over 7.4 million tribals were displaced in Jharkhand by different projects between 1950 and 1990. Only 1.85 million of these displaced tribals have received some rehabilitation.<sup>33</sup> The Orissa government also signed 42 MoUs with companies between 2002 and 2005.<sup>34</sup> The MoU with Korean steel major Pohang Steel Company, signed on 22 June 2005 for the establishment of a steel plant at Paradeep in Jagatsinghpur district in Orissa with a total investment of US\$12 billion, will result in the displacement of around 4,000 tribal families.<sup>35</sup> Another 80,000 to 100,000 tribals from 50 villages in Subdega and Balisankra blocks in Jharsuguda district of Orissa faced imminent displacement due to the proposed dam on the Ib river.<sup>36</sup>

In October 2005, the central government granted "forest and environmental clearance" for the 46-meter-high multi-purpose Polavaram dam being built across the Godavari River in West Godavari district of Andhra Pradesh.<sup>37</sup> The Union Ministry of Environment and Forests also admitted that about 193,350 persons would be displaced in three states – Andhra Pradesh (175,275), Orissa (6,316) and Chhattisgarh (1,766). Around 150,000 of these are indigenous.<sup>38</sup>

Displaced persons are seldom rehabilitated. Since 1972 around 1,600 families in Karnataka have been evicted from the Nagarhole National Park of Kodagu district. After evicting the tribals, the state government has allegedly been promoting jungle lodges inside the park.<sup>39</sup> It was reported in early 2006 that about 250 tribal families who have been shifted out of the Nagarhole National Park to Nagapura in the last three years have not been provided with even the necessary facilities such as electricity supply, hospital, proper infrastructure, etc.<sup>40</sup>

### Conflict-induced displacement

Indigenous peoples also constitute the majority of over 600,000 conflict-induced internally displaced persons (IDPs) in India. The indigenous peoples have been displaced because of intra-indigenous peoples' conflicts, conflicts between different armed opposition groups as well as by state governments for counter-insurgency operations and other security measures such as the Indo-Bangladesh Border fencing. Indigenous peoples who have been internally displaced by these conflicts include 33,362 displaced Bodos and Santhals in Kokrajhar district and 74,123 displaced Bodos and Santhals in Gosaigaon district of Assam; about 35,000 Brus (also known as Reangs) from Mizoram who took refuge in Tripura in October 1997; and 43,740 displaced Adivasis living in the anti-Naxalite *Salwa Judum* camps in Dantewada district of Chhattisgarh.

At the beginning of 2006, there were 44,000 Karbi and Dimasas IDPs who had been displaced because of the internecine conflict between October and December 2005 that claimed over 90 lives in Karbi Anglong district of Assam. By the end of 2006, they had all returned to their villages, but without a modicum of rehabilitation. The state government of Assam even failed to provide the compensation of 300,000 Rupees (approx. US\$6,726) announced for the relatives of those killed.

Indigenous IDPs faced discrimination in terms of access to basic humanitarian services. While a displaced Kashmiri Pandit, a sect of Hindu Pandits who ancestrally originate from the Kashmir Valley, received 750 Rupees (US\$17) per month, an adult Bru IDP in Tripura State received only 80 Rupees (US\$1.8) per month.

Thousands of indigenous peoples have been displaced because of the Indo-Bangladesh border fencing along the 4,096.7 km-long border running through the five Indian states of West Bengal, Assam, Meghalaya, Tripura and Mizoram.<sup>41</sup> About 40 villages in the Nongjri to Dawki and Dawki to Jaliakhola sectors in Jaintia Hill district of Meghalaya will fall outside the fence, on the Bangladeshi side, if the fencing work is completed.<sup>42</sup> In March 2006, the state government of Meghalaya temporarily suspended the border fencing works following protests by the indigenous peoples in Khasi

and Jaintia Hills as their villages had fallen on the other side of the border due to fencing.<sup>43</sup>

In Mizoram, the "Indo-Bangladesh Border Fencing Affected Families Resettlement Demand Committee of Mizoram" conducted a house-to-house survey and found that the fencing will displace a total of 5,790 Chakma tribal families, consisting of 35,438 persons from 49 villages. These villages are located on the banks of four rivers namely the Thega, Karnaphuli, Harina and Sajek rivers, which form the natural boundary between India and Bangladesh.<sup>44</sup> The fencing has been continuing without the provision of any assistance to the displaced Chakma families.

The establishment of military infrastructure such as firing ranges, training centres and camps also often resulted in the displacement of considerable numbers of tribals. On 22 August 2006, thousands of people, especially tribals, demonstrated before the district secretariat demanding the closure of the army firing range in Netharhat town of Latehar district of Jharkhand. The range covers 1,471 sq km spread over 245 villages of Latehar and Gumla districts. As of 24 August 2006, 30 cases had been filed by the local residents against the army relating to rape, attempt to rape, forceful removal of animals, etc.<sup>45</sup>

The armed opposition groups were also responsible for displacement. Some 1,000 Hmars from the Lunghtulien, Parbung, Tulbung and Mawlia areas of Churachandpur district of Manipur fled to Mizoram following clashes between the armed opposition groups, the Hmar People's Convention (Democratic) and the United National Liberation Front (UNLF) in January 2006.<sup>46</sup> They were housed at Sakawrdai relief camps in Mizoram<sup>47</sup> and, by the end of 2006, they had returned to their villages.

The majority of the internally displaced people could not return until now simply because of the failure of the state governments. While the Assam government took no visible steps to rehabilitate the internally displaced persons in Bodoland areas, the Mizoram government simply refuses to take back the Brus sheltered in relief camps in Tripura State on frivolous grounds.

## Repression under forest laws

The indigenous peoples continued to face eviction from their traditional habitat under the Forest Conservation Act of 1980. In May 2006, the Forest Department of Tripura issued eviction notices to about 43,215 tribal families comprising around 215,000 tribals, ordering them to immediately vacate their traditional habitat pursuant to a Supreme Court directive to clear all forest land encroached upon by human settlers (read more about this in *The Indigenous World 2002-2003, 2004, 4005, 2006*). These tribal people were allotted so-called forest lands by the Revenue Department under the Tripura Land Revenue and Land Reforms Act, 1960 but the state government had failed to regularise them.<sup>48</sup>

Thousands of indigenous people face prosecution for accessing minor forest produce, one of their means of survival since time immemorial. In November 2005, the Forest Department of Chhattisgarh reportedly decided to close 257,226 forest cases registered against 162,692 tribals between 1953 and 30 June 2004 under Sections 26, 33, 41 of the Indian Forest Act 1927 pertaining primarily to the illegal felling of trees for domestic use and ferrying of wood by bullock carts.<sup>49</sup> Section 3(1)(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognised the “right of ownership, access to collect, use, and dispose of minor forest produce which has traditionally been collected within or outside village boundaries”. But the Act failed to address the plight of those Adivasis who have been charged under the Indian Forest Act of 1927 and the Forest Conservation Act of 1980 for accessing the same minor forest produce. Nor does the Recognition of Forest Rights Act address the plight of those Adivasis who have been displaced from their habitat because of the creation of national parks.

## Affirmative actions

The constitution of India provided an array of affirmative action programmes for the Scheduled Tribes and the Scheduled Castes, includ-

ing reservation in the parliament, education, employment etc. These affirmative action programmes have been instrumental in bridging the social, political and economic disparities. Yet these programmes could have further bridged the disparities had the government of India and various state governments been serious about their implementation.

On 19 October 2006, a five-judge Constitution Bench of the Supreme Court of India extended the concept of "creamy layer" to the Scheduled Tribes and Scheduled Castes for exclusion from the affirmative action programmes for those who no longer require such programmes because of their income or employment situation. The Supreme Court had previously identified the "creamy layer" only for the Other Backward Classes.<sup>50</sup> The judgement, if implemented, will have serious negative consequences considering that the government has consistently failed to fill the vacancies reserved for, among others, the tribals. As of March 2006, there were about 121,000 vacancies in the police force for Scheduled Castes and Scheduled Tribes across the country.<sup>51</sup> In addition, about 20% (nearly 2,000) of the places for Scheduled Caste and Scheduled Tribe students remain vacant every year in Delhi University.<sup>52</sup> Unless the government takes measures to address the Supreme Court judgement, identification of the "creamy layer" of the tribals will further deprive them of access to affirmative actions.

The budgetary allocations intended for the welfare of the tribal peoples under various welfare schemes such as the Tribal Sub-Plan, Special Central Assistance under Article 275 of the Constitution etc. are often grossly misused or underused. In the capital Delhi, as of January 2006 the state government had utilized only 7.4 million Rupees (US\$167,180) of the 53.3 million Rupees (US\$1,204,150) sanctioned for the year 2005-2006 for the scheme of free supply of stationery to Scheduled Castes\Scheduled Tribes\Other Backward Classes\Minorities in schools. Only 18,040 students benefited as opposed to the target of 74,000 students. Other scholarship schemes, including the Open Merit Scholarship Scheme, met the same fate.<sup>53</sup> The state governments often divert such unutilized funds for the benefit of the majority population.

## Vulnerable tribal communities

Many tribal communities such as the Birhores,<sup>54</sup> Chero, Paharia and Malpahari in Jharkhand,<sup>55</sup> Abuj Madias and Baigas of Chhattisgarh,<sup>56</sup> Karbongs of Tripura,<sup>57</sup> the Great Andamanese, Onges, Shompens, Jarawas, and Sentinelese of the Andaman and Nicobar islands,<sup>58</sup> are on the verge of extinction due to the government's apathy.

In 2002, the Supreme Court ordered the closure of those parts of the Andaman Trunk Road that run along and through the Jarawa Tribal Reserve as it threatens their survival. But the Andaman Trunk Road continued to remain open in 2006, in gross contempt of the Supreme Court orders.<sup>59</sup> According to a report presented to the Planning Commission in August 2006, the Jarawas faced the dual challenges of losing their habitat and saving themselves from sexual exploitation by outsiders because of the construction of the Andaman Trunk Road.<sup>60</sup>

The government of India launched specific programmes for the so-called "Primitive Tribal Groups". The National Commission for Scheduled Tribes stated in February 2006 that although the central government had sanctioned 1 Billion Rupees (US\$22.6 million) in 2003 for the development of so-called primitive tribes – the Baigas, Pahari Korbas, Abuj Madias and Birhors – in Chhattisgarh, it had failed to uplift their conditions. Even the central government-aided midday meal scheme for primary school children and the Antodaya scheme – an Indian government programme to distribute highly subsidised grain to the "poorest of the poor" among the rural population - were absent in the areas dominated by these tribes.<sup>61</sup>

## Denial of voting rights to Chakmas and Hajongs

On 9 January 1996, in its judgment in the case of *National Human Rights Commission versus State of Arunachal Pradesh & Another*, the Supreme Court of India directed the government of India and the state government of Arunachal Pradesh to process the citizenship applications of the Chakma and Hajong tribals. A total of 4,627 Chakmas and Hajongs who migrated from the Chittagong Hill Tracts of then East Pakistan

submitted citizenship applications in 1997 and 1998. By the end of 2006, the government of India had failed to determine even a single application.

In addition, about 14,000 Chakmas and Hajongs, who are citizens by birth, also continued to be denied registration on the electoral roll in Arunachal Pradesh. On 23 March 2005, the Election Commission of India issued specific guidelines for registration of the eligible Chakma and Hajong voters. Instead of complying with those guidelines, the Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers who are also employees of the state government summarily rejected the applications of the Chakma and Hajong citizens for their names to be included. The Election Commission of India suspended publication of electoral rolls for all four Chakma and Hajong-inhabited State Assembly constituencies and sent a team to investigate in February 2006. By the end of 2006, the Election Commission of India had failed to give its final verdict. □

*This article is based on excerpts from the Advanced Unedited Version of The State of India's Indigenous/Tribal Peoples 2006, being published by Asian Indigenous and Tribal Peoples Network based in New Delhi.*

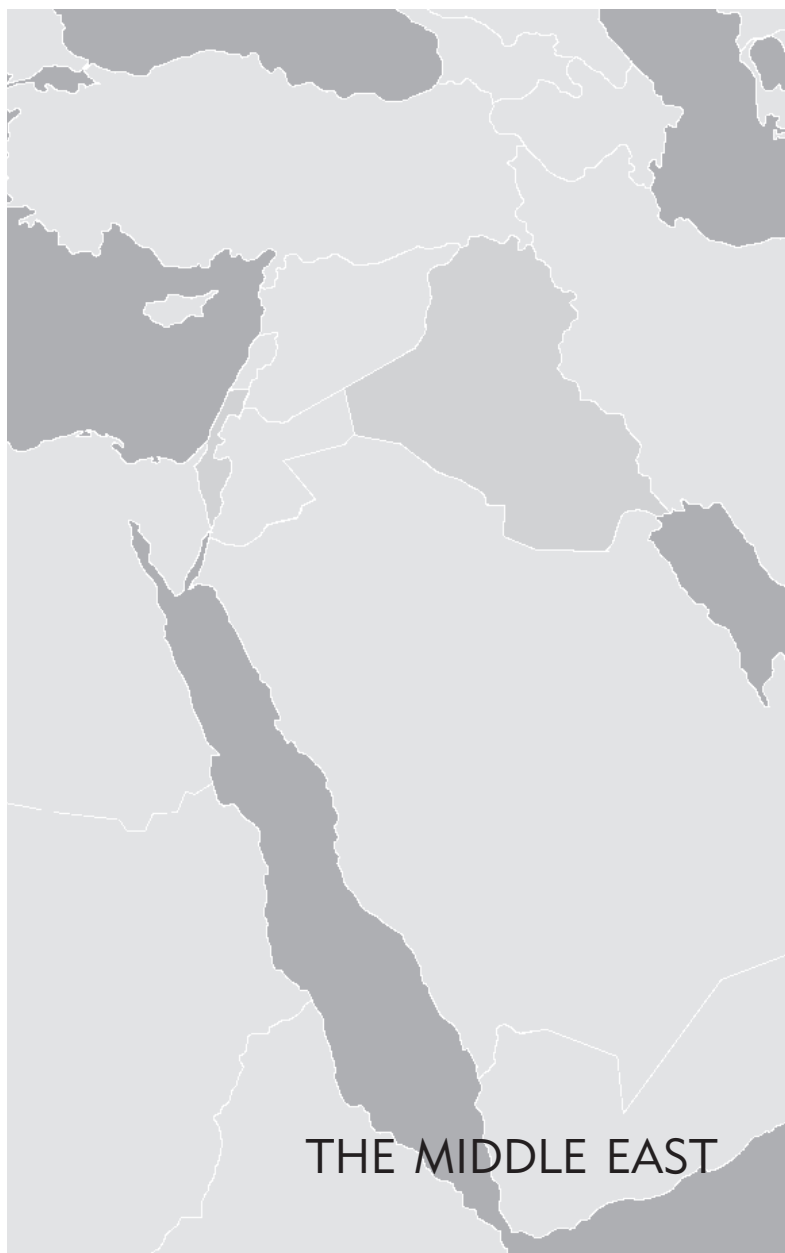
## Notes and references

- 1 Development not for tribes, by Joseph Marianus Kujur, Open-Ed, *The Pioneer*, 18 June 2005.
- 2 Read more about the Draft National Policy on Tribals in *The Indigenous World 2005*. Ed.
- 3 2005 Report of National Crime Records Bureau, Ministry of Home Affairs, Government of India, available at <http://ncrb.nic.in/crime2005/cii-2005/CHAP7.pdf>
- 4 People's Union for Civil Liberties (PUCL), 2006: Police firing at Kalinga Nagar, fact-finding report. Available at: <http://www.pucl.org/Topics/Dalit-tribal/2006/kalinganagar.htm>
- 5 12 Orissa tribals shot dead by police; cop hacked to death, *The Pioneer*, 3 January 2006.
- 6 Police shot 2 tribals in the back, 2 in the head, *The Asian Age*, 5 January 2006.
- 7 What's under the carpet?, *The Telegraph*, 12 January 2006.
- 8 Slashed genitals in glare - Rights body allegations in Orissa tribal killings, *The Telegraph*, 14 January 2006.

- 9 Justice Naidu commission defers sitting, *The Statesman*, 8 May 2006.
- 10 The Adivasis of Chhattisgarh: Victims of the Naxalite movement and Salwa Judum campaign, Asian Centre for Human Rights, 17 March 2006.
- 11 Naxalites slit throats of 13 hostages in Chhattisgarh, *The Hindustan Times*, 29 April 2006.
- 12 Naxal Conflict Monitor, Vol II (April-June 2006), Asian Centre for Human Rights, <http://www.achrweb.org/ncm/ncm-vol-2.pdf>
- 13 Maoist army butchers 31, *The Hindustan Times*, 18 July 2006.
- 14 Ibid.
- 15 Naxals kill 6 more in Chhattisgarh, *The Hindustan Times*, 19 July 2006
- 16 <http://ncrb.nic.in/crime2005/cii-2005/Chapters.htm>
- 17 Tribal women raped in Madhya Pradesh, *The Asia News International*, 5 June 2006.
- 18 Youths strip four tribal women, two arrested, *The Times of India*, 30 August 2006.
- 19 ST woman paraded naked, *The Central Chronicle*, 2 June 2006.
- 20 Rape slur stalks Assam Rifles - Gangrape charge denied, high-level probe launched, *The Telegraph*, 14 February 2006.
- 21 Rape victims record statements, AR denies charges, *The Shillong Times*, 16 February 2006.
- 22 In Manipur, tribal groups call for probe into rape by militants, *The Indian Express*, 7 March 2006.
- 23 Govt constitutes twin inquiry panels, *The Kanglaonline*, 20 March 2006.
- 24 Rajkhowa to head probe panel, *The Sangai Express*, 20 March 2006.
- 25 Women were raped in Parbung: NWC, *The Statesman*, 4 June 2006.
- 26 Tribal land occupied, *The Deccan Chronicle*, 22 March 2006.
- 27 Justice at last - A new programme helps AP tribals recover lost land, *The Tribune*, 11 July 2006.
- 28 Tribals lose land battle, *The Deccan Chronicle*, 30 June 2006.
- 29 Justice at last - A new programme helps AP tribals recover lost land, *The Tribune*, 11 July 2006.
- 30 Ibid.
- 31 [http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2\\_ch4\\_2.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_ch4_2.pdf)
- 32 Jharkhand tribals up in arms against projects, *The Hitavada*, 16 November 2005.
- 33 Homeless in rush for progress - Alarm over displacement, *The Telegraph*, 25 April 2005.
- 34 [http://orissagov.nic.in/e-magazine/orissaannualreference/ORA-2005/pdf/mou\\_signed\\_with\\_companies.pdf](http://orissagov.nic.in/e-magazine/orissaannualreference/ORA-2005/pdf/mou_signed_with_companies.pdf)
- 35 **Rediff.com, 2005:** All about India's biggest FDI project, 23 August 2005, <http://www.rediff.com/money/2005/aug/23posco.htm>
- 36 Development not for tribes, by Joseph Marianus Kujur, *The Pioneer*, 18 June 2005.
- 37 Polavaram project gets clearance, *The Hindu*, 2 October 2005.
- 38 State Pulse: AP: Dam to displace hundreds, *The Central Chronicle*, 14 December 2005.
- 39 Jungle lodges displacing tribals, *The Deccan Herald*, 7 June 2006.

- 40 250 tribal families denied facilities: HC, *The Deccan Herald*, 4 February 2006.
- 41 Asian Indigenous and Tribal Peoples Network (AITPN), 2006: *Indigenous Rights Quarterly*, Vol. I: No. 01, April-June, 2006.
- 42 40 Meghalaya villages protesting fencing work, *The Assam Tribune*, 14 January 2006.
- 43 Victims of Barbed-Wires: Chakmas' existence in Mizoram threatened by Indo-Bangladesh Border Fencing, *Indigenous Rights Quarterly*, AITPN, April-June 2006.
- 44 Ibid.
- 45 Close Netharhat firing range, tribals demand, *The Pioneer*, 24 August 2006.
- 46 Hundreds flee after clash in Manipur, *The Pioneer*, 21 January 2006.
- 47 Manipur plans to repatriate Hmar refugees, *The Sentinel*, 19 June 2006.
- 48 Govt serves notices to inhabitants in forest lands - Tripura tribals facing eviction, *The Shillong Times*, 2 June 2006.
- 49 Over two lakh forest cases against Chhattisgarh tribals to be withdrawn, *The Hitavada*, 11 November 2005.
- 50 First time, talk of a "well-off" cut-off in SC/ST quotas, *The Indian Express*, 20 October 2006.
- 51 SC quashes PIL for SC/ST vacancies in police, *Deccan Herald*, 28 March 2006.
- 52 20% of 9,000 SC, ST seats in DU vacant, *The Times of India*, 11 April 2006.
- 53 Funds for SC/STs not used properly, *The Asian Age*, 13 March 2006.
- 54 Birhore tribe, may soon become extinct in J'khand, *The Hitavada*, 4 July 2005.
- 55 Soren criticises Jharkhand govt, *The Times of India*, 5 February 2007.
- 56 State Pulse - Chhattisgarh: Tribes on verge of extinction, *The Central Chronicle*, 6 February 2006.
- 57 Only 23 families still surviving, *The Sentinel*, 25 June 2005.
- 58 Andaman tribes at risk of extinction, *The Statesman*, 17 May 2005.
- 59 Andaman activists allege sexual exploitation of Jarawa women, *The Kashmir Times*, 20 August 2005.
- 60 Experts to Plan panel: Habitat loss, sexual exploitation threaten Jarawas, *The Indian Express*, 30 August 2006.
61. State Pulse - Chhattisgarh: Tribes on verge of extinction, *The Central Chronicle*, 6 February 2006.





## THE MARSH DWELLERS OF IRAQ

Of Iraq's 26 million plus people, approximately 75 to 80% are Arabs, 15 to 20% are Kurds and roughly 5% are Turkamans, Armenians and others. A distinct sub-group within the Arab community is known as the Marsh Dwellers,<sup>1</sup> who have historically inhabited the Mesopotamian marshlands of southern Iraq.

No accurate figures exist for the Marsh Dwellers of Iraq but, of an estimated 250,000<sup>2</sup> population in the 1990s, their population dropped to 85,000 before the war in 2003 due to persecution by the Saddam Hussain regime. Currently, registered refugees and internally displaced peoples are listed at just over 78,000 although the actual number is most likely to be much higher.<sup>3</sup> Many of the displaced have not returned to their former lands, and may never do so.

Marsh Dwellers traditionally inhabited a land of interconnected lakes, mudflats and wetlands within modern-day Iraq and Iran. They constructed artificial islands and depended on fishing, hunting, rice and date cultivation.

Although there is significant prejudice against Marsh Dwellers in Iraq, no legislation protecting the rights of Marsh Dwellers or any other indigenous group within Iraq has been developed to date.

Following the end of the Gulf War in 1991, the Marsh Dwellers in Iraq took part in the rebellion against Saddam Hussein's regime in an uprising that became known as the "Shiite or *Shabayna* Uprising". To control the region, the Iraqi regime implemented a program for the



systematic desiccation of the marshes by diverting the water, burning the reeds and poisoning the waters.

In addition, the regime waged a brutal campaign in which whole villages were destroyed by aerial bombardment and bulldozing. Many of the Marsh Dwellers died or fled the area during this time and the marshes themselves shrank to less than 10% of their original size, the rest having been turned into wastelands.

### The return of the Marshes and the Marsh Dwellers

To date, 58% of the marshlands have been re-flooded (primarily as a direct result of action taken by the Marsh Dwellers and the Iraqi Min-

istry of Water Resources) and wetland vegetation cover has increased throughout the marshland area.<sup>4</sup> Fish and animals have returned; rare and endangered bird species have been reconfirmed in the marsh areas; water buffalo populations are recovering and, in general, the biodiversity of the area, upon which the Marsh Dwellers rely, is increasing. With the return of water, the people continue to filter back to the marshlands to rebuild their villages with reed huts and exquisite *mudhifs* (guesthouses).

But many problems remain. Large areas remain barren or have problems with high salinity. Fishermen are using unsustainable practices (such as the use of electro-shocking and the application of pesticides) to harvest fish. The International Organization for Migration (IOM) and the office of the UN High Commissioner for Refugees (UNHCR) have listed shelter, employment, desalination of water and development of water networks, improved sanitation and health services, construction and funding of schools as priority needs to support the return of Marsh Dwellers and other refugees and IDPs to the Marshland Areas.<sup>5</sup>

## Future challenges

The year 2006 has seen increasing instability in Iraq and there is still no coordinated plan for the region. Our last report on the governorates indicated a poor quality of service in most public sectors (power, potable water, education, health, etc.) and this situation, though improved in localized areas due to small projects being carried out by governmental and non-governmental organizations, remains largely the same overall.

Land ownership remains a potential issue that will eventually have to be dealt with. Many Marsh Dwellers were forcibly relocated to new areas when the drying occurred, which has further complicated the ownership issue and impedes the process of marshland restoration. For example, in Thi Qar Governorate, where entire villages were razed to the ground, many of these villages were located in rural marshland areas and were not registered on the official land or estate registries. Thus returning refugees do not qualify for compensation under current legislation and claims can only be pursued through the ordinary civil courts.<sup>6</sup>

It has been established that there is water available in Iraq for the restoration of up to 75% of the marshlands, in concert with a more ef-

ficient utilization of Iraq's water resources. A set of tools developed by a working group of Italian and Iraqi experts, called the New Eden Group, is now available to the Iraqi regional and local government and aid agencies to address the issue of water resource allocation, marshland restoration and socio-economic development in the area.<sup>7</sup>

## Activities by and for Marsh Dwellers

Tribal and family affiliations still dominate in the Marshland areas, but new indigenous organizations are forming. To date, the Iraqi government has made very little investment in the Marshland areas and the Marsh Dwellers have formed associations and village councils to promote their rights and organize their own projects to provide health care and other services to their members. One example is the Chubayish Marsh Arab Council in Thi Qar Governorate. This organization was formed to bring back and develop the marshes and help restore the rights of the people who live in the marshes by providing services in all aspects of life, education and health. There are at least two other groups in Thi Qar Governorate, two to three in Missan, and up to eight groups in Basrah Governorate.

Environmental and humanitarian aid groups are also involved in the area. Nature Iraq is involved in research in the marshland areas as well as assisting with a pilot project to develop a "Green Village" in the Marshland Area and a feasibility study for a future Marshland National Park. The Rafha Organization is involved in representing and advocating for the needs of the refugee communities in Thi Qar and Basrah governorates. Together to Protect Humans & the Environment of Baghdad and the Ibin Sina Society of Basrah are developing a project for women in these areas to create and market their craftwork. A Czech group called People in Need is also working in these communities. □

## Notes

- 1 The dwellers are also known as "Marsh Arabs" or "Ma'dan". The former specifically refers to Bedouin groups who moved into the marshes perhaps only 500 to 1,000 years ago; the term Ma'dan is a pejorative term in Iraq but some

believe that the Ma'dan are the truly indigenous people. The term Marsh Dweller is used here as it is more inclusive of the cultural values that are consistent between the two (or more) groups that live in the marshes.

- 2 According to some sources, the number may have been as high as 500,000. -Ed.
- 3 **New Eden Group, 2006:** Master Plan for Integrated Water Resource Management in the Marshland Areas, September 2006. [www.newedengroup.org](http://www.newedengroup.org).
- 4 **United Nations Environment Programme, 2006:** *Iraqi Marshland Observation System (IMOS)*. December 2006. <http://imos.grid.unep.ch/>
- 5 **International Organization for Migration, 2006:** *Missan Governorate Profile*, October-December 2005; *Thi Qar Governorate Profile*, October 2005-January 2006; *Basrah Governorate Profile*, October-December 2006, Phase II Monitoring.
- 6 **United Nations High Commissioner for Refugees, 2006:** *Thi Qar Governorate Assessment Report*, October 2006.
- 7 **New Eden Master Plan**, sponsored by the Italian Ministry of Environment & Territory. For more information on the Marshes and work in southern Iraq: [www.natureiraq.org](http://www.natureiraq.org).

## THE ARAB BEDOUINS OF ISRAEL

Today there are approximately 160,000 Arab-Bedouins in the Negev desert of Israel (2.2% of Israel's overall population). This indigenous population was concentrated into a tight geographical area in the eastern Negev-Naqab, called the *Seyag*, following the establishment of the State of Israel in 1948.

Roughly half of the Arab-Bedouin population lives in villages unrecognized by the State of Israel. These villages do not appear on Israeli maps, have no road signs indicating their existence, and are denied basic services and infrastructure, including paved roads, running water, garbage disposal, electricity, and proper schools and clinics. It is illegal to build permanent structures in these villages. Those that do so risk heavy fines and home demolitions.<sup>1</sup>

The other half of the Bedouin population is concentrated in seven government-planned towns which were built between the late 1960s and early 1990s in the *Seyag* area. The towns were planned as urban centers, giving little or no consideration to the traditional Arab-Bedouin way of life. This forced urbanization has been disastrous: unemployment is high and the Arab-Bedouin towns rank among the country's 10 poorest municipalities.

During 2006, the Negev region was often discussed in the media, as various "development" programs and "solutions" for the problems of the Arab-Bedouin community in the Negev gradually emerged. Among them: Negev 2015 – Strategic-National Negev Development Plan, ratified by the government; and a position paper of the National Security Council calling for the continued forced concentration of

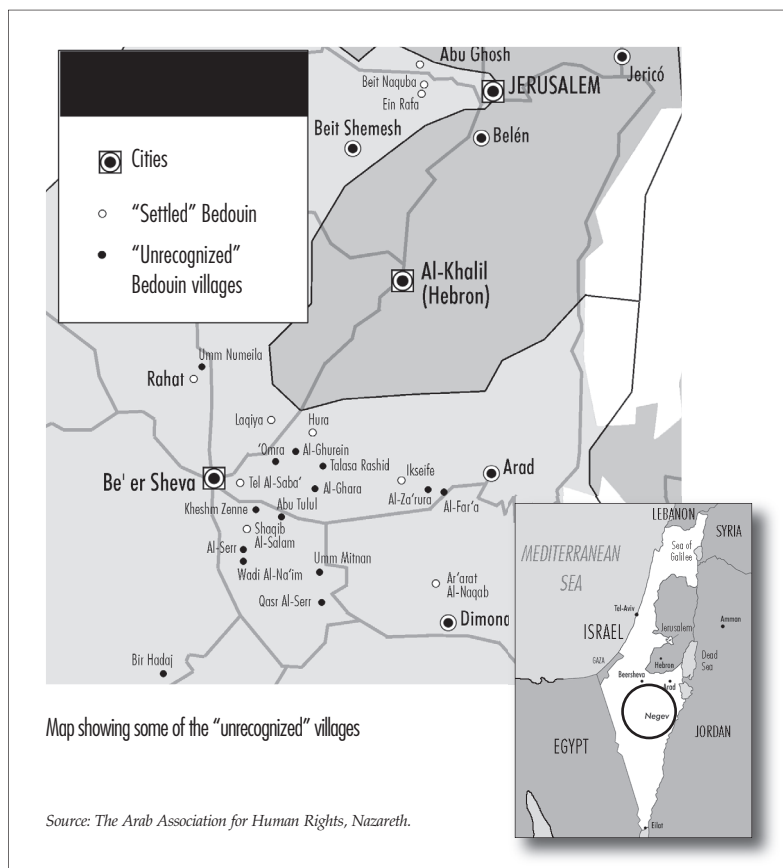
Bedouins. In addition, the National Planning and Building Committee agreed to accept the new District Outline Plan for the Southern Region (23/14/4). All these plans have been severely criticized by the Negev Bedouin residents as well as by the various NGOs that operate in the region, on the basis of a lack of equality and an unjust distribution of resources between the Jewish and Arab-Bedouin populations of the Negev.

## House demolitions

One of the principal methods by which the government hopes to implement its exclusive township policy is by demolishing “illegally built” houses, although not providing any avenues for legal construction within the unrecognized villages. The state puts demolition orders on houses it claims are built illegally. Not all the homes that get demolition orders are demolished, only two or three homes every two or three weeks in different villages. This way, the authorities keep the people under permanent threat of seeing their home disappear. Once the bulldozers have finished their work, the families, half of whom are children, are left without shelter and most of their possessions are buried under the ruins.

On May 30, 2006, in a speech at the Knesset (Parliament), the Minister of the Interior, Mr. Roni Bar-On, said that aerial photos from 2005 showed that there were 42,000 unlicensed houses in the Negev Bedouin community. The minister noted that between 2002 and 2005, 560 houses had been demolished in the Negev, and it was made clear that the government intended to pursue the policy of house demolitions further.

During 2006, 93 houses were demolished in the unrecognized villages and hundreds of demolition orders were issued to houses (see full demolition log at [www.dukium.org](http://www.dukium.org)). For example, on December 6, 17 houses and three shacks, belonging to the Bedouin family of Al Talalka, were demolished in the unrecognized village of Twayyel abu Jarwal. Large forces of police and inspectors from the Ministry of the Interior arrived in the village in the early hours of the morning, accompanied by 6 bulldozers, to destroy the houses.



## Crop destructions

Crops were also destroyed in 2006. On February 6, forces of the Israel Land Administration (ILA) destroyed 2,500 dunams<sup>2</sup> of crops belonging to the families of Abu-Zaed and Abu-Altayef, located south of the city of Rahat. These fields had been in the possession of these families since before the establishment of the State of Israel. On April 16, 400 dunams of crops were destroyed in three locations: around 100 dunams in the unrecognized village of Bir Hamam, belonging to Ali Abu Isaa,

approximately 150 dunams in the unrecognized village of Hirbat al Watan, belonging to the Abu Hurti family and another 150 dunams in the unrecognized village of Al Garin, belonging to Salame Abu Kaf.

The use of bulldozers and tractors in crop destructions was reintroduced after the Supreme Court in 2004 issued an interim order that stopped the Israel Lands Authority from using aerial spraying with chemical pesticides (*Round Up*, among other chemicals).

## **Even sheep do not go free**

This year, the Israeli army prevented Bedouin sheep and goat flocks from entering grazing areas bordering on firing zones in the Negev, in spite of the severe drought that the region suffered this year. The closed-off areas had been open to Bedouin grazing for many years. According to the Ministry of Agriculture, the closing of these areas deprives some 50,000 sheep and goats of their natural feeding ground.

In spring, the Regional Council for the Unrecognized Villages in the Negev (RCUV) organized a “shepherds’ revolt”, during which many shepherds entered the area. On April 23, members of the Green Patrol (Paramilitary unit of the ILA), accompanied by policemen, put a flock of 130 sheep grazing in Um Khashram (also known as firing zone 81) in a truck and quarantined them in Beer-Sheva. They also cut the fence that kept the sheep inside at night, and spilled the water in their drinking bowls.

In response, the RCUV helped the herd owners to organize. The assumption is that maintaining a traditional lifestyle and economy based on livestock will make it difficult for the government to evacuate the villages and confiscate their land.

## **Negev planning**

On January 18, 2006, the National Security Council published a position paper on the Negev Bedouin population. According to the authors, Negev Bedouins hinder the development of this region. The plan recommends fixing a timeframe for concentrating all of the

Bedouins in several towns. As this timeframe runs out, they recommend putting an eviction campaign into effect, conducted by the government, just as settlers were evicted from the Gaza Strip.

On November 20, 2005, the government ratified the Negev 2015 - National-Strategic Negev Development Plan. The plan included far-reaching goals for settling the Negev for employment, education and infrastructure, including a significant budget. In 2006, the Israeli government approved a budget for the plan that is only equivalent to the funding already available for the region and thus does not represent the increase outlined in the plan.

The Regional Planning and Building Committee of the Ministry of the Interior ruled to accept the recommendations of the Labor Committee, which discussed reservations regarding the partial master plan for metropolitan Beer Sheva (23/14/4), and to recommend that the National Planning and Building Committee submit the plan. The Arab-Bedouins claim that the new District Outline Plan offers them virtually no types of planning other than urban or suburban towns. While more than 100 Jewish agrarian villages (kibbutzim, moshavim, single family farms) exist in the Negev-Naqab, the state refuses to allow this type of planning for the Arab-Bedouin population and aims to concentrate them in a circumscribed territory.

## **The “Wine Road” Plan**

Another discriminatory plan that was approved in May 2006 is the “Wine Road” Plan. While the state refuses to allow almost any form of agrarian planning for the Arab-Bedouin localities, it has initiated a plan to establish 30 single household farms (29 Jewish and one token Arab-Bedouin household) on a combined area of tens of thousands of acres currently being claimed by Arab-Bedouins. Each farm is inhabited by a single family provided with dozens, and sometimes hundreds, of dunams of land for their exclusive use. The plan is discriminatory as it prevents equal access to the land for the entire population of the region, and is not based on any relevant factual data about the local Arab-Bedouin population.<sup>3</sup>

The "Wine Road" Plan is a "reincarnation" of previous programs intended to establish single farms. These programs were cancelled by the High Court of Justice in the year 2001 and harshly criticized in a Critical Report (50b) of the State Controller, which saw the programs as an attempt to bypass the accepted planning and real estate market protocols in order to populate the farms with Jews only.

## **Counter land claims**

In April 2003, the Special Ministers Committee for the Non Jewish Sector adopted a new method for dealing with the land conflict in the Negev. More than 50 years after the Arab-Bedouins were dispossessed from their lands, and more than 30 years after they were asked to file their land claims, the committee ordered the Israeli Land Administration to file counter land claims against the lands claimed by the Arab-Bedouins.

Up until June 2006, 170 counter land claims had been served over an area of 110,000 dunams; and in every case where a ruling has been handed down by the court, it has ordered the land to be registered as state-owned.<sup>4</sup> The state is planning to serve the Arab-Bedouins with 100 new counter claims every year.

This method forces many Arab-Bedouins to cope with a complex legal process and court expenses that are beyond their financial means. Moreover, due to the long period that has passed, many of the people who originally filed the claims are no longer alive and the growing number of their descendants now face great difficulty in proving their ownership of the land.

## **Bedouins organize**

Throughout 2006, the Regional Council of Unrecognized Villages (RCUV), a community-based organization, organized coordinated responses to the daily challenges faced by the Negev Arabs. In 2006, RCUV and its allies organized five massive demonstrations: two against the National Security Council's recommendations and the Ne-

gev Development Plan, two against home demolitions, and one against discrimination of Arab Bedouins when issuing grazing licenses. In addition, with the help of the people in the villages, the RCUV rebuilt 47 demolished homes and offered financial support to some families whose homes had been demolished.

Another organization dedicated to the Negev population's specific problems is the Negev Coexistence Forum for Civil Equality, established in 1997. Its aim is to provide a framework for Jewish-Arab collaborative efforts in the struggle for civil equality and the advancement of mutual tolerance and coexistence. The Forum is unique in being the only Arab-Jewish organization established in the Negev. □

## Notes and references

- 1 **The Regional Council for Unrecognized Villages, 2000:** *Characteristics of the Arab Bedouin Unrecognized Villages in the Negev*.
- 2 One dunam is equal to 1,000 square metres or 0.1 hectares. Ed.
- 3 **Adalah, 2005:** *Suggested Issues for Consideration Regarding Israel's Combined 10th, 11th, 12th, and 13th Periodic Report to the UN Committee on the Elimination of Racial Discrimination (CERD)*, 15 December 2005.
- 4 **Israel Land Authority, 2006:** *The Bedouin of the Negev Israeli Construction and Housing*, at [www.mmi.gov.il](http://www.mmi.gov.il), June 2006.





NORTH AND WEST AFRICA

## MOROCCO

The Amazigh (Berber) people are considered to be the indigenous people of North Africa. The Amazigh population may number as many as 30 million people throughout North Africa and the Sahel. In Morocco, estimates give between 65 and 70% of the Moroccan population of 20 million as being Amazigh. According to information on the official Moroccan government site, the Amazigh form a majority of the Moroccan population, with Arabs representing 25%.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure of assimilation. The government does not respect international agreements on indigenous peoples, particularly with regard to the prior consultation of people on projects affecting their regions. Recent years have, however, seen positive changes with the establishment of the Royal Institute of Amazigh Culture, recognition of the Amazigh alphabet, introduction of mother tongue education in the Amazigh language in state schools, and the gradual opening up of the media to the Amazigh language.

The establishment of the modern state in Morocco was based on the idea of a unitary state with centralised power, a single religion, and a single language. Arabic has become that single official language and forms the vehicle of teaching, and of the administration.

In 1991, the Moroccan Amazigh associations signed a charter known as the Agadir Charter on the rights of the Amazigh people. Today, there are as many as 300 Amazigh associations spread across the Moroccan territory.



In order to combat a policy of assimilation and an ideology of forced Arabisation, these associations created a movement known as the Amazigh Cultural Movement. They then decided to internationalise their struggle, and it was in this context that the first Amazigh international body, the Amazigh World Congress, was established (France 1995). Their struggle is in line with that of the international movement of indigenous peoples, and they contributed to creating the Indigenous Peoples of Africa Coordinating Committee (IPAAC) (Geneva 1997) and the *Coordination Autochtone Francophone* (French-speaking Indigenous Coordinating body - CAF) (Agadir, Morocco 2006).

On the basis of universal values of human rights, the Amazigh Cultural Movement has decided to conduct a vigilant struggle against violations of Amazigh rights, both inside the country, with demonstrations and cultural activities, and abroad.

## At constitutional level

The Moroccan Constitution recognises only the Arab reality as constituting the Moroccan state. Thus the preamble to the Constitution states, "The Kingdom of Morocco, sovereign Muslim state, whose official language is Arabic, forms a part of the Greater Arab Maghreb" .

The whole of the country's administrative/political system is dominated by the Arabic language. The legal system has been entirely Arabised, notably since a 1965 decree of the King of Morocco (known as a *Dahir*), and the same has been the case for the public administration since a circular in 1998.

This focus on Arabisation has created an unprecedented phenomenon of assimilation which puts a severe strain on the viability of a cultural and linguistic ecosystem that has prevailed for thousands of years. The domination of the public space by Arabic, the official language, creates situations that are detrimental to the Amazigh majority, and this contributes to exacerbating feelings of inferiority in relation to the institutional language.

As in neighbouring countries, Tamazight (the Amazigh language) is not recognised by the constitution. Official rhetoric on Tamazight goes no further than the level of folklorism. This situation leads us to conclude that the Amazigh people are facing a clear cultural segregation. The lack of official recognition of the Amazigh identity and language in constitutions leaves a huge legislative void and gives protection to those who are anti-Amazigh, as all actions in favour of the Amazigh language can be considered unconstitutional.

## Civil rights

In previous years, the Ministry of the Interior sent round a circular forbidding the use of names that were not of Arabic or Islamic origin.

In other words, the Imazighen no longer had the right to call their children by their own names, emanating from their own culture and civilisation. After several demonstrations from the Amazigh Cultural Movement, the Moroccan government agreed to abolish this circular in 2003, but the situation remains in limbo (2005-2006). The name "Amazigh" was refused on 10-02-2006 in Errachidia, along with the name "Ider" in Casablanca. After a campaign of solidarity with the victims, the names were finally accepted, as were several other forbidden Amazigh names. It thus seems that although Morocco has abolished this circular, the local authorities continue to apply its contents.

The provincial authorities continue to intimidate activists from the Amazigh Cultural Movement. A number of Amazigh associations are denied their registration papers. In Agadir, the Akal Confederation, founded six years ago, still does not enjoy the right to exist. The Amazigh association AZETTA only received its registration papers at the end of 2006, after several years in existence. Several sections of the Amazigh organisation TAMAYNUT have been subject to the same oppression.

In Agadir, Mr. Abdellah Sadik (Azenzar), an activist from the Tamaynut association, was stopped by the security forces on November 5, 2006 in the middle of a cultural evening in favour of tolerance. He was carrying an Amazigh flag. The police officers made racist insults against his culture, and the flags and banners he was carrying in Amazigh were seized.

## **The right to education in Tamazight**

The struggle of the Amazigh Cultural Movement has resulted in the introduction of the Amazigh language into the Moroccan education system. Tamazight is now taught in some pilot schools. According to circulars from the Ministry of Education, the Amazigh language must be taught to all Moroccans, with plans to make the language more widespread. However, this achievement seems to be confronted by the existence of pockets of well-established resistance within the administration, which are trying to minimise and stifle this experiment. In-

structions regarding the teaching of Tamazight are boycotted by the heads of regional academies on different pretexts.

## The right to information in Tamazight

Most Amazigh people in remote regions do not enjoy the right to receive media broadcasts in their mother tongue, which leads to a lack of connection between the public information system and their reality. The small opening that has been noted over the last few years still restricts Tamazight to irregular media broadcasts of less than an hour on the two Moroccan channels.

Promises made by the Ministry of Information with regard to Tamazight are thwarted by the lamentable situation from which journalists of the Tamazight section of *Radio Télévision Marocaine* (RTM) suffer. They are also hindered by the absence of a specialist Tamazight department within the Higher Institute of Journalism, which explains the mediocrity of RTM's Tamazight output.

The statements of the Director General of the *Société Nationale de Radiodiffusion et de la Télévision* during a press conference (2006), when he refused to grant the Amazigh identity a significant place in Morocco's audiovisual information media, were completely in contradiction with the administrative and political responsibilities entrusted to him, and this kind of statement is hardly in accordance with Law No.77.03 of the *Haut Commissariat de l'Audiovisuel* or the content of the terms and conditions signed by the country's main audiovisual channels (Azetta Report).

## Marginalization

Generally, the Amazigh regions coincide geographically with the most impoverished regions, far from the central authorities (mountains/Sahara), and this exacerbates their marginalisation yet more. Human development is far from being achieved in these regions: illiteracy is extremely high and infrastructure (roads, schools, hospitals and other local services) often non-existent.

Children, and particularly girls, do not always have the possibility of continuing their secondary and university education outside of their villages. Women in difficulty during childbirth often die *en route* before arriving at the hospital, through lack of available means of transport.

Equal opportunities between citizens are not guaranteed by the government. The Imazighen, and particularly Amazigh activists, do not enjoy the same opportunities as others in terms of accessing senior civil service posts. Skill and professionalism count for nothing in these cases.<sup>1</sup>

Senior state officials are often appointed and chosen from the same governing class and Amazigh skills are often marginalised. A number of requests have been received by Amazigh associations from students who have been subjected to the stresses of a lack of equal opportunities in competitive examinations or before boards of examiners.<sup>2</sup>

Despite a number of concessions from the Ministry of Water and Forests, the state continues to expropriate the land of Amazigh tribes throughout Morocco, particularly in the south (Agadir, Tiznit, Ouarzazate, Aichtouken). And this despite the people's protests.

The government does not respect international agreements on indigenous peoples, particularly with regard to the prior consultation of people on projects affecting their regions.

## Climate of hope

Despite all these remarks on the rights of the Amazigh people, the climate of hope that reigns in Morocco means that national and international human rights organisations, such as the *Fédération Internationale des Droits de l'Homme* (FIDH), are optimistic and congratulate the efforts being made by Morocco in the context of human rights in general, and Amazigh rights in particular. They note that the Amazigh population is beginning to be recognised in official Moroccan rhetoric, with the creation of the Royal Institute of Amazigh Culture and references to Amazigh identity in royal speeches. This also includes official recognition of the Amazigh alphabet *tifinagh* and the nascent teaching of Amazigh, along with the gradual opening up of the Moroccan information system to Amazigh culture.

But the great challenge for those involved in Amazigh rights, the government and the Amazigh cultural movement is that of including Amazigh concerns in the forthcoming constitutional reforms.

### **The first Congress of the Francophone Indigenous Coordination (CAF)**

Apart from being involved in the national-level challenges noted above, Moroccan indigenous organizations played a crucial role in co-organizing and hosting the first international Congress of the *Coordination Autochtone Francophone* (CAF), which took place in Agadir, Morocco, 2-6 November 2006.

CAF was created in May 2004 in response to the desire and need expressed by francophone indigenous organizations to have a network that would help them alleviate the marginalization they often feel in international fora where English and Spanish are the two dominant languages both among indigenous organizations but also in international documents and reports, which are not always translated into French.

In 2005, IWGIA and its local group GITPA – IWGIA France were able to include a component entitled “Strengthening the Indigenous Peoples’ Network in Francophone Countries” into an EU-funded programme on “Indigenous Rights Advocacy and Capacity Enhancement”. One of the planned activities was to convene a Conference for the French-speaking indigenous peoples’ network.

The Congress was prepared and organized by GITPA-IWGIA France and the Moroccan Amazigh organization – TAMUNT N IFFUS – who also hosted it in Agadir. Participants were some 33 francophone indigenous people representing indigenous organizations from North America (Quebec, Canada), Latin America (French Guyana), North Africa (Morocco and Algeria), West Africa (Burkina Faso, Mali and Niger), Central Africa (Burundi, Cameroon, Gabon, D.R.Congo, Rwanda) and Oceania (New Caledonia and French Polynesia), plus representatives from GITPA, IWGIA, DOCIP, IPACC, IFAD and UNESCO and a few observers.<sup>3</sup>

The Congress, which lasted four days, gave the indigenous participants ample opportunity to provide information on their situation, share their experiences and discuss the way forward for the network. An important session was devoted to discuss the CAF, its objectives and its organizational structure.

The final statement of the Congress - the "Agadir Declaration" - establishes CAF's objectives and plans. The objectives include - inter alia - the establishment of a mechanism that can disseminate information about the various international bodies and instruments and promote and develop the training of francophone indigenous peoples in human rights. One of the first tasks in the plan of action was the production of a new draft of CAF's statutes.

The Congress also elected Mohamed Handaine, the chair of TAMUNT N IFFUS, as president of CAF and Lisa Koperqualuk, an Inuit from Quebec, Canada, as its vice-president. An Executive Committee of 13 members was elected on the basis of regional and gender parity. Quebec was chosen as the seat of the CAF since the next international CAF congress is planned to take place in Canada in 2008.

The creation of the CAF constitutes an important step towards strengthening the participation and collaboration of francophone indigenous organisations at the international level. □

## Notes

- 1 According to a press release from the Amazigh organisation Tamaynut, issued in October 2005, a university lecturer and member of this organisation was unsuccessful in a competitive entry examination for the civil service (Faculty of Arts) because of his ethnic background and his studies on the history of Morocco.
- 2 For example a letter received by the *Confédération des Associations Amazighes du Sud Marocain* from 8 students who had been culturally abused and excluded from an oral examination despite their level of education, because of their association with an Amazigh region ( Sous Region).
- 3 Besides EU funding, the Congress was funded or supported by the Danish Ministry of Foreign Affairs, the French Ministry of Overseas Territories, the Canadian Ministry of Foreign Affairs, the Grand Council of the Cree (Canada), the Council of the Atikamekw (Canada), the Association Inuksiutiit Katimajit Inc. (Canada), Dialog Quebec, Tamaynut (Morocco), DOCIP and IPACC. UNESCO supported the production of a DVD of the Congress, which will be ready in May 2008 for the UN Permanent Forum session.

## Sources

**Handaine Mohamed, 1996:** *Afrique du Nord (études sur l'histoire et la culture).*

**Chafik Mohamed, 2000:** *Un manifeste pour la reconnaissance officielle de l'amazighité du Maroc.*

Report of the Amazigh organisation Tamaynut: [www.tamaynut.org](http://www.tamaynut.org)

Report of the Azetta network <http://www.forumalternatives.org/rac>

Official site of the Moroccan government [www.maroc.ma](http://www.maroc.ma)

## ALGERIA

The Amazigh (also known as Berbers) are the first inhabitants of the whole North African region, the Sahara and the Sahel. Rough figures suggest that the Amazigh-speaking population comprises between 20-30% of Algeria's total estimated population of 32.9 million (2006 estimate), spread over an area of 2,381,741 km<sup>2</sup>. Amazigh speakers are found in four large linguistic areas, namely: Kabylia, the main Amazigh-speaking region situated in the north; Aures (Chaoui region) situated in the east; Mزاب in the centre-south; and the Tuareg Territory (nomadic Amazigh people known as the Blue Men) in the far south. There are also many other Amazigh-speaking groups dotted around in islets, not exceeding a few tens of thousands of people. Since independence in 1962, the rural exodus has meant that there are very large Amazigh-speaking communities in the main towns, where the dominant day-to-day language is a dialect of Arabic (as opposed to the classical Arabic learnt at school).

The Algerian Constitution recognizes the indigenous Amazigh language as a "national language". However, the Amazigh identity remains marginalised by the state institutions.

### Linguistic rights

**I**n the heat of popular pressure and following the resolutions passed by ECOSOC (the UN Economic and Social Council) on 30 November 2001, which "recommended that the Algerian state take measures to recognise Tamazight [the Amazigh language], as official language", on 8 April 2002 the National Algerian Assembly unanimously approved a constitutional amendment to article 3b that stipulates, "*Tamazight is*

also a national language. The State shall work for its promotion and development in all its linguistic variations in use in the national territory" (Official Journal dated 10-04-2002). But since this partial constitutional recognition of the Amazigh identity, nothing has been done to institutionalise it in practice. Four years on, in 2006, Amazigh-speaking populations only have a right to 15 minutes of news programmes daily, and a weekly broadcast in Tamazight on national state television. All other programmes are broadcast in Arabic.

There is a national state radio channel that broadcasts programmes in the Amazigh language (in its different regional variations), and local state channels that broadcast programmes in the Amazigh and Arabic languages.

In terms of the written press, the rare Amazigh-language titles that saw the light of day in the early 1990s soon disappeared through lack of state support. Today, there is just one private fortnightly paper published in Kabylia under the title "*Racines*", a bilingual French–Amazigh publication. Unfortunately, this newspaper has no state support and benefits from no institutional advertising.

Literary publications in the Amazigh language also come up against problems. With the Amazigh language's status as a developing language, book publishing would only really be possible with some sort of state support, but there is no policy of supporting books in Algeria.

In the area of film production, some works in Amazigh are beginning to see the light of day. So far, however, through lack of financial resources, there are only four feature-length films in the Amazigh language. Nevertheless, a national Amazigh film festival was institutionalised in March 2006, having been held six times under the auspices of the High Commission for Amazighness (HCA – a state institution responsible for rehabilitating and promoting the Amazigh identity, created by presidential decree in 1995).

Teaching of the indigenous language (currently taught from 4th year primary on) has been implemented since 1995 but is currently only provided in around seven departments (primarily in Kabylia) instead of being available throughout all the Amazigh-speaking regions. For lack of the necessary human and material resources, it is still bogged down in random and never-ending experimentation.



According to figures provided by the High Commission for Amazighness, for the school year 2006-2007 there are 687 teachers for 130,510 pupils across 12 Amazigh-speaking departments where the Amazigh language is taught, of which 631 are working in the three main departments of Kabylia (Tizi Ouzou, Bejaia and Bouira) with 116,847 pupils. These figures are clearly an improvement on previous years but remain insignificant in relation to the teaching of Arabic in these Amazigh-speaking regions. And Amazigh language teachers are not in short supply given that, in 2006, a number of Amazigh language students graduating from the two Kabylia universities (two departments for Amazigh language and culture have been in operation since 1990) could not find jobs due to lack of available funding. In some regions, it is still prohibited, to this day, for indigenous people to give their children Amazigh first names. The names of former Amazigh kings and princes are declared unknown by the Algerian administration as they do not appear on the official name list produced by the

Algerian state since independence in 1962. Actual prohibition is left to the judgement of the individual official. Even though the problem is less apparent in Kabylia, where the local authorities are run by indigenous Amazigh, in other regions outside of Kabylia, over-zealous civil servants, along with the apathy of the state, means that many citizens are not allowed to register their newborn babies.

## **Marginalization**

During the different local, parliamentary and presidential elections, those who hold power do their best to restrict the parties with a strong Amazigh base (Kabylia) and to prevent them from having a voice outside of Kabylia. Amazigh individuals (politicians and others) that do occupy key posts in government tend to be those who are supportive of these authorities. All others are systematically excluded, without even access to the media, except during electoral campaigns in order to legitimise the ballot.

In economic terms, the Amazigh-speaking regions suffer from a lack of development projects. The state has only implemented a few projects in these regions, and these are mere window dressing. In Kabylia, the region manages to finance a few projects itself through the support of Kabyl emigrants (around 800,000 Kabyls live in France). These focus on rural environment, trade, transport, etc. Unemployment is rampant in this region, and social scourges are widespread through lack of state attention to the problems of young people. Cases of suicides recorded in some areas in recent years are worrying. But, through lack of reliable statistics, precise figures cannot be given to quantify the extent of this phenomenon in relation to other regions of the country.

## **Conclusion**

Despite constitutional recognition of the indigenous Amazigh language as a "national language", in Algeria the Amazigh identity remains marginalised by the state institutions. Official Algeria prestig-

iously declares itself an Arab country, and evokes its Amazigh identity only occasionally in official rhetoric, simply to recall some useful historical point or during folklore festivals. The right to study one's mother tongue, the right to culture, etc. are, however, enshrined in the International Covenant on Economic, Social and Cultural Rights, a text that Algeria has ratified, in addition to the Association Agreement signed with the European Union in 2001 and many other international texts ratified by Algeria. But, alas, they are but ink on paper... □

## Sources

**Salem Chaker, 1990:** *Imazighen ass-a* (The Berbers Today), Editions Bouchene, Algiers, 1990.

**Issad, Mohand, 2001:** *Rapport préliminaire de la Commission nationale d'enquête sur les événements de Kabylie*. Algeria Interface, 27 juillet 2001. Available at: [http://www.tamazgha.fr/article.php3?id\\_article=240](http://www.tamazgha.fr/article.php3?id_article=240)

**UN Economic and Social Council, 2001:** *Concluding Observations of the Committee on Economic, Social and Cultural Rights on Algeria*, Report E/C.12/1/Add.71. Geneva 30/11/2001.

**M.A.Haddadou, 1995:** *Guide de la culture et de la langue berbères*. Edition Enal/Enap, Algiers.

**Presidential decree no. 95-147** dated 27 May 1995 on the creation of the High Commission responsible for the rehabilitation of Amazigh identity and promotion of the Amazigh language.

[www.congres-mondial-amazigh.org](http://www.congres-mondial-amazigh.org)

[www.tamazgha.fr](http://www.tamazgha.fr)

[www.kabyle.com](http://www.kabyle.com)

[www.racines-izuran.com](http://www.racines-izuran.com)

[www.el-mouradia.dz](http://www.el-mouradia.dz)

[www.wikipedia.org/wiki/Kabyle](http://www.wikipedia.org/wiki/Kabyle)

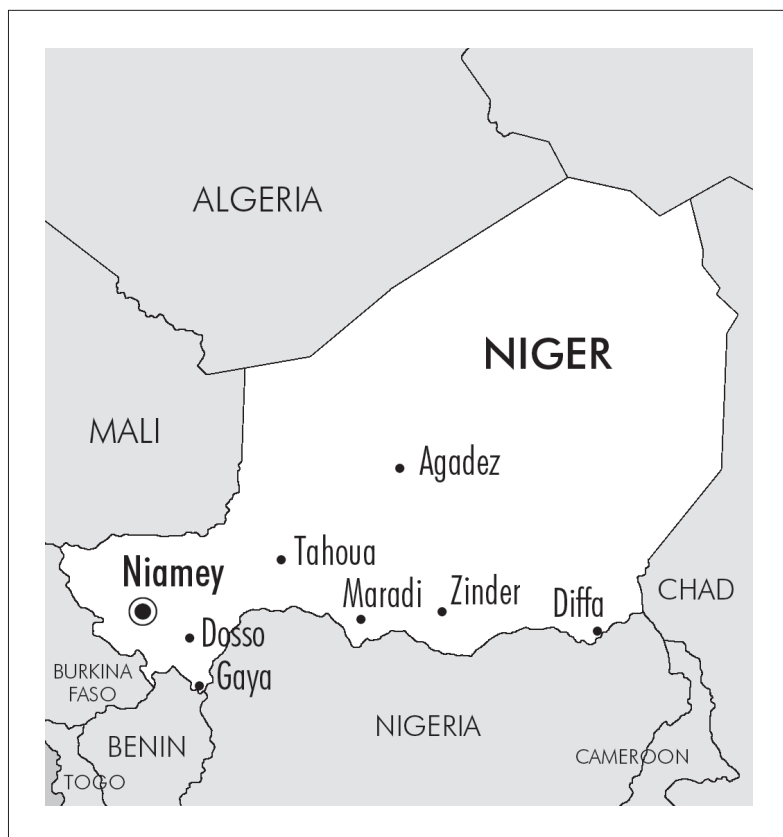
## NIGER

The indigenous groups in Niger include the Tuareg, Toubou and Peul. Out of a total Nigerien population of almost 12 million inhabitants,<sup>1</sup> the *Tuareg* who live in the north-west and north of the country are estimated to number a little over one million.. Most Tuareg practise livestock rearing (camels, sheep, goats) while others work in the oases, or as craftsmen. The *Toubou* camel rearers represent less than half a million people and live in the regions of Agadez, Zinder and Diffa. The *Peul* people who live in all regions of the country are officially estimated to number 900,000 but the actual number is probably much higher. Some Peul have become settled agricultural and livestock farmers, but a significant minority, including the Bororo Peul and the so-called "red" Peul (Gorgabè and Tolébès Peul) remain nomadic pastoralists.

There is no general legislation in Niger that takes the specific nature of the pastoralist people into account. However, a Pastoralist Code aimed at organising the legal system for livestock production in Niger is currently being drafted.

### Local events organised by Peul pastoralists

Two major events organized by Peul pastoralists took place in 2006: the Torodi Forum and the Eggo Festival of Bororo Culture. *The Torodi Forum*<sup>2</sup> was initiated by Peul sheep rearers through their customary leaders, who are called *garso*.<sup>3</sup> It was supported financially by the Association for the Revitalisation of Livestock Rearing in Niger (*Association pour la Redynamisation de l'Elevage au Niger* – AREN),<sup>4</sup> an association that many pastoralists belong to. The rationale behind this meet-



ing was to enable all the participants to experience, for a moment, the wealth of the Peul culture in all its subtleties, as mastered by the *garsos* and their pupils, the young shepherds. This was an opportunity to show everyone present that the bond between a shepherd and the animal he is looking after can in no way be reduced to a utilitarian relationship. The other thing of great importance about the Torodi meeting was that it formed a context for informed discussions around the difficulties being encountered by pastoralists in terms of access to natural resources, access to all public services (schools, health, water, etc.) and mechanisms for protecting their rights and interests. Similarly, the challenges of the Pastoralist Code that is currently being drafted<sup>5</sup> were

explained to those present by the organisations, particularly AREN and the Organisation for the Defence of Human Rights and Freedoms (*Organisation pour la Défense des Droits et Libertés Humains* - ODLH).<sup>6</sup>

*The Ego festival*<sup>7</sup> of pastoralist culture and cultural pride was organised by the Bororo Peul because they no longer feel they have a place in other traditional pastoralist meetings, particularly the Ingall *Cure Salée*<sup>8</sup> and the Akadani meeting,<sup>9</sup> which have become arenas for politicians. The intention of this meeting was for the organisers to reiterate their desire to live faithfully by their culture, alongside the other components of Nigerien society. For them, the imperative of national unity must not be a pretext for aligning the cultures of other communities with those of the majority populations. The wealth of a culture cannot be proportional to the number of its members.

Apart from the Bororo Peul, other pastoralist peoples also participated in this festival, and agreed in principle to organise it on a regular basis, extending it to all pastoralist peoples (Tuareg, Arab, Toubou) whilst ensuring that it remains a place for pastoralists and not politicians. At this meeting, as at Torodi, the pastoralist associations (AREN) and the organizations closely involved with these peoples (ODLH) took the opportunity to hold informed discussions on the ongoing drafting of the Pastoralist Code.

## National policy developments

One of the main events that kept Nigerien pastoralists busy over the past year was their active participation in the process of drafting a Pastoralist Code that takes the interests and specific nature of Nigerien pastoralists into account. To this end, a number of pastoralist organisations (AREN, CAPONG<sup>10</sup>, ROPAZ<sup>11</sup>, UEP-ZP<sup>12</sup>) joined forces to influence the text on behalf of pastoralists' interests. The result is that strong principles to be included in the Pastoralist Code have been agreed on by pastoralist organizations across the whole national territory.

In the discussions at various meetings, the pastoralists managed to convince the participants, including government officials, that pastoralism is not an outdated, outmoded practice. It was argued that pastoralism is the most rational way of optimally utilizing the land and

natural resources in the dry and fragile Sahel areas. On a level of pure economic profitability, the greater productivity of transhumant livestock herding in comparison to settled livestock production was demonstrated during the discussions. Similarly, the pastoralists raised awareness among the participants at these meetings (including decision makers) of the fact that pastoralism is not only the basis of an economic activity but a “social whole” within which economics is but one aspect, and far from the most important.

Regarding the security of pastoralism’s land base, it was agreed that the new Pastoralist Code should reaffirm the need to revive the northern boundaries of farming<sup>13</sup> and to map and make secure the different pastoralist spaces, with the support of pastoralist civil society. If it is possible to get these principles included in the Pastoralist Code then this will be a real step in the right direction for Nigerien pastoralists.

The other event that stands out as a victory for the pastoralists and their support structures is the adoption of a new decree on animal pounds.<sup>14</sup> This decree makes the proliferation of municipal animal pounds for the purposes of extracting money out of the pastoralists illegal.

## **Conflict resolution attempt**

For more than a decade now, there has been ongoing insecurity<sup>15</sup> along the Niger-Mali border, resulting in hundreds of deaths and colossal losses of material wealth, the main victims being the pastoralist livestock producers. After solutions proposed by the government failed, Niger’s pastoralist civil society (ODLH, AREN), along with that of Mali (TASSAGHT<sup>16</sup>, Ménéka Chamber of Agriculture<sup>17</sup>), decided to suggest a way of enabling a solution to be found that was endogenous to the pastoralists, both Malian and Nigerien. An initial meeting between these warring communities was held in Gao, Mali on 6, 7 and 8 December 2006. The different warring parties made firm commitments to create the conditions for a lull in the conflict, whilst awaiting the intercommunity (Peul-Tuareg) reconciliation forum planned for March 2007 in Tillabéri, Niger.<sup>18</sup> Terms and conditions were produced for par-

ticipants already identified at this forum. It is thus anticipated that these participants will prepare the Tillabéri Forum around the following points:

- the causes of insecurity
- those involved in the insecurity
- the symptoms of insecurity
- proposed solutions

Tangible results have already been noted since the two pastoralist communities met, and a climate of trust has begun to be established between them. These results will therefore need to be consolidated at the forthcoming Tillabéri Forum, which will include the participation of the two states of Mali and Niger, the Peul and Tuareg communities, pastoralist civil society and external partners.

## **West African Regional Conference on Indigenous Peoples**

From 20 – 25 February 2006, the Agadez-based *Asssocation TUNFA* and the West African regional Tuareg network *Tasghalt* organized a West African Regional Conference of Indigenous Peoples of the Sahara and Sahel. The objective of the conference, which was held in Agadez in northern Niger, was to discuss the strengthening of indigenous peoples' participation in the conceptualization and implementation of development programmes in their areas. More than 40 organizations from seven Saharan and Sahelian countries participated in the conference, including Tuareg, Toubou and Bororo representatives.

## **Visit of the ACHPR Working Group on Indigenous Populations**

The Working Group on Indigenous Populations of the African Commission on Human and Peoples' Rights (ACHPR) visited Niger from 14 – 24 February 2006. The objective of the mission was to gather information on the situation of indigenous populations in Niger, and to en-

gage the government of Niger and civil society in a dialogue on the situation of indigenous populations. The delegation comprised Commissioner Kamel Rezag Bara and Mohamed Khattali (member of the Working Group), assisted by Robert Eno from the ACHPR secretariat. The delegation met with the President, the Prime Minister, several ministers and members of the Commission on Human Rights and Fundamental Freedoms in Niger. The delegation visited the Dosso, Tahoua, Agadez, Zinder, Maradi and Tillabéri regions and held meetings with decision makers, development organizations, civil society organizations and representatives of indigenous communities. A report from the mission will be published in 2007. □

## Notes

- 1 C.f. general population census, 2001.
- 2 Torodi is a municipality situated 60 km from Niamey, the capital of Niger, on the road linking Niamey to Ouagadougou in Burkina Faso. It is primarily a Peul municipality.
- 3 GARSO: This is a learned person of the Peul culture. He prepares and leads the seasonal migration movements (transhumance) of the pastoral communities he heads.
- 4 AREN: *Association pour la Redynamisation de l'Élevage au Niger*. AREN is the largest organised structure of pastoralists and livestock farmers in Niger. It has more than 30,000 members throughout the national territory.
- 5 The process of producing a Pastoralist Code (the aim of which is to organise the legal system for livestock production in Niger) is at a stage where the producers and their organised structures need to be on the alert to ensure that the text takes sufficient account of their interests, by guaranteeing land issues and access to renewable natural resources.
- 6 ODLH: *Organisation de Défense des Droits et Libertés Humains*. This is a young human rights association that is very close to the pastoralists. In this respect, it forms a bridge between the different pastoralist associations, helping to bring them closer together.
- 7 EGGO: This is a pastoralist well located some one hundred kms to the north of Dakoro department in the centre-south region of Niger known as Maradi. Eggo and all of north Dakoro forms part of the pastoralist zone of Niger, and constitutes one of the great strongholds of the Bororo people.
- 8 INGALL: This is a town in the pastoralist zone (not far from Agadez) famous for hosting the annual pastoralist festival known as *cure salée* ("salt cure"). This festival is traditionally held at the end of the rainy season, when thousands of livestock producers gather at the salt flats to refresh their livestock.

- 9 AKADANI: This is a semi-permanent pool to the north of Dakoro where Bororo livestock producers meet to enjoy their culture together for a while and celebrate the great events of the past year.
- 10 CAPONG: Coordination of pastoralist associations and NGOs of Dakoro.
- 11 ROPAZ: Network of pastoralist organisations of Agadez. This network includes pastoralist associations linked to the Tuareg, Peul and Arab peoples.
- 12 UEP-ZP: Union of livestock producers from the pastoralist zone. This structure is linked to the Tuareg pastoralists from Tahoua and Agadez regions.
- 13 This relates to a band stretching from the north-west to the extreme north-east of the country in which agriculture cannot, in principle, be practised and which is reserved for the pastoralists. It was a 1961 law that demarcated this band but it has not been respected, reducing the pastoralist area ever more to the benefit of agricultural farmers.
- 14 With decentralisation, the new municipalities – in search of funding for their activities – have launched a process of building animal pounds to put so-called “wandering” animals into. But it has emerged that these pounds have ceased to be tools of the rural police (public rural police service) and have instead become instruments by which the municipalities are raising money, to the detriment of pastoralists. This has led to a boycott of all livestock markets in municipalities involved in creating these illegal pounds.
- 15 With the Tuareg rebellions in Mali and Niger violent conflicts also started between the Tuareg and the Peul, and the area was plunged into a cycle of perpetual attacks and reprisals. It was this situation that the pastoralist associations decided to put an end to by creating the conditions for renewed trust between these two pastoralist communities.
- 16 TASSAGHT: This is an association of Tuareg livestock producers based in Gao, Mali.
- 17 MENEKA: This is a Malian municipality (and also administrative capital of the district) on the border with the pastoralist zone of Niger. Many Tuareg who are involved in conflicts with other livestock producers live here. In the absence of livestock producers’ associations, Niger’s pastoralist civil society has contacted those producers who are active in this municipality’s Chamber of Agriculture.
- 18 TILLABERI: Administrative capital of the north-west region of Niger, bordering with Gao region in Mali.

## MALI

The groups identifying as indigenous in Mali include the Tuareg and, to some extent, the Peul. This article focuses on the Tuareg. The Tuareg are a Berber people living in the central Sahara, spread across Mali, Niger, Burkina Faso, Algeria and Libya. In Mali, where the total population is 11.7 million, along with the Moors the Tuareg probably represent around 10% of the population. They live in the north, in the regions of Timbuktu, Gao and Kidal, which alone cover two-thirds of the country's land mass. Their language is Tamasheq.

Traditionally, the Tuareg are nomadic pastoralists, and camels are an important and distinctive element of the Tuareg culture and way of life. The Tuareg are traders, bartering the meat of small game and camels, along with rock salt, in exchange for dates, fabrics, tea, sugar and foodstuffs.

The Constitution of Mali recognizes cultural diversity,<sup>1</sup> and the National Pact<sup>2</sup> recognises the specific nature and needs of the Tuareg regions. In addition, legislation on decentralisation gives local councillors powers whilst failing, however, to transfer the resources necessary for their exercise.

Two events marked 2006 for the Tuareg of Mali: relations with Libya and the taking of Kidal town by indigenous insurgents, on 23 May 2006. Before considering these two points, it would be useful to give a brief overview of the Tuareg protest movement and the Kidal region.

## **History of the Tuareg protest movement**

Following independence in 1960, the Tuareg of Mali found themselves excluded from political life, which was dominated by people from the south. This triggered the Kidal Revolt of 1963, which was bloodily suppressed. In 1990, the Tuareg rose up again. An agreement called the National Pact was signed in 1992 between the Tuareg and the Malian government, and the formal signing of this agreement in Bamako was a sign of great hope for the Tuareg. In fact, some joined the security forces and civil service. Two funds were planned to enable the north to catch up with the south. Some development projects<sup>3</sup> were certainly implemented in the Tuareg region but it still remained very far behind. This state of neglect led to discontent among the inhabitants of the Kidal region, who found themselves once more heading the Tuareg protest movement.

## **Kidal Region**

Kidal is the only region to have retained a Tuareg homogeneity, even though other ethnic groups are beginning to move into the town centre. It covers an area of 260,000km<sup>2</sup>, or 27% of the country, and is the poorest and least populated region of Mali. It is cut off, without a surfaced road and with no airport or river access. It is right in the middle of the desert. Kidal is the only region in the country to have borne the brunt of two droughts, in 1973 and 1974, and 3 rebellions, in 1963, 1990 and 2006. The region is also the only one in Mali to rely entirely on livestock rearing and is 1,600 km from Bamako, the capital and centre of decision-making.

All its representatives – both at local and national level (8 councilors and 4 deputies) – are Tuareg. During 2006, the following notable events took place in the area.

## **Relations with Libya**

In 2006, Libya - which has a small Tuareg population - opened a consulate in Kidal, the only country to do so in this remote region of Mali.



In April 2005, all the heads of the Malian and Nigerien Tuareg tribes were invited to Libya to sign an alliance with their Libyan brothers, swearing to provide assistance and to fight drugs and arms trafficking, and religious fundamentalism in the Sahara. Libya agreed to finance projects presented by the Tuareg populations of the two Sahelian countries (an airport and the boring of wells for drinking water, so badly needed by the Tuareg).

In February 2006, a Libyan consulate was opened in Kidal to coordinate all these development actions for the north of Mali. This action, in a region where there are no Libyan nationals, aroused a great deal of controversy in Mali, and in Algeria too, which was not happy to see

Libya establishing itself on its southern borders. The Kidal Tuareg thus found themselves the object of competition between their North African brothers.

During the Muslim festival of the birth of the Prophet, in April 2006, in Timbuktu, Colonel Qadhafi announced the creation of the *Sahara Pact*, with himself as *Amghar* (term of respect signifying chief or guide), aimed at fighting terrorism, illicit drugs and arms trafficking and epidemics.

### The events of 23 May 2006

On the 23 May 2006, Colonel Ag Fagaga, vice-chief of the National Guard and a native of Kidal, led a group of insurgents into the town of Kidal. The Tuareg insurgents seized the two military camps of Kidal and Ménaka, withdrawing over the next few days into the Tigharghar mountains, where they can still be found. The reasons for this uprising were, as put by Colonel Ag Fagaga:

- To complete the application of the National Pact, particularly the components relating to the autonomy of the Tuareg regions and the establishment of the two Development Funds.
- To give attention to the needs of the rising Tuareg generations that have not been addressed by the National Pact, and to demand that the Tuareg soldiers in the national army are respected on an equal footing with their non-Tuareg colleagues.

After bitter negotiations, an agreement was reached on 4 July 2006 in Algiers between the Malian government and the Tuareg, united within the Democratic Alliance of 23 May for Change (*Alliance démocratique du 23 mai pour le changement* – ADC).<sup>4</sup> Among other things, this agreement - also known as the Algiers Accord - provides for:

- The creation of a provisional regional coordination and monitoring council that will be consulted on all issues related to the Kidal region.

- The organisation of a forum on the development of the Kidal region.
- Security measures such as the withdrawal of military reinforcements from the town, the recovery of arms taken by the insurgents and the creation of special units made up largely of Tuareg under a joint command.

Application of these provisions is being delayed, however. Two rounds of negotiations have taken place in Algiers to solve the situation. The Malian government refuses to recall its troops in order to return to a pre-23 May situation and the insurgents refuse to lay down their arms before this withdrawal.

All these events leave their mark on the indigenous populations, who are facing daily problems at every turn, problems that are, in fact, at the root of their discontent:

- There is an urgent lack of drinking water and electricity and, every year, people are dying of thirst in the Sahara.
- Camels, which form the basis of life in the Sahara, receive no attention from the public authorities. There are no camel vets, and veterinary training schools in Bamako teach nothing about this animal, so essential for life in the Sahara.
- A proper education system is lacking. In a meeting during the Malian prime minister's recent visit to Kidal, the President of the Chamber of Agriculture, supported by the teachers, criticised the national authorities for the lack of teachers and educational material in the region's only secondary school.

The Tuareg also criticise the public authorities for the unequal distribution of national wealth: the ADC has noted that, of the 900 billion francs CFA<sup>5</sup> granted this year to Mali by the United States of America and the European Union, nothing has been put aside for the Tuareg region of Kidal.<sup>6</sup> The exaggerated presence of the army and army checkpoints in the Kidal region has been criticised. The people are also worried about the legislative and presidential election process planned for April 2007 if the Algiers Accord is not fully implemented.

Despite all this, the people seem optimistic for the following reasons:

- Both the government and the ADC have shown self-control in order to avoid an escalation of the conflict.
- The forum on the economic development of the northern regions seems to be on track.<sup>7</sup>
- The French government's support for implementation of the Algiers Accord may perhaps create interest among other partners.

In reality, everything will depend on the results of the forum. If it fulfils expectations and avoids the cynicism of previous programmes, which prioritised agriculture in the north - based around sedentary populations who are not generally Tuareg - to the detriment of pastoralism (and camel rearing, in particular, which is only practised by the Tuareg and the Moors) then there are strong hopes that the peace will last. □

## Notes and references

- 1 Fourteen national languages have been recognised and are taught in experimental schools, including Tuareg. However the Tuareg alphabet, Tifinagh, is not recognized.
- 2 A pact agreed between the government of Mali and the Tuareg movement providing special status to the north of Mali. This pact allows for an interregional structure and regional assembly responsible for managing all development issues.
- 3 Like development of the Timbuktu region, financed by Germany.
- 4 The Tuareg movement that rebelled on 23 May.
- 5 The currency used in Mali and other West African countries.
- 6 See [www.azawad-union.blogspot.com](http://www.azawad-union.blogspot.com)
- 7 A ministerial committee has been established and the executive secretary has just been appointed by the government.



## THE HORN OF AFRICA & EAST AFRICA

## ETHIOPIA

The pastoral population in Ethiopia constitutes roughly 12-15% of the total population of 80 million.<sup>1</sup> They inhabit almost the entire lowlands of the country, which constitutes 61% of the land mass. The pastoral population is heterogeneous in its ethnic composition, having bigger ethnic groups such as the Somalis, Afars and Borana with well over a million people each. The rest are Omotic pastoral groups such as the Hamar, Dassenech, Ngagaton, Erbore and so on, and the Nuer and other groups in the western lowlands. Their main livelihood system is livestock production, while a section of the Borana is also engaged in crop cultivation. The pastoral communities have been neglected for a very long time and have been under pressure from successive governments, including the current government, to change their livelihood systems to crop cultivation. Large tracts of the pastoralist areas have been converted to commercial farms and national parks from which the community has not benefited. There is no legal framework to protect the rights of pastoralists in Ethiopia.

### Political developments

The onslaught against the official opposition and civil society that began in the wake of the defeat of the ruling party in the 2005 elections continued in 2006. It was the official interpretation of the ruling party that its waning influence was caused, among other things, by “the campaign of anti-government agitation on the part of NGOs and



other civil society organizations" (Deputy Prime Minister Addisu Legesse on Radio Fanna, May 2005). The official clampdown was thus not only against the official opposition party, the Coalition for Unity and Democracy (CDU), but also against civil society as a whole. The rights of advocacy organizations have been greatly restricted, if not completely suppressed, severely limiting the scope for influencing government policy, and this has had a serious impact on pastoral rights and pastoral development.

It was a great disappointment and setback for democracy in Ethiopia that the main opposition party, the Coalition for Unity and Democracy, boycotted parliament after the elections because of irregularities and the refusal of the government to verify these. The ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF), used this boycott as an excuse to clamp down on the opposition and all independent forms of organization in the country. It painted all independent forms of organization as opposition and tried to "tame" them, so to speak, and co-opt them. The private press was closed down, and NGOs put under scrutiny. Unlike during the pre-election period, i.e.

until 2005, the ruling party is now on the offensive and civil society organizations on the defensive. The entire agenda for advocacy, including advocacy around pastoral rights, is under attack from the government. In a meeting with a visiting delegation from an international NGO coalition, Global Call for Action Against Poverty, the prime minister and his advisor, the Minister of Information in the previous cabinet, said that advocacy organizations had stepped outside their "legal parameters" and that they had to be curbed. Consequently, pastoral rights advocacy organizations are now compelled to keep a low profile.

### **The 8<sup>th</sup> Pastoralist Day**

In 2006, Pastoralist Day had to be held in meeting halls due to the quasi-state of emergency declared following the elections in May 2005, when all outdoor activities were banned. Since 1998, pastoralist organizations have celebrated a national Pastoralist Day on January 25 as a high-level advocacy event for the pastoralist cause, pastoral rights and pastoral development (read more about Pastoralist Days in previous editions of *The Indigenous World*.) The central government took control of Pastoralist Day 2006 celebrations in order to appear the champion of pastoral rights. The gathering was held at the international conference hall on the premises of the UN Economic Commission for Africa in Addis Ababa. The prime minister himself came to deliver a key note address but did not speak for more than three minutes as it was clear that he was not well-versed on issues of pastoralism. He then announced that he wanted to meet the pastoral elders alone in the palace, thus excluding the NGO sector and other actors, such as donors. At the meeting with the elders, the prime minister revealed nothing new except to plead for more understanding and cooperation and to make more of the usual promises.

The meeting with the prime minister did not prevent pastoral elders from proceeding to pass resolutions demanding attention from the government. On the 8<sup>th</sup> Pastoralist Day, in January 2006, they passed a 14 point resolution which touched upon issues surrounding the development and implementation of pastoral land-use policy, marketing mechanisms/access, conflict resolution and prevention, micro-

financing, the establishment of pastoral institutions at federal level and so on. Later in the year, the government finally announced a long-standing demand of pastoralists: to declare Pastoralist Day a national holiday. Parliament resolved that January 25 was to be observed as a national holiday.

However, the ruling EPRDF party has not changed its policy on pastoral rights and pastoral development one bit. It is still as anti-pastoral as it has always been. It still compels pastoral communities to change their livelihood system to crop farming without providing the required infrastructure for settlement.

### **Establishment of Oromia Pastoral Council**

Having experienced the consequences of a lack of governance in their areas, pastoral communities have long been demanding the reinstitution of pastoral councils, and this demand has constituted the cornerstone of pastoral demands on pastoralist days in recent years. It is in the light of this that the pastoral elders of Oromia region took the lead in re-establishing the first Pastoral Council. The reinstitution of pastoral councils will definitely contribute to a process of empowerment, if unfettered by the government. It can offer a way of improving service delivery, developing livestock and promoting the sustainable use of natural resources. The council has been set up with a mix of both traditional and modern forms of organization and its objectives are to safeguard pastoralists' interests, secure their livelihoods, protect pastoral land-use rights, lobby government, formulate appropriate land-use policy, and so on.

Pastoral councils were *de facto* dissolved when the so-called "modern state" stepped into the shoes of the colonial state in post-independence sub-Saharan Africa. The "modern state" continued the anti-pastoral policies of colonial times and marginalized the pastoral councils, which used to play an important role in governance and particularly in the area of justice. Despite the fact that Ethiopia was not colonized, its government, which was under the influence of the British and US governments, nevertheless adopted a similar policy of sidelining pastoral councils. Unfortunately, the local government authorities in pastoral

areas failed to play a meaningful role in governance. As a result, pastoral communities have been neglected in terms of governance and provision of justice. In fact, there has been a permanent lack of government institutions in pastoral areas. As a result of this neglect, these areas have been prone to revolts and ethnic-based rebellions.

Allowing the establishment of the Oromia Pastoral Council is a conciliatory gesture on the part of the government, which still faces cross-border guerrilla attacks, ostensibly from the Oromo Liberation Front (OLF) with an unofficial base and presence in the Borana region of northern Kenya. The OLF has been trying to establish itself inside the Borana region of southern Ethiopia but with no success. Antagonizing the Borana, who are predominantly pastoral Oromo, is something that the government cannot afford to do at the moment. Their demand to establish a Pastoral Council was therefore not resisted by the government. The government instead chose a strategy of "if you can't beat them, join them" and assigned the Oromia Pastoral Commission (a government institution) the task of remaining in active contact with the Pastoral Council. The council has registered with the Justice Bureau of Oromia and has started raising funds for its own development activities. It remains to be seen how far it can go in maintaining its independence.

## **Flood in South Omo**

The South Omo regions of southern Ethiopia, bordering Kenya and southern Sudan, belong to the conflict-ridden area called the Karamoja triangle. The main ethnic groups in South Omo are the Hamar, Dassenech, Ngangaton and Erbore. Predominantly pastoral, the peoples of this region live mainly from livestock rearing and they have been neglected for a very long time by all governments in Ethiopia. In South Omo there is no electricity, no clean water, no infrastructure and no clinics. Primary schools were only introduced around the 2005 elections, but without proper institutions and sufficient teachers in place.

In 2006, major rainfall in the highlands of Ethiopia caused floods in downstream regions, east and west, causing disaster. One of the regions hit by flood was South Omo. Unlike other regions, South Omo

was inaccessible and it was impossible to bring in relief supplies. Many perished because of the flood and many could not make it to make-shift relief camps. The floods also destroyed livestock and property, and displaced thousands of people. Although South Omo was the main pastoral region to be severely affected, other pastoral regions such as Afar and Somali were also affected. □

## Note

- 1 Those considered indigenous groups in Ethiopia are mainly the marginalized pastoral populations.

## KENYA

Kenyan communities identifying with the indigenous peoples' movement are mainly pastoralists or hunters-gatherers. These include, among others, the Ogiek, Sengwer, Yaaku, Watta, Maa-sai, Samburu, Elmolo, Turkana, Rendille, Borana, Somali, Gabra, Pokot and Endorois. It is difficult to estimate the number of indigenous peoples in Kenya out of the current estimated national population of 31,639,091 people (1999 Population and Housing Census). The government only recognizes 42 ethnic communities but this excludes a large number of indigenous communities. The government has been perpetuating an assimilationist policy of compelling certain minority indigenous communities to identify with larger and more dominant neighbours and this makes it difficult to obtain accurate population statistics of indigenous people.<sup>1</sup> However, it is estimated that 25% of the people of Kenya live in Arid and Semi-Arid Lands (ASALs), and many of these are pastoralists. There is no specific legislation governing indigenous peoples in Kenya.

Indigenous communities in Kenya suffer from very similar problems, such as: dependency on natural resources for their livelihoods; a lack of security of tenure; a lack of infrastructure, including schools, health facilities, communication, roads etc.; and generally a denial of their economic, social, political and cultural rights. Indigenous peoples do not have the same protection and security over their lands and resources as the majority population; they do not have the same political influence needed to safeguard their resources from alienation. Neither do they have the same economic strength, organizational structures



and technical capability necessary to seek protection from human rights violations.<sup>2</sup>

As mentioned, there is no specific legislation governing indigenous peoples in Kenya. Some Kenyan laws, such as the Trust Land Act Cap 288, Forest Act Cap 285 and Government Lands Act Cap 280 work against the human rights of indigenous peoples in a number of ways as, through evictions or restriction of movement, they deny indigenous peoples access to their resources and primary sources of livelihood.

Such policies have led – and continue to lead – to loss of land, lives and livestock without adequate compensation. However, the World Bank, under the auspices of the Office of the President and in collaboration with the Kenya Agricultural Research Institute, recently undertook a study with the aim of ensuring that large-scale development projects do not have negative impacts on indigenous communities, in line with World Bank Operational Directive 4.20.

## **Main policy developments**

The new draft land policy was published toward the end of 2006 so that the public could raise any issues they might have in this regard. Indigenous peoples participated in developing the land policy by providing their input to the thematic groups that were set up as part of the policy development process. When the policy was published, the Ministry of Lands held a special one-day consultative meeting for pastoralists and hunter-gatherers. While some sections of the draft are sensitive towards issues relating to land and resources (issues touching directly on the livelihoods of indigenous peoples), it falls short of recognizing collective rights, a main concern for many indigenous peoples. This is because there is a strong move to individualize land titles and insufficient examples and precedents as to how security of tenure and development can be achieved when resources are held collectively. While the land policy-making process included travel to various countries all over the world to inform the land policy, the visits failed to include ideas on collective title. The draft is also unclear on the institutional arrangements relating to national parks and other protected areas. Most indigenous peoples whose lands and resources were alienated through gazetting expect that those resources should either revert to them wholly or that a large percentage of the revenue accruing from those areas should go to them. Since the launch of the policy document, there have been many conflicting interest groups writing to the secretariat supporting or opposing the adoption of the document. In the same vein, indigenous peoples can also still write and give additional views until the process is concluded.

The year 2006 also saw stakeholders, through an inter-ministerial committee, develop a draft policy on traditional medicine and medicinal plants in Kenya. This policy is aimed at the conservation of medicinal plants, sustainable use of related biological diversity and equitable sharing of benefits for the prosperity of the nation.<sup>3</sup> Since indigenous communities rely very much on biodiversity for food and medicine, and thus have a very specialized knowledge within this field, the adoption of this draft policy paper would potentially provide mechanisms for protecting the intellectual property rights of indigenous peoples. However, proponents of the policy seem to miss the point that indigenous knowledge is culture specific and not national in character. Because of this misconception, it is not clear how the draft policy can be finalized and implemented.

In 2006, the Kenya National Commission on Human Rights was spearheading a process to include the human rights of indigenous peoples on the human rights agenda in Kenya. On 29 and 30 October 2006, the National Commission held a two-day round table meeting on indigenous and minority issues to which they invited the Kenyan member of the Working Group of Experts on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights and an expert from the University of Pretoria to give presentations on the issues of indigenous issues and minorities. The report from this round table meeting represents a first step and initial interest on the part of the National Commission to learn about and engage in indigenous rights issues in the country. Following this meeting, it is imperative that the development of a National Action Plan on Human Rights includes issues relating to indigenous peoples.

### **Visit of the United Nations Special Rapporteur to Kenya**

Indigenous peoples in Kenya were this year privileged to receive the Special Rapporteur (SR) on the human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen. It took a long time for the government to respond to the SR's request to visit the country but, after some persuasion, the government invited the SR to visit the country from 1 to 14 December 2006. The Ministry of Consti-

tutional Affairs assigned an officer to accompany the SR to a number of meetings. The NGO Arid Lands Institute also allocated a young Maasai woman to accompany the SR throughout his visit and to coordinate and ensure that indigenous communities were prepared for the visit and that they were at the right place at the right time, with their own memoranda.<sup>4</sup> Through the generosity of IWGIA and the Centre for Rights and Development in Canada, 25 communities and sub-communities were able to travel and meet with the SR. The Arid Lands Institute chaired the committee that brought together representatives of indigenous communities, the Kenya National Commission on Human Rights and the United Nations office in Nairobi and all those involved contributed to making the SR's visit to Kenya a success.

Kenyan indigenous communities who presented their concerns to the Special Rapporteur included the Borana (from Marsabit and Isiolo), Rendille, El-Molo, Samburu, Turkana, Endorois, Marakwet, Aweer, Boni, Chepkitale, Wardei, Ilchamus, Ogiek (in Narok, Nakuru and Mt. Elgon), Maasai (from Narok, Kajiado and Laikipia), Malakote, Orma, Waata (all three from Coast Province), Pokot, Sengwer, Terik/Nyan-gori, Somali (in Wajir and Garissa) and Yaaku. He visited the Kajiado, Narok, Nakuru, Baringo, Kitale, Marsabit, Wajir and Garissa districts. Some communities had to travel long distances and spend several nights away in order to meet with the SR. The SR received memoranda, communications and background documents from government and civil society organizations on violations of the human rights and fundamental freedoms of indigenous peoples. The violations ranged from exclusion and marginalization to militarization and massacres. The indigenous peoples were excited about the visit and the opportunity offered to present their own situation without any intermediary. An El Molo elder spoke for all indigenous peoples when he expressed his delight at the visit: *"For us, this is a special day because it is the first time we are being asked to say what our concerns are. Usually, we simply listen to government officers as they speak"*.<sup>5</sup> The SR report is now anxiously awaited.

## **The impact of drought and livestock diseases**

The early part of 2006 witnessed one of the worst droughts in recent years and it had a serious impact on indigenous peoples. Some people lost all their livestock, although the majority were left with herds that were too few to sustain families. Pastoralists moved long distances in search of pasture and water. In the districts south of the capital, Nairobi, a lot of land is no longer in the hands of pastoralists, and private farms have put up fences all along the road. This makes it difficult for livestock to graze and pastoralists are forced to move past the city to the outlying northern areas. In the northern districts of Laikipia and Samburu, the government ordered pastoralists out who had sought grazing in the Mount Kenya areas following the severe drought.

Some relief food was provided in the form of maize flour, but it was inadequate. Once schools had opened early in 2006, many children were unable to attend because their parents could not raise the required school fees and other requirements.<sup>6</sup>

Following the drought, the Advanced Satellite Technology Project was launched, spearheaded by the International Livestock Research Institute and the African Development Bank for the purposes of providing pastoralists with data on drought early warning signs.<sup>7</sup> However, methods of disseminating the information generated by this satellite have yet to be sought.

The government issued an alert in December 2006 following an outbreak of Rift Valley Fever, first in North Eastern Province and later in Rift Valley Province, then across the border into Tanzania. The disease killed 80 people within the first three weeks of its outbreak.<sup>8</sup> Many more people have since succumbed to the disease. Consequently, livestock movements have been restricted and this has affected the marketing of livestock all over the country.<sup>9</sup> The state subsequently launched a vaccination campaign in hard-hit districts.

## **Revival of the Kenya Meat Commission**

The Kenya Meat Commission is a facility under the Ministry of Livestock which was initiated during the colonial period to provide a livestock market. Such a facility is significant for pastoralists since the sale of surplus livestock enables pastoralists to cover fundamental expenses such as supplementary foods, school fees, medicines etc.

After closure for close on a decade, the Kenya Meat Commission was revived in 2006. It has the capacity to absorb 1,000 livestock per day, which will boost the marketing of pastoralists' livestock.<sup>10</sup> The Government of Kenya pumped some 700 million Kenya Shillings (US\$ 10M) into the project but gave first priority to the government-owned African Development Corporation (ADC) farms. It is expected that the facility will provide adequate marketing for pastoralists once their herds have been built up.

## **Insecurity, clashes and disarmament**

2006 also witnessed more land clashes similar to those of the early 1990s, resulting in loss of lives and property. Several Members of Parliament from pastoral areas censured the government for insecurity in a number of northern districts. They complained of cattle rustling-related insecurity in their areas and the police were said to be applying selective justice.<sup>11</sup>

During the year, the government initiated a disarmament project that targeted pastoralists. As a result, an estimated 3,000 herdsmen fled to Uganda. This followed the government's estimation that herdsmen from the Pokot community owned more than 50,000 illegal guns.<sup>12</sup> Local leaders were unhappy over the disarmament exercise because it targeted certain communities and not others, making them vulnerable to those who were not being disarmed. Leaders and civil society organisations from the regions targeted for the exercise claimed that the communities had armed themselves because the government had failed to protect them from aggression.<sup>13</sup> Local leaders held the view

that disarmament was targeted at them because they voted against the draft constitution in the referendum.<sup>14</sup>

### **The Ogiek hold the government to task**

During 2006, more than 10,000 Ogiek called on the government to re-settle them, one and a half years after having been evicted from the Mau Forest. They also demanded compensation for loss of property during the eviction, which left them in makeshift shelters. The Ogiek are not alone in this saga of government evictions from their traditional lands. The Speaker of Kenya's National Assembly also protested at the government's determination to evict his own community, the Laikipia Maasai, from "privately owned land" (formerly part of their territory) in Laikipia District.<sup>15</sup>

### **Ilchamus win a constitutional case on representation**

The indigenous Ilchamus of Lake Baringo (an area once represented by the former president and now by his son), with a population of between 25,000 to 30,000, won an important case in December 2006 requiring the Electoral Commission of Kenya to consider interests of minority and special groups when allowing nominations by political parties. A constitutional court, which issued the rulings, further extended the possibility of such communities having their own representatives in parliament by stipulating that the Electoral Commission of Kenya should consider their interests at the next constituency boundary review. The court agreed with the community's arguments that, in the past, the electoral commission had not implemented the legal machinery for the representation and protection of minorities as required by the constitution.<sup>16</sup> The case is perceived as a landmark case for other indigenous communities without political representation.

## Nairobi workshop on the MDGs

It was noted with concern that there was no indigenous participation or consultation when formulating the Millennium Development Goal (MDGs) indicators of poverty and well-being. The MDGs thus ignore the most important aspects of indigenous peoples' livelihoods, such as protection of their lands, territories and resources, traditional knowledge, as well as their own aspirations and perceptions of development. The United Nations Permanent Forum on Indigenous Issues therefore decided to organize a series of regional meetings to learn more about the challenges and gaps in existing data. The African Regional Workshop was held in Nairobi from 26 to 28 November 2006, under the auspices of the Arid Lands Institute, and it brought together participants from the five regions of Africa to discuss and develop indicators of well-being for African indigenous communities. □

## Notes

- 1 Dominant ethnic communities and their population percentages in Kenya according to the 1999 population and housing census are as follows: Kikuyu 22%; Luhya 14%; Luo 13%; Kalenjin 12%; Kamba 11%; Kisii 6%; Meru 6%. The remaining, dubbed "other Africans", including indigenous peoples, comprise 15%.
- 2 *Daily Nation*, Monday March 29 2006, p. 5.
- 3 *The Saturday Standard*, December 9 2006, p.7:
- 4 Background information and demands to be presented at the meeting.
- 5 Reported by Christiana Seiti from the El Molo area of Marsabit District.
- 6 *The Standard*, Monday January 2 2006, p. 15.
- 7 *The Standard*, Tuesday March 28 2006, p. 7.
- 8 *The Standard*, 9 January, 2007.
- 9 *The Standard*, 23 December, 2006.
- 10 *The Standard*, May 5 2006.
- 11 *The Standard*, Thursday March 23 2006, p. 26.
- 12 *Daily Nation*, April 26 2006.
- 13 *Sunday Nation*, May 7, 2006.
- 14 *Saturday Standard*, 6 January, 2006, P. 16&17.
- 15 *Daily Nation*, 8 November, 2006, p.11
- 16 *The Daily Nation*, Tuesday December 19 2006.

## UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa and Benet communities and pastoralist groups such as the Karamojong. They are not recognized as indigenous by the government.

The *Karamojong* are transhumant pastoralists who live in the neglected Karamoja region of north-eastern Uganda. They number around 955,245<sup>1</sup> people, out of a total population of approximately 26 million. The *Benet*, who number around 20,000 people, also live in the north-eastern part of the country. They are former hunter/gatherers. The 6,700 or so *Batwa* who live primarily in the south-western region of Uganda are also former hunter/gatherers.<sup>2</sup> They were dispossessed of their ancestral land when the Bwindi and Mgahinga forests were gazetted as national parks in 1991.<sup>3</sup>

The Constitution has no express protection for indigenous peoples but provides for affirmative action in favour of marginalized groups. The Land Act of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.<sup>4</sup>

### Main developments in 2006

A landmark truce between the Lord's Resistance Army (LRA) and the government in an effort to bring an end to some 20 years of fighting in northern Uganda was signed in Juba, southern Sudan on 26 August

2006 and took effect on 29 August 2006. Rebels were given until 12 September to have safe passage to come out of hiding. Despite these efforts, fighting and rebel activity reportedly continued throughout late 2006 in some areas. While the national peace process moved forward, international efforts to bring to justice the perpetrators of international war crimes and crimes against humanity continued in parallel. In May 2006, Interpol issued the first wanted persons notices on behalf of the International Criminal Court (ICC). Despite requests from the Ugandan government and some sectors of civil society that an amnesty be granted in order to facilitate the peace process, the ICC has insisted that LRA leader Josph Kony and four other LRA leaders must face justice.

Uganda also remained susceptible to the instability in neighbouring DRC. In December 2006 between 12,000 – 20,000 people from eastern DRC entered south-west Uganda after fleeing fighting in the volatile eastern province of North Kivu.

During 2006, the United Organization for Batwa Development in Uganda (UOBDU)<sup>5</sup> continued its work for the Batwa, addressing land and housing issues, education and adult literacy, and income generation, including agricultural support activities. Many Batwa are still completely landless. Access to health, education and other social services is also extremely low among Batwa communities, and their housing conditions are extremely dire and precarious, characterized by overcrowded makeshift huts of sticks and mud which leak when it rains and have no proper sanitation. Batwa childhood mortality is more than double that of the general population.<sup>6</sup> The Batwa also suffer inordinately low rates of primary and secondary school attendance. In 2004, there were only five Batwa children in secondary school in the three districts of Kabale, Kanungu and Kisoro, where an estimated 70 percent of the Batwa population in Uganda resides.<sup>7</sup> In Kisoro, only 30 percent of Batwa children attend primary school, and in Kabale the figure is around 40 percent.<sup>8</sup> Ninety-eight percent of Batwa adults of working age living in south-west Uganda were reported to be unemployed in 2004.<sup>9</sup> To survive, many Batwa work merely as casual labourers on the farms of neighbouring communities and receive as compensation only the right to stay on the landlord's property, cultivate a small piece of his land and receive handouts of food and old clothing.<sup>10</sup>



In November 2006, with the support of FPP, UOBDU participated for the first time at the African Commission on Human and Peoples' Rights, attending and delivering written and oral interventions to the Commission and its Working Group on Indigenous Populations/Communities at the 40<sup>th</sup> Ordinary Session of the Commission. In collaboration with FPP and IWGIA, UOBDU submitted a supplementary report to Uganda's first periodic report to the African Commission, describing the situation of indigenous peoples in the country. This led the African Commission to direct specific questions about the Batwa to the Ugandan state delegation.

In 2006, the Karamojong people experienced a number of negative state interventions. For instance, the Karamoja Integrated Disarmament and Development Programme 2005-2008, which sought to pursue a holistic bottom-up approach to disarmament, in which communities are participants in the entire disarmament process, was abandoned in 2006. It was abandoned soon after it was launched, when the main donor, DANIDA, pulled out citing frustration with the state. As a result, a punitive disarmament strategy was pursued by the state in 2006, with consequent human rights violations meted against the Karamojong. The state also sought to appropriate the Pian Upe National Park through compulsory acquisition, without consulting the Karamojong, an attempt that communities resisted successfully in particular through a campaign mounted by Advocates Coalition for Development and Environment (ACODE), the East African Leadership Centre and the Karamoja Cultural Trust.

The Benet successfully prosecuted a law suit in 2005 against the Uganda government, where the High Court ruled that they were the "historical and indigenous inhabitants" of the land around Mt. Elgon and thus were entitled to "stay and carry out economic and agricultural activities including developing the same undisturbed". However, by 2006 the Benet had yet to enjoy the fruits of this judgement as the Uganda Wildlife Authority had not taken any action in compliance with the orders of the court.

The African Commission's Working Group on Indigenous Populations / Communities conducted a country visit to Uganda in July 2006, and its final report on the visit is expected to be released in 2007.

In November 2006, the Ugandan Human Rights Commission was granted affiliate status at the African Commission on Human and Peoples' Rights, thereby opening the door for better collaboration and consistency between the work of the Commission and its Working Group on Indigenous Populations/Communities and that of Uganda's national human rights institution. □

## Notes and references

- 1 According to the final results of the September 2002 National Population and Housing Census, Kotido District has a population of 605,322 (302,206 males and 303,116 females). Moroto District has a population of 194,773 (98,145 males and 96,628 females). Nakapiripirit has a population of 155,150 (78,284 males and 76,866 females) (See <http://www.ubos.org/preliminaryfullreport.pdf>).
- 2 The Batwa are also known as Twa.
- 3 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data*. August 2004, Uganda, p.3.
- 4 Land Act (1998), Articles 2 and 44; National Environment Statute (1995), Article 46.
- 5 *The United Organisation for Batwa Development in Uganda (UOBDU)* is the main indigenous community-based organisation representing the Batwa of Uganda. It was established by the Batwa in 2000. Based in Kisoro, UOBDU works with the Batwa in Kisoro, Kabale and Kanungu districts to improve living conditions, livelihoods and human rights awareness and advancement.
- 6 Kabanankye, K. and Wily, L, *Report on a Study of the Abayanda Pygmies of South Western Uganda*, Kabale, Mgahinga and Bwindi Impenetrable Forest Conservation Trust, 1996, pp. 72-74.
- 7 Same as note 3, p.3.
- 8 *Ibid.*, pp. 8, 13.
- 9 *Ibid.*, pp. 11, 15, 19.
- 10 **ACODE, 2005:** *Living on the Margins: The Deprivation of Community-Based Property Rights of the Batwa Pygmies of South Western Uganda*, p. 9.

## TANZANIA

Tanzania is estimated to have a total of 143 ethnic groups, falling mainly into the four racial categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organising themselves around the concept and movement of indigenous peoples and these are the hunter-gatherer groups of the Akiye and Hadzabe, and the pastoralist Barabaig and Maasai. Population estimates<sup>1</sup> put the Maasai in Tanzania at 430,000, the Barabaig at 76,000, the Hadzabe at 3,000 and the Akiye (Ndorobo) at 5,268.

There is no specific national legislation on indigenous peoples. However, policies, strategies and programmes are continuously being developed and implemented that restrict indigenous peoples in terms of their access to land and natural resources, basic social services and access to justice, resulting in a deteriorating political environment for both pastoralists and hunter-gatherers.

The main policies impacting negatively on indigenous peoples include: the National Strategy for Growth and Reduction of Poverty (NSGRP), the Strategy for Formalisation of Property and Businesses (MKURABITA), the Strategic Plan for Implementation of the Land Laws (SPILL), the Wildlife Policy (1998) and the Livestock Policy (2006).

During 2006, different indigenous peoples in Tanzania experienced droughts, further land losses, a loss of influence as well as a loss of leadership positions at different levels. They further experienced pressure on their natural resources from developers, conservation ac-



poverty reduction that seeks to build Tanzania as a country with high and shared growth, a high quality livelihood, peace, stability and unity, good governance, high quality education and international competitiveness. As a framework for national development, the NSGRP poses threats to indigenous peoples as it sees indigenous territories as economic theatres of market production and fails to acknowledge the social disparities that exist between indigenous peoples and the mainstream groups.

While the NSGRP provides an opportunity in terms of recognition of customary ownership of resources and small traditional occupation nationwide, the initiative is driven by hard core neo-classical economic models that see monetary benefits in natural resources as opposed to other values and functions that indigenous peoples, as rights holders, attach to their territories.

The Strategic Plan for Implementation of the Land Laws (SPILL) is another important document that has a bearing on the lives of the indigenous peoples in Tanzania. SPILL helps to provide a framework for the land sector to contribute to the goals of poverty reduction, agricultural transformation, good governance, promotion of a land market and use of land as collateral. However, some pastoralist groups are worried that the SPILL will lead to a loss of land as the strategy focuses on use of customary titles as collateral, which may result in people losing their lands if they cannot pay back their loans. The SPILL strategy is unfavourably biased towards pastoralists in relation to collectively-owned village lands, and this bias is articulated directly in its action plan:

*“Curbing sources of explosive land conflicts on village lands by addressing ill-effects with regard to three issues, namely: disregarding and violating land rights, nomadic cultures and excessive stock holdings”.<sup>2</sup>*

The livestock policy (2006) is another problematic area for indigenous peoples as it seeks to resettle indigenous livestock owners in lower stocked areas which are outside their traditional territories. The livestock policy seeks to transform rangelands into commercial ranches and to increase beef production by 39%. The policy assumes a transformation of pastoralists “from being nomadic livestock herders to being

settled modern livestock keepers",<sup>3</sup> without recognizing the fundamental economic contribution of pastoralism to the Tanzanian economy and food production. Livestock remains a major contributor to the national food supply, contributing 30% of the Agricultural Gross Domestic Product.<sup>4</sup> Although it is estimated that pastoralism supports 10% of the population in Tanzania and that the pastoralists own 99% of the livestock, with the remaining 1% owned by commercial ranches and dairy farms,<sup>5</sup> the traditional livestock sector does not receive adequate funding from the government. All infrastructural and service provision is left in the hands of the private sector and pastoralists themselves, resulting in high costs for infrastructure and limited expensive services that are not affordable for the majority of indigenous pastoralists.

The government has further adopted a strategy for rangelands development that seeks to enhance beef production. The strategy is biased against pastoralists and in favour of commercial ranching. Although the strategy intends to do this through formal recognition of associations and organizations of livestock keepers/pastoralists, the drivers behind such a strategy are the private sector and financial institutions, whose forces are not accommodating to indigenous peoples' needs and aspirations. The strategy assumes an active collaboration between the government and the pastoral organizations and action is taken to ensure that livestock keepers obtain formal legal recognition of traditional grazing rights as envisaged in the new Land Act of 1999.

## **The Hadzabe people**

The indigenous territories of the Hadzabe peoples are located around Lake Eyasi and Yaeda chini in Mbulu District of Arusha Region. The Hadzabe territories extend to the Shinyanga and Singida regions, and are surrounded by famous places such as the Tarangire and Serengeti National Parks as well as the Ngorongoro Crater. Their traditional territory covers approximately 1,500 square km.

The situation of the Hadzabe peoples deteriorated further during 2006. It is estimated that the population declined overall and they are

now estimated at around 3,000 people, with social scientists raising concerns about the risk of their extinction. Research recently carried out by Oxfam maintained that the Hadzabe were “*facing severe pressures on their traditional way of life*” as a result of pressure on their natural habitat, and that the community could be extinct in a few years.<sup>6</sup>

Over the course of 2006, the Hadzabe peoples experienced worsening environmental and living conditions, an increased loss of land and a deteriorating policy environment. The Hadzabe people’s sources of livelihood have been lost either to farming, conservation or hunting activities or to development policies biased against hunter-gatherers in favour of other forms of land use, exacerbating the plight of the Hadzabe peoples.

Most of the traditional Hadzabe territory is leased out to a commercial hunting company as a so-called *hunting block*, and this restricts the Hadzabe people from accessing fundamental natural resources upon which their livelihood and survival as a people depend. Due to a lack of influence in policy and development circles, the Hadzabe are even denied a share in the revenue generated by the commercial hunting activities taking place on their territory. In 2006, Hadzabe people reported incidences of arrest, jail and fines from hunting companies that claim to have been given exclusive use of hunting resources in their areas.

Due to a lack of formal education and economic power, and the fact that they are a small minority, the Hadzabe people suffer from a lack of representation in decision-making bodies at all levels. This makes the poverty-stricken Hadzabe people even more vulnerable to outside forces and threatens their very existence as a people. Although some Hadzabe groups have registered as non-governmental organisations, their work on the ground is yet to gain any profile, so the plight of the Hadzabe people is increasingly falling on deaf ears.

## The Akie people

The Akiye or Ndorobo<sup>7</sup> people neighbour the Maasai in Kiteto, Simanjiro and Ngorongoro districts of Manyara and Arusha regions. The

Akiye are estimated to number 5,286. They constitute small segments of the population in the districts of Kiteto and Simanjiro.

Like their relatives the Hadzabe, the livelihood of the Akiye peoples is severely threatened. Their traditional territory has been encroached upon by different land users, and hunting plus gathering of wild berries (which governed their livelihoods) have become restricted by conservation and development policies. Consequently, the ability of the Akiye to access their food sources has been constrained, and this is creating livelihood uncertainty, perpetual food insecurity and worsening living conditions.

The Akiye communities living in Kiteto District continue to experience environmental destruction caused by shifting cultivation practised by farmers from Morogoro, Iringa and Dodoma regions. Shifting cultivation clears bushes and destroys the habitat that used to provide the Akiye with wild berries and roots, contributing significantly to their food. Coping with disease is increasingly becoming difficult as many plants used for herbal medicine are also being destroyed by cultivation.

Levels of food insecurity have been further heightened by the destruction of the flowers that wild bees depend on for making honey, which is an important dietary supplement for the Akiye. Community Research and Development Services (CORDS) and Ndorobo Safaris have provided limited services to the Akiye community. CORDS' land-use programme is working with one of the Akiye communities to demarcate the Akiye's land and enhance their legal ownership of it.

## **The indigenous pastoral Barabaig**

The pastoralist Barabaig, who number more than 76,000, live in the mountainous areas around Hanang District in Manyara Region of northern Tanzania. During the 1970s, 80s and 90s, agricultural groups - especially the Iraqw people - moved into the territory of the Barabaig and took land for small as well as large-scale farming. In the 1970s, the National Agricultural and Food Cooperation (NAFCO) took well over one hundred thousand (100,000) hectares of prime pasture from the Barabaig and converted it to wheat farming.

As a result of this loss of prime pasture, the Barabaig were forced to migrate to other districts and regions of Tanzania. Discrimination against the Barabaig in the places they moved to has been an ever-growing problem as they are perceived as intruders with no respect for other peoples' property or cultures. The Barabaig are constantly discriminated against and, in 2006, they experienced evictions from Mbeya and parts of Morogoro regions.

Following the failure of NAFCO to put the land it took from the Barabaig to any economic use, it was decided in 2005 that some of the land should be sold to private developers, some should be distributed to landless farmers from Hanang District and the rest given back to the Barabaig community.

In 2005, indigenous pastoral Barabaig women demonstrated against the manner in which their lands were being allocated to outsiders, with the Barabaig systematically being refused any land allocations. In 2006, reading the signs of the time, and knowing that they would not be given a fair share of the redistribution of land that was once theirs, the pastoralists moved their livestock back to parts of the land that had been taken from them by NAFCO, and a significant number of the Barabaig settled there as a strategy of land recovery.<sup>8</sup> Although the Barabaig have not been given any piece of land legally, community leaders assume that land already occupied by the Barabaig will not be taken back for fear of conflict.

## **The indigenous pastoral Maasai peoples**

The indigenous Maasai peoples are estimated to number 886,000 living in both Kenya and Tanzania (around 430,000 in Tanzania alone) and they live in the districts of Kiteto and Simanjiro in Manyara Region; and Monduli, Longido and Ngorongoro districts in Arusha Region. There are pockets of Maasai peoples in almost fifteen other districts throughout Tanzania.

The year 2006 was tough for the indigenous pastoral Maasai as they experienced further losses of key natural resources due to the expansion of crop farming, wildlife management, mining and infrastruc-

tural projects. The year also recorded the highest number of livestock losses to disease since 1984.<sup>9</sup>

In 2006, the indigenous Maasai pastoralists were evicted from the Usangu Plains in southern Tanzania to make way for the creation of the Ihefu National Park. Pastoralists were accused of destroying the environment and contributing to power shortages in the country.<sup>10</sup>

Although farming is more environmentally destructive than pastoralism when practised on marginal lands, it was only the pastoralists who were evicted. Rice, potato and onion farming along basins that feed into the great Ruaha River is still ongoing. Pastoralist and some human rights groups expressed dissatisfaction with the discriminatory nature of the eviction which, in essence, targeted the pastoralists alone.

There were statements issued by political leaders regarding the areas to which pastoralists should be relocated, such as the regions of Lindi, Coast and Mbeya in the districts of Kilwa, Rufiji, Mkuranga, Nachingwea, Liwale, Chunya and Mbarali. Towards the end of 2006, Ministry of Lands officials stated that village demarcation work would be carried out in order to identify available grazing areas where evicted pastoralists would be resettled. However, the exercise is yet to start.

In 2006, the Ngorongoro Conservation Area Authority gave 200 Maasai families notice of eviction. Plans were developed to resettle evicted families in the Oldonyo Sambu area, north of the Ngorongoro area near the border with Kenya. Traditional leaders in Ngorongoro reported that the Sonjo people opposed the plan to resettle the Maasai in their area.<sup>11</sup>

The Il-Parakuyo is a sub-group of the Maasai people, and they currently live in the Tanga, Manyara, Iringa, Dodoma, Morogoro, Mbeya, Coast and Kilimanjaro regions. Scarcity of land and resource-based conflicts are intensifying in all regions where the Il-Parakuyo live. Il-Parakuyo formed part of the pastoralist groups evicted from the Usangu Plains. In Morogoro, there were reports of evictions of the Il-Parakuyo from the Kilombero basin in 2006.

## **Indigenous women fight for their land rights**

Maasai pastoralist women from Kimana, in Kiteto District, Manyara Region, came together on 18 March 2006 to reflect on how to remove

the illegal farming immigrants who had moved onto pastoral lands and established big farms in areas already designated for livestock grazing. Kimana village, together with eight other neighbouring villages, had already formulated village land-use plans, with the support of a local NGO, Community Research and Development Services (CORDS).

On 3 April 2006, Kimana women were joined by other women from neighbouring villages and around 600 women held a demonstration at Kibaya, the headquarters of Kiteto District. They presented their demands to the District Authorities, calling for the removal of the illegal settlers, and demanding that corrupt district and village officials responsible for the losses should be held to account. The women produced documents showing their own village land-use plans and how illegal immigrants had established farms in areas earmarked for livestock keeping.

Terming the women's claims as baseless, the District Commissioner banned the demonstrations, saying that they were a disturbance of the peace. Standing their ground, the women disobeyed the ban and continued to meet. After several meetings, a five-person delegation was appointed and sent to Dodoma, the national capital of Tanzania, to present their concerns to the national government leaders.

On 4 April 2006, the delegation went to Dodoma where they met three ministers. i.e. the Minister for Lands and Human Settlement, the Minister for the Environment and the Minister for Local Government. In response to the plight of the pastoralist women, the Minister for Local Government directed the Kiteto District Authorities to ensure that the women and other villagers were allowed to organize their meetings. The second action that the Minister for Local Government took was to appoint a Commission of Inquiry into Land Matters in Kiteto.

Shortly after the return of the women's delegation from Dodoma, the appointed commission visited the villages concerned in Kiteto and held interviews with different stakeholders. They further interviewed some district officials as well as some officials from Manyara regional headquarters.

During the visit, the villagers, particularly the women, gave overwhelming evidence regarding the involvement of some village and district leaders in illegal land dealings.

A report was prepared and submitted to relevant ministers, who studied the report and acted on it accordingly. Some of the steps taken included: banning all cultivation in the disputed areas by 30 September 2006; dispatching a police force to the area to ensure the smooth removal of the illegal settlers; and the transfer or removal of the district officials who were found to have been involved in illegal land dealings.

On 16 November 2006, the Prime Minister himself visited Kiteto District and confirmed the decisions made earlier by the Minister for Local Government. The Prime Minister further directed the District Authorities to ensure that village land-use plans were respected and that each zone should be used for its designated purpose only. He directed the regional and district authorities to ensure that land-use problems were addressed and the rights of the villagers respected. He confirmed earlier orders to evacuate all people who were cultivating grazing land.

Overwhelmed with joy, the women danced and composed land rights songs, which they sang to the Prime Minister. In their songs, they further demanded the eviction of around 200 large-scale farmers and the return of 3,006 square km of land to pastoralists for grazing. In their songs, they further praised the Prime Minister for his support and intervention. □

## Sources

- African Commission on Human & Peoples' Rights and IWGIA, 2005:** *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities in Africa*. IWGIA, Copenhagen.
- Bureau of Democracy, Human Rights and Labor (US Department of State), 2006:** *Country Reports on Human Rights Practices* – see [www.state.gov/g/drl/rls/hrrpt/2005/61596.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61596.htm)
- IWGIA, 2005, 2006:** *The Indigenous World*. IWGIA, Copenhagen.
- Madulu, N.F. and Liwenga, E. 2004:** *Economics of Pastoralism in East Africa: Tanzania Component*. Reconcile/IIED.
- Organisation of African Unity, 1983:** *African Charter on Human and Peoples' Rights*
- Ministry of Natural Resources and Tourism, 1998:** *Wildlife Policy*,
- United Republic of Tanzania, 2001:** *Agricultural Sector Development Strategy*.
- United Republic of Tanzania, 2005:** *National Livestock Policy*.
- United Republic of Tanzania, 2005:** *Strategy for Policy Implementation of Land Law (SPILL)*.

## Notes and references

- 1 Dr. Scott S., 2007: *Rift Cross Safari*. At <http://www.answers.com/Maasai>
- 2 See SPILL Planned Intervention on Village Lands, April 2005, p.47.
- 3 See speech of the President of the United Republic of Tanzania when addressing the Fourth Parliament on 30 December 2005.
- 4 See **United Republic of Tanzania, 2005: *National Livestock Policy***.
- 5 **Madulu, N.F. and Liwenga, E., 2004: *Economics of Pastoralism in East Africa: Tanzania Component***. Reconcile/IIED.
- 6 Reported by Arusha Times, 22-28 October, 2005.
- 7 Ndorobo is a Maasai word that means someone without livestock and hence dependent on hunting and gathering.
- 8 Personal communication with A. Maragu, a Barabaig human rights activist.
- 9 Tanzania Maasailand lost livestock in great numbers due to East Coast Fever following the collapse of the Maasai Range project that introduced dipping in Maasailand. In 2006, losses of livestock were caused by CBPP, Lamp Skin Disease, Rift Valley Fever and Black quarter and heart water.
- 10 The pastoralists and their livestock were accused of causing environmental destruction which, in turn, was said to lead to inadequate flow of water into the greater Ruaha River, which is central to the generation of electricity.
- 11 The Sonjo peoples have always considered the Maasai their traditional enemies and violent conflicts have frequently broke out between the Sonjo and the Maasai.



## RWANDA

It is widely accepted that indigenous forest-dwelling Batwa (also known as Twa) were the first inhabitants of Rwanda, who were later joined by migrating farmers and animal herders. The Batwa self-identify, and are identified by other Rwandans, as *Batwa* and *Abasangwabutaka* ("original inhabitants"). The Batwa self-identify and are widely recognized within Africa as indigenous peoples, including by the African Commission.<sup>1</sup> There has never been a national disaggregated demographic census in Rwanda; however, the total number of Batwa is estimated to be 33,000, which represents approximately 0.4% of the population.<sup>2</sup>

The Batwa are amongst the poorest and most marginalised sector of Rwandan society. They have been totally dispossessed of their traditional lands and territories, and forced to give up their traditional hunting and gathering lifestyle and cultural practices and subsist on the fringes of settled society. They experience increasing racial discrimination and stereotyping by the rest of Rwandan society as morally, physically and intellectually deficient, gradually becoming social outcasts despised for their ethnic origins. The Rwandan government fails to recognise them as a distinct ethnic group and an indigenous people, and appears to be adopting a policy of (cultural) assimilation.<sup>3</sup>

Unable to access their ancestral lands and practise traditional cultural and economic activities, the Batwa now perceive their pottery and dancing as the principle expression of their cultural integrity and ethnic distinctiveness, as well as one of their main sources of income. However, Rwanda's 2005 land law threatens the Batwa's access



even to clay, an essential natural resource in pottery production, by declaring previously communal land as state-owned and managed, and prioritising agriculture on these lands.

The land law is based on the assumption that small parcels of land are not viable and promotes land consolidation. The authorities will decide how land will be grouped and to what use it will be put. The law also contains provisions for the state to compulsorily requisition land that it deems is being inadequately used without compensation. Very few Twa individuals currently own land, and the majority of Twa landholders do not practise cultivation on their land. A serious concern, therefore, is that the land law allows for state expropriation of land that is not used “in a productive way”, which is deemed to in-

clude agriculture and animal husbandry.<sup>4</sup> The land reform process continued throughout 2006 with the support of international donors such as the UK's Department for International Development (DFID). The government is in the process of formulating further implementing legislation, but there has been no known consultation with indigenous peoples on this to date. The indigenous representative organisation, CAURWA, encouraged the key DFID-sponsored reform team to consult indigenous Twa communities during their work.

### **CAURWA still not permanently registered**

As noted in *The Indigenous World 2006*, since the 1994 genocide, the Rwandan authorities have sought to remove all reference to ethnicity, and organisations and individuals who refer to ethnicity are likely to be labelled "divisionist", as the authorities assert that all Rwandans share a common language, religion and culture. They maintain that differences are not "ethnic" but the result of the colonial "divide and rule" policy which was perpetuated by subsequent post-independence administrations.

The failure of the Rwandan authorities to allow reference to ethnicity has led to the direct refusal by the Ministry of Justice to legally register the country's largest national Batwa representative organisation, CAURWA (*Communauté des Autochtones Rwandais*) until it removes the words "Batwa", "indigenous" and "Abasangwabutaka" from its name and statutes.<sup>5</sup>

In response to this demand, in 2005 CAURWA sought the views of its members and the wider Batwa community. The response was a call to the Rwandan authorities to understand that these terms are not divisionist; to put in place special measures to improve the socio-economic conditions of the Batwa; and to continue a dialogue with CAURWA to allow the latter to continue its work.

As a result, CAURWA spent 2006 in lengthy, ongoing negotiations with the authorities on the issue of permanent legal registration. In the meantime, Rwanda's Ministry of Local Affairs ("MINALOC") granted CAURWA temporary registration in June, and again in December 2006; however, this is only valid until 17 May 2007. The issue of CAURWA's

permanent registration thus remains pending and unresolved. The lack of permanent legal registration has had a negative impact on CAURWA's operations in the past due to the uncertainty it places on their future and the unwillingness of some donors to enter into funding agreements without it. Nevertheless, the organisation successfully functioned throughout 2006, continuing its livelihoods, education and rights programmes, which benefit Batwa communities throughout the country. Amongst other things, these included distributing agricultural inputs, adult literacy and numeracy training, and a voter-sensitization programme in the run-up to the local elections in February-March 2006, which were unfortunately marred by irregularities.<sup>6</sup>

## Government response to Batwa issues

In an apparent response to criticisms about the socio-economic situation of the Batwa, in 2006 MINALOC approached CAURWA requesting data on all Batwa households nationwide, indicating that it intended to pay the school fees of all Batwa secondary school children and membership fees of health insurance schemes for all Batwa.<sup>7</sup> MINALOC constructed some housing for Batwa communities and paid the school fees of some Batwa secondary school students for two of the three scholastic terms. However, this positive development was marred by the local authorities' failure to ensure that all Batwa continued to benefit once the programme had been decentralised to the district level. Apart from these initiatives, there was no policy or programme follow-up of the 2005 NEPAD (New Partnership for African Development) Peer Review report, which concluded that the Rwandan authorities appear to be adopting a policy of assimilation with regard to the Batwa (see *The Indigenous World* 2006). In its official response to the report, the government stated that "[*The Twa's (Batwa's)*] integration into the Rwandan social economic mainstream continues to be a voluntary but inevitable process necessitated by changing times. It's important to mention that the government has never had a policy of assimilation, since that is comparable to socio-cultural genocide. As a community however, it is clear that a targeted response to their specific problems is recommended and government has already initiated programmes to do so."<sup>8</sup> □

## Notes

- 1 **African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), 2005:** *Report of the African Commission's Working Group of Experts on Indigenous Peoples/Communities, Submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session, (Gambia, Denmark)(hereinafter "ACHPR Working Group on Indigenous Populations/Communities (2005))"*, which states that "all the Batwa Pygmies of Central Africa recognise their common ancestors as being the first hunter/gatherer inhabitants of the tropical forests", p.16 and pp. 92-93.
- 2 This estimated Batwa population comes from a national survey conducted in 2003 by the Forest Peoples Project, CAURWA (Community of Indigenous Peoples of Rwanda) and the Office of National Statistics of the Rwandan Ministry of Finance. The results were published in a report: **CAURWA (2004):** *Enquête sur les conditions de vie socio-économique des ménages bénéficiaires de la Communauté des Autochtones Rwandais* (CAURWA, Kigali). Rwanda's population is now approximately 9 million, with an average population density of 366 people per square kilometre, making it the most densely populated country in Africa. See: **UNDP, 2005:** *Human Development Report 2005: International Cooperation at a Crossroads; Aid, Trade and Security in an Unequal World*, (New York); **International Bank for Reconstruction and Development/World Bank, 2006:** *World Development Report 2007: Development and the Next Generation*, (Washington, DC), p. 289.
- 3 Rwanda was one of the first countries to submit itself to NEPAD's (New Partnership for African Development) Peer Review mechanism. The NEPAD report notes that with regard to the Twa that the authorities appeared to be adopting a policy of assimilation, and recommended the government begin intensive dialogue with the Twa. The government's official response states that it has never had a policy of assimilation but admitted that the "Batwa community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the national policy that supports socio-economic integration of all Rwandans." The authorities also noted that "it is clear that a targeted response to [the Twa's] specific problems is recommended and shall be reflected in the plan of action." **Government of Rwanda, 2005:** *Response to Issues Raised and Best Practices Suggested in the Country Review Team (CRT)'s Report. Section on 'Democracy and Good Political Governance'*, p. 4, June 2005.
- 4 Illegal expropriation of Batwa land by the local authorities and neighbouring Bantu continues to this day. Pervasive discrimination in Rwandan society means that malfeasants often steal the Batwa's land with impunity, and the Batwa are often unable to obtain legal redress because of their extreme poverty and social isolation.
- 5 The Rwandan authorities believe that all Rwandans are "indigenous" and that CAURWA's work in support of the Batwa is unconstitutional and "divisionist", undermining the unity and reconciliation process.

- 6 **Human Rights Watch, January 2006:** *Rwanda: Country Summary*.
- 7 Health insurance schemes, known as “*mutuelles de santé*” are the main way of accessing healthcare in rural Rwanda; however, the fees are often out of the reach of most Batwa. Unfortunately, despite the government’s promises, many Batwa remain unregistered on the insurance scheme.
- 8 **Government of Rwanda, 2005:** *Response to Issues Raised and Best Practices Suggested in the Country Review Team (CRT)’s Report*. Section on “Democracy and Good Political Governance”, June 2005.

## BURUNDI

The indigenous Batwa<sup>1</sup> of Burundi form part of the wider population of Batwa living in the Great Lakes region of Central Africa. While no census has been taken, and estimates in recent years have varied widely, it is currently estimated that between 80,000 – 100,000 Batwa live in Burundi,<sup>2</sup> representing approximately 1.25 percent of the total population. Having lost their ancestral forests decades ago due to clearing for agricultural uses, the majority of the Burundian Batwa are landless and their traditional hunter-gatherer lifestyle has long been eliminated. While the majority of Burundian Batwa are labourers, potters and beggars, some are now practising agriculture and animal husbandry.

Despite constitutional protections against servitude, an estimated 8,000 Batwa are still living in conditions of servitude under Hutu and Tutsi “masters”.<sup>3</sup>

Unique for the region, the 2005 Constitution provides for three Batwa representatives in both the National Assembly and the Senate.<sup>4</sup> There are currently three Batwa representatives in each house. The Honourable Liberate Nicayenzi, one of the Batwa Members of Parliament, is also the President of *Unis-sions-nous pour la Promotion des Batwa* (UNIPROBA), one of the principal Batwa NGOs in Burundi, based in Bujumbura.

### Main developments in 2006

The political situation continued to stabilize in 2006, particularly with the signing on 18 June 2006 of a provisional truce between the government and the rebel group *Forces nationales de libération* (FNL) and the subsequent ceasefire agreement in September 2006. Despite



delays in implementation, the truce and the ceasefire agreement have helped Burundi in its efforts to emerge from 13 years of civil war. Nonetheless, problems continued during the year, including reports of a possible intended coup and the subsequent arrest of several individuals, including former President Ndayizeye and former Vice-President Kadege, and reports of summary extrajudicial executions. The country's second vice-president, Alice Nzomukunda, resigned in 2006, accusing the government of human rights violations and corruption. ONUB, the UN peacekeeping mission in Burundi, completed its mandate on 31 December 2006. It was succeeded by the United Nations Integrated Office in Burundi (BINUB), established by Security Council

Resolution 1719 of 25 October 2006, the mandate of which includes supporting the peace process, providing assistance in the reform of the security sector, supporting the reintegration of displaced persons, and promoting and facilitating economic development.<sup>5</sup>

With 271 people per sq km, the second-highest population density in Africa, Burundi continued to face severe land pressure.<sup>6</sup> Land issues were a main concern for the Batwa organization UNIPROBA in 2006. The majority of Batwa ancestral lands that have not been consumed by agriculture have either been transformed into parks or forest reserves, and the vast majority of the Batwa are consequently either landless or with very small plots of land that cannot sustain their livelihoods. Land laws in Burundi latently discriminate against the Batwa as they base the protection of customary land rights on visible and material occupation of the land, ignoring the traditional hunter-gatherer lifestyle of the Batwa, which left little visible sign of their occupation on the land.<sup>7</sup> The land redistribution that occurred at independence failed to significantly benefit the Batwa. However, through the efforts of the Batwa MPs and provisions by some local authorities, some communities have acquired land and improved housing.

A new law was passed in May 2006 establishing a national land commission, *la Commission Nationale des Terres et Autres Biens*,<sup>8</sup> which has the daunting primary task of solving the land and property issues of all victims of war, including thousands of refugees and displaced persons from recent decades whose land was appropriated by others, thereby rendering them landless when they eventually returned home. It is hoped that this Land Commission will also address indigenous land issues and, in this respect, the law's provision that one seat out of 23 on the Commission be reserved for a Batwa representative is a positive step. A staff member of UNIPROBA was appointed in 2006 as the sole Batwa member of the Commission. The Commission undertook preliminary activities in 2006 and will actively commence its substantive work in 2007.

With the support of IWGIA, UNIPROBA carried out a survey in 2006 to document the land situation of the Batwa in six Provinces in Burundi.<sup>9</sup> The survey found that almost all the Batwa in the six provinces surveyed were either totally landless or had less than 1,000 m<sup>2</sup> of land for a whole household. Hopefully, the survey will serve as a use-

ful input to the work of the Land Commission in 2007, ensuring that sufficient land will be distributed to the Batwa people.

UNIPROBA continued its work to improve livelihoods, combat servitude and sensitize communities on health and education issues. In 2006, the organization conducted a field inquiry in the Cibitoke, Bururi, Gitega, Ngozi, Ruyigi and Bujumbura Rural provinces to determine the numbers of children attending school and their level of schooling. This found a total of 10,234 Batwa children in primary school, 450 in secondary and 7 in university, with 3 additional Batwa having recently completed their university studies. The study also found a growing recognition among Batwa parents of the need to send their children to school, although many still lack the necessary means to do so. UNIPROBA also launched a new legal and human rights programme in collaboration with the British NGO Forest Peoples' Project (FPP), in order to increase the knowledge and use of legal and human rights norms and mechanisms to claim and defend indigenous rights.

Key staff of UNIPROBA participated in a training session on the African regional human rights system organized by FPP in November 2006 and, with the support of IWGIA, the organization continued its active participation in the ordinary sessions of the African Commission on Human and Peoples' Rights. UNIPROBA was granted observer status at the African Commission at its 40<sup>th</sup> Ordinary Session in November 2006. □

## Notes and references

- 1 The Batwa are also known as the Twa.
- 2 According to information obtained from UNIPROBA.
- 3 African Commission on Human and Peoples' Rights Working Group of Experts on Indigenous Populations/Communities, *Rapport de la Mission d'information au Burundi du 27 Mars Au 9 Avril 2005*, p. 15.
- 4 Constitution of Burundi (2005), Articles 164 and 180.
- 5 United Nations Operation in Burundi website at <http://www.un.org/Depts/dpko/missions/onub/> (accessed 27 February 2007).

- 6 *BURUNDI: Huge challenges in solving land crisis*, UN Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network (IRIN), 23 November 2006.
- 7 See note 3 above, p. 12.
- 8 *Loi n°1/18 du 4 mai 2006 portant missions, composition, organisation et fonctionnement de la Commission Nationale des Terres et Autres Biens*.
- 9 The provinces surveyed were: Bujumbura Rural, Bururi, Cibitoke, Gitega, Ngozi and Ruyigi.

## DEMOCRATIC REPUBLIC OF CONGO (DRC)

There are four main groups of indigenous peoples in the vast territory of DRC: the *Bambuti*, *Bacwa*, *Western Batwa* and *Eastern Batwa* (also known as Twa). As there has never been a national demographic census, their total number is unknown; however, estimates of the indigenous population range from 270,000 to four million, which is approximately 0.4%-7% of the total population.<sup>1</sup>

As a direct result of historical and continuing expropriation of indigenous lands and forests for conservation and logging purposes, many have been forced to abandon their traditional way of life and cultural practices based on hunting and gathering and become landless squatters living on the fringes of settled society. Many have been forced to farm the lands of others in arrangements of bonded labour. Indigenous peoples' overall situation is considerably worse than the national population in DRC: they experience disproportionately worse living conditions and access to services such as health and education.<sup>2</sup> Their participation in DRC's social and political affairs remains disproportionately low, and they experience discrimination of various forms, including racial stereotyping, social exclusion and systematic violations of their human and indigenous rights.

**T**he forest plays an essential part in ensuring the physical, cultural and spiritual well-being of indigenous peoples in DRC, who suffer extreme levels of poverty and ill-health without it. Most believe their lives would be better if they lived in the forest, as it gives them access to a secure means of subsistence, medicinal plants and the ability to

practise their customs. However, DRC does not recognise or protect the rights of indigenous peoples to own, enjoy, control or use their communal lands, territories and resources, has not delimited or demarcated these lands and territories and has not taken any other effective measure to guarantee and secure their rights to lands, territories and resources.<sup>3</sup>

One welcome development in November 2006 was the adoption of a Presidential decree that acknowledges the existence of indigenous peoples in DRC.<sup>4</sup> However, although it recognises indigenous peoples should be consulted if forestry concession titles are to be renewed on land “near” to them, it makes no provision for how this will be done, nor does it guarantee that indigenous peoples’ concerns will be taken into account. As far as we are aware, there are no (other) major pieces of legislation or major development programmes in DRC that contain the requirement that indigenous peoples be meaningfully consulted about, or participate in decision making, or give their free, prior and informed consent to activities on their traditionally owned lands and territories, particularly with regard to forest zoning, management, gazetting and commercial concessions.

## **The Forest Code**

Despite continuing land expropriation and natural resource exploitation, several indigenous communities in DRC have managed to retain their forest-based hunter-gatherer lifestyle and culture with varying degrees of success. Those that have done so have avoided the same level of racial discrimination and deprivation that afflicts indigenous communities forced out of their forests. Nevertheless, they face the same urgent threat as a result of forest zoning plans that, without any regard for their rights, will substantially increase protected areas and commercial forest exploitation pursuant to the 2002 Forest Code and with support from agencies such as the World Bank.<sup>5</sup>

The Forest Code determines how the Congolese forests will be zoned, with at least 40 percent allocated to commercial exploitation and 15 percent to conservation. Although referred to as “protected” in the Code, the remaining forest – at least 45 percent – will also be sub-



ject to concessions; however, the percentage of forest, if any, that will be regularised as indigenous-owned remains unknown and is not presently being considered.<sup>6</sup>

The Code is blatantly discriminatory as it fails to recognise the existence of indigenous peoples and protect their rights. It clearly indicates the state's desire to prioritise commercial and conservation use of the forests over community forests. It also fails to recognise indigenous peoples' ownership of their lands, territories and resources, their rights to collective title and their traditional land tenure systems. It neglects to delimit, demarcate and title indigenous peoples' lands, and to respect and protect their use and access rights. In fact, the provisions governing forestry use rights discriminate against indigenous peoples

and violate their rights to a secure means of subsistence and to freely dispose of their natural wealth.<sup>7</sup>

Despite assurances from the state that there would be active participation by local communities and NGOs in forestry sector reforms,<sup>8</sup> to date there has been virtually no public consultation, and public knowledge about the forestry legislation is severely limited. The Code contains no requirements that indigenous peoples should be meaningfully consulted or participate in decision-making, or that the state should obtain their free, prior and informed consent to activities on their lands, particularly with regard to forest zoning and management plans, gazetting and commercial forestry concessions. In fact, there is no such requirement in any other law in force in DRC.

## **Forestry reforms and the impact on indigenous peoples**

While the World Bank has agreed to fund reforms in the forestry and mining sectors,<sup>9</sup> indigenous peoples' rights are not addressed in relation to these reforms, and the state currently has no effective legal framework to regulate or control the environmental impact of forestry exploitation. According to the World Bank, the DRC zoning plans could affect at least 300,000 indigenous people and 35 million people in total who live in the forests or rely on them for their survival.<sup>10</sup>

Increased forestry exploitation in DRC by logging concessionaires is also substantially exacerbating and intensifying the threat to indigenous peoples' security, and has resulted in further dispossession and irreparable harm. Concessions are regularly granted without prior consultation with communities, even when they live within the concession zone. Despite a forestry moratorium of May 2002 that was extended in November 2005,<sup>11</sup> the state has admitted that logging continued in DRC, with the granting of 103 concessions since the moratorium was put in place (equivalent to 147,426 km<sup>2</sup> of forest).<sup>12</sup>

A 2005 Presidential decree states that forestry concession titles granted prior to the adoption of the Forest Code must be "converted" into new titles, otherwise the forest will revert back to state ownership.<sup>13</sup> The implementation of this legislation, also assisted by the World Bank, was suspended in 2006 during the election period. How-

ever, it poses a further threat to indigenous peoples' rights and livelihoods if the state does not carry out full and thorough consultations with indigenous peoples to ensure their informed participation, establish their customary property and use rights, and delimit and demarcate their lands and territories. Worryingly, there was no known consultation with or participation of indigenous communities prior to the list of conversion requests being published by the state,<sup>14</sup> despite assurances from the World Bank that consultations with indigenous peoples would follow the principles of free, prior and informed consent.<sup>15</sup> At the very least, all concessions granted after the moratorium should be declared illegal and their titles rescinded.

Indigenous, national and international non-governmental organisations continued their activities around the issues of forestry and mining reforms throughout 2006, including the follow-up to a formal complaint lodged by indigenous organisations with the World Bank Inspection Panel in 2005 because the Bank had failed to take into account the impact that its support to the country's forestry sector would have on the people depending on the forest for their survival. Having agreed that a full investigation was necessary, the Inspection Panel had to postpone two country visits in 2006 because of insecurity during the election period. The visit is now expected to take place during February 2007.

Indigenous representatives participated in a meeting with international NGOs and the World Bank in Holland in May 2006, during which they expressed their concerns over, amongst other things, illegal logging and how the Bank could ensure that indigenous peoples would benefit from developments in the forestry sector. The World Bank representative stated that the Inspection Panel complaint could discourage the Bank from further involvement in forestry reforms.

### **Calling upon the international community**

Also during 2006, six indigenous and indigenous support organisations and the Forest Peoples Programme (FPP) submitted reports about the situation of indigenous peoples in DRC to the United Nation's Special Rapporteur on the situation of human rights and fundamental

freedoms of indigenous peoples and the African Commission on Human and Peoples' Rights. Two additional reports were submitted to the UN's Committee on the Elimination of Racial Discrimination (the CERD Committee). These highlighted the risk of immediate and irreparable harm being posed to indigenous peoples in DRC by the forestry legislation and concessions. Both reports called upon the Committee to initiate an urgent action and early warning procedure, designed to allow the Committee to examine urgent, emergency situations or situations of serious concern. The Committee responded by directing a letter to the Congolese government, asking it to answer a series of questions relating to the situation of indigenous peoples in DRC, and placing several similar questions on the list of issues to be discussed with state representatives during the Committee's examination of the government's report at its 70<sup>th</sup> session in February 2007.

## Conflicts and violence

Reports of continuing violence against indigenous peoples in DRC continued in 2006. A UN report in September noted the increasing incidence of HIV/AIDS amongst indigenous women as a result of rape, used as a weapon of war by marauding soldiers and militiamen, and untreated due to a lack of access to healthcare.<sup>16</sup> □

## Notes

- 1 The estimate of 270,000 is found in: **African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), 2005: Report of the African Commission's Working Group of Experts on Indigenous Peoples/Communities, Submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session.** Gambia, Denmark. page 6. The estimate of 4,000,000 is found in: **ARD, Inc.: Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases – Final Report Submitted to the United States Agency for International Development,** Vermont, USA, page 17.
- 2 A September 2006 report published by the UN highlighted the increasing prevalence of HIV/AIDS amongst indigenous communities, spread by sexual violence and left untreated due to their poverty and social isolation. **United Na-**

- tions' Integrated Regional Information Networks (IRIN), 13 September 2006: DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among pygmies. Available at: <http://www.plusnews.org/aidsreport.asp?reportid=6371>
- 3 See US State Department, 2006: *Congo, Democratic Republic of: Country Reports on Human Rights Practices*. Released by the Bureau of Democracy, Human Rights, and Labor, 8 March 2006, available at: <http://www.state.gov/g/drl/rls/hr-rpt/2005/61563.htm>; **Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables, 2005: Echos des Pygmées**, No.17, Jan-March 2005.
  - 4 See *Décret No. 06/141 du 10 Novembre 2006 Portant Nomination des Membres de la Commission Interministerielle de Conversion des Titres Forestiers*, article 2, which reads "The following are named as members of the Interministerial Commission on Forestry Title Conversions...11) In the case of the presence of indigenous communities amongst the local resident communities near to the titles in question, the Commission will be open to an additional member, representing these indigenous communities." (unofficial translation by FPP).
  - 5 *Loi 011/2002 du 29 Août 2002 Portant Code Forestier* (Law 011/2002 of 29 August 2002, Forest Code). Any translations of the 2002 Forestry Code and implementing regulations are unofficial translations by the author.
  - 6 **Forest Peoples Programme and Réseau des Associations Autochtones Pygmées, 2004: Guide pour la compréhension du Code forestier à l'usage des populations locales et du peuple autochtone 'Pygmée'**, page 10.
  - 7 For example, some provisions state that local communities have use rights for "domestic" purposes only, which constitutes a direct threat to the physical and socio-economic well-being of indigenous peoples who wish to sell or exchange their forest resources, for example, to supplement household incomes or provide funding for healthcare. Use rights in gazetted and "protected" forests are extremely limited and fail to recognise or respect indigenous peoples' rights: they do not recognise hunting as a legitimate activity, and prohibit any use other than for domestic purposes. All use rights, including traditional indigenous livelihood and cultural practices, such as hunting and fishing, are banned in conservation areas.
  - 8 See, for example, **République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, 2004: Forum des Nations Unies sur les Forêts, Rapport National 2004**, 13 January 2004, Point A.2 (page 9), Point A.3 (page 11).
  - 9 **World Bank, 2006: Democratic Republic of Congo: World Bank Approves US\$90 million Budget Support Operation**, Press Release No. 2006/296/AFR, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,contentMDK:20750090~menuPK:349472~pagePK:141137~piPK:141127~theSitePK:349466,00.html>.
  - 10 **Jackson, D., 2005: Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa**. FPP, Moreton-in-Marsh, p. 44.
  - 11 **Ministère de l'Environnement et Ministère de Finances de la République démocratique du Congo, 2005: Communiqué de Presse, No. 3519, 1/11/2005**. This Press Release by the DRC Ministries of the Environment and Finance lists 141

existing forestry concessions as at 29 October 2005, of which at least 103 were granted since the moratorium.

12 Ibid.

13 *Décret No. 05/116 du 24 Octobre 2005 Fixant les Modalités de Conversion de Concession Forestière et Portant Extension du Moratoire en Matière d'Octroi des Titres d'Exploitation Forestière.*

14 By February 2006, 73 title holders requesting 235 concession conversions had been registered. See **République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, 2006: Communiqué Officiel No. 001/CAB/MIN/ECN-EF/2006, 02/02/2006.**

15 Letter from Mr. John McIntire, Sector Director, Rural, Environmental and Social Development, African Region, World Bank on "World Bank involvement in the forest sector of the Democratic Republic of Congo" to Mr. John Buckrell, Global Witness, 4 April 2006.

16 **UN Integrated Regional Information Networks (IRIN):** *DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among pygmies.* Available online at: <http://www.plusnews.org/aidsreport.asp?reportid=6371>.

## REPUBLIC OF CONGO (CONGO BRAZZAVILLE)

According to the 1984 census, there are 16,142 indigenous individuals in Congo Brazzaville, spread throughout the country's departments. They live without any kind of rights or legal framework governing them, in an unparalleled situation of vulnerability.

The indigenous peoples (Pygmies<sup>1</sup>) are known by a variety of different names in Congo Brazzaville. They are called Babongo, Batswa, Gyeli, Baaka, Bangombe, Bambengangnelé, Makaya, Luma, Mbendjelé or Babemdjelé, depending on the department in which they live. Despite these different names, they have the same way of life based around hunting and gathering, with a deep affinity for the forest. The indigenous peoples of the Congo today live in a situation of extreme poverty, marginalised, vulnerable, in short, without any right to the human dignity enjoyed by other ethnic groups (the Bantu).

In general, no Congolese constitutional or legislative text provides any specific protection measures for the indigenous peoples. However, a pioneering bill on indigenous peoples' rights is presently being drafted as described in further detail below.

### Legal framework

The Congolese Constitution of 20 January 2002 stipulates the protection of all Congolese (for example, article 8 states that, "All citizens are equal before the law"), and prohibits discrimination on the basis of origin, social or material situation, racial belonging, etc.

Whilst some texts in the national unity charter of 29 May 1991 refer to protecting ethnic minorities and the right to property, the Republic of Congo's indigenous peoples have no official right to employment or to participate in elections except when this is a manufactured process, making them vote for the interests of political authorities who illegally give them identity cards, even though these people do not even have the right to obtain a birth certificate. The indigenous people are, to a large extent, excluded from participating in the running of the country, and from being represented in the Assembly, Senate, local councils and village committees.

Neither the Congolese Family Code nor the Employment Code refer to the protection of indigenous peoples. Even Law No. 003/91 dated 23 April 1991 on Environmental Protection and Law No. 16/200 dated 20 November 2000 on the Forest Code (which should take the indigenous peoples into consideration, given their forest-related way of life) do not specifically acknowledge indigenous peoples. And yet there are some mechanisms that have been established by the state to address the protection of indigenous peoples, for example, the Department for the Protection of National Minorities and Vulnerable Social Groups within the Ministry of Justice (PRAEBASE), which works in the context of Congo's cooperation with the World Bank to support the schooling of indigenous children, under the supervision of the Congolese Ministry of Basic Education.

A very interesting recent development is the elaboration of a draft bill on the promotion and protection of the rights of indigenous peoples that has been drawn up by the Ministry of Justice and Human Rights, in collaboration with civil society and with the participation of the indigenous peoples themselves. The immediate objectives of this bill are to establish national legislation protecting the rights of indigenous peoples, and to strengthen the capacity of the relevant government departments around indigenous rights in the Republic of Congo. It should be noted that this bill must pass through a number of stages, the last of which will be the adoption of the text, once a high-level meeting of members of Congo's Parliament and the Council of Ministers has been held to facilitate an understanding of the law as a whole, its practical provisions, the indigenous peoples' need for



legal protection and Congo's role in Africa in terms of protecting indigenous peoples' rights.

### **Poor health and servitude**

In the Republic of Congo, indigenous peoples have very limited access to health or medical care because of the isolation in which they live, far

from state infrastructure and with no attention from the state administrators.

Some of these groups, such as the Babemdjelé, suffer from various illnesses, the most visible being yaws, leprosy, conjunctivitis etc. Their mortality rate is considerably higher than that of the Bantu. In addition to a lack of access to health care, the women and girls in particular fall victim to the sexual aggression of Bantu soldiers, leading to unwanted pregnancies and sexually transmissible infections.

Practices similar or comparable to slavery continue to persist in relation to the Pygmies of the Republic of Congo. Many Pygmies still have Bantu "Masters" who virtually control the lives of "their Pygmies" and who subject them to forced labour, unpaid services, sexual abuse of women and girls etc.

## Logging

The indigenous people of the Republic of Congo live under difficult circumstances, without either land or natural resources; the forest reserves and national parks are controlled by the state even though the forest is where these people express their way of life.

Logging continues to pose serious threats to the livelihoods of indigenous peoples in the Republic of Congo. However, there are also promising developments such as emerging FSC (Forest Stewardship Council) certification processes. FSC certification is based on compliance with 10 principles of environmental and social sustainability, two of which specifically refer to respect for indigenous peoples' right to their traditional territory, livelihood and cultural integrity. In May 2006, one of the concessions of the large logging company *Congolaise Industrielle des Bois* (CIB) was FSC certified. CIB has been working over the past 5 years to meet FSC standards, and they have put substantial efforts into meeting the standards on indigenous peoples' rights. The CIB is working towards certifying their entire operation covering some 1,300,000 hectares in the northern part of the Republic of Congo. FSC certification is an interesting opportunity for securing indigenous forest peoples' rights, and it is hoped that the CIB case can be of inspiration to

other logging companies in the Republic of Congo as well as in the region as a whole. □

## Note

- 1 Whilst aware of the pejorative and derogatory nature of the word, this article uses the term “Pygmy” for lack of an alternative that can encompass the different groups that make up this community in the Republic of Congo.

## GABON

Indigenous hunter-gatherer communities (often referred to as Pygmies) are located throughout Gabon and include numerous ethnic groups (Baka, Babongo, Bakoya, Baghame, Barimba, Akoula, Akwoa, etc.) separated by locality, language and culture. Pygmy communities are found in a range of socio-economic situations: urban and forest-based. Their livelihoods and cultures remain inextricably tied to the forest areas of the country (85% of Gabon is forested). It has recently been estimated that the number of Pygmies in Gabon is 20,000 out of a national population of 1,400,000.<sup>1</sup>

The last decade has seen the rise of the indigenous movement and three officially recognised indigenous organisations.<sup>2</sup>

Since 2002, due to increasing environmental threats posed by expanding extractive industries, the country has received a large influx of foreign funding and human resources to support Congo Basin conservation initiatives, in particular the establishment of 13 National Parks. In 2005, Gabon agreed to its own Indigenous People's Plan as part of a World Bank policy loan agreement for the Forest and Environment Sector Program (Schmidt-Soltau, 2005). This marked the government's first official recognition of the existence of, and its responsibility towards, indigenous peoples.<sup>3</sup>

### Political and legislative developments

As elsewhere in the region, Gabonese Pygmy communities are marginalised and experience relative poverty and discrimination. Current threats and challenges include resettlement and integra-



tion plans, insecurity of land tenure and encroachment through logging and extractive activities, infrastructural transformations (roads, dams and railways), large-scale commercial bush-meat trading, conservation development and regulations, land delimitation and demarcation.

Forest policy plays a crucial role for Pygmy communities given their traditional forest-based livelihood and culture. During 2006, the Assembly and the Senate passed two different versions of a new National Park Law, which awaits adoption. According to the draft Law, local subsistence activities within the parks are illegal except in certain approved fishing and ecotourism zones. Negotiations continued between the ministries, park managers and legal experts to produce park-specific regulations and guidelines for inhabited areas. As part of these processes, indigenous leaders were invited to the Ministry of

Water, Forestry, Fishing, Environment and National Parks to present their organisations' recommendations. Management plans for two parks (Loango and Lopé) have been elaborated in order to use them as standards for other parks. In February, during a visit to Gabon, the United States Forestry Service highlighted the social sensitivity of Pygmy subsistence activities within park boundaries when developing the Lopé Management Plan and concluded that there was a delicate balance in providing cultural heritage opportunities without allowing local people to engage in illegal meat hunting and poaching. As national park policies are still being developed, it is not clear whether park management plans will actually recognise indigenous peoples' tenure and use rights or how these principles will be implemented on the ground by specific park managers and conservators.

The Indigenous People's Plan has been delayed, like many other components of the Forest Environment Sector Programme, due to ongoing discussions between the World Bank and the government concerning donor conditions for loan approval. These discussions have exposed Gabon's conflicting conservation and commercial interests, in particular, encroaching activities that severely threaten the environment and local communities. These include destructive mining activities in Loango National Park, the government's decision to sell iron mining rights to a Chinese company in Belinga involving the construction of a new railway line, and the proposed building of a hydro-electric dam on the Ivindo River (Ogooué-Ivindo Province). These developments will affect the whole of the North-East region of the country. The area targeted for mining is close to three national parks. Indigenous local communities include the Bakoya and Baka.

## **Policies, programs and projects**

*The Forests of the Congo Basin: State of the Forest Report* (2006), a key reference document for planning and policy-making in the forest and environment sector, went to press in November 2006. The document has been generated by several of the donor countries to the Congo Basin Forest Partnership and technical agencies; in response to a general consensus that there was little objective information on the Congo-Basin

available to decision makers and stakeholders.<sup>4</sup> Consequently, a long-term process to document current baseline information on the natural resources of the region and identify key indicators in order to monitor activities in the Congo Basin landscapes<sup>5</sup> has begun.

While local populations are described within the context of specific landscapes and are included in the stakeholder section of the report, there has been a clear absence of indigenous peoples' participation or representation in the process and this is reflected in the indicators prioritised. Out of a list of over 100 contributors, the majority are conservation scientists, with the exception of one social anthropologist. Social indicator data is measured according to an external development framework, and does not capture the role of local people's knowledge in the conservation process or provide supportive measures to safeguard indigenous cultures and rights.<sup>6</sup> Major partners in the Congo Basin Forest Partnership, including the World Wildlife Fund and the World Bank, who already support indigenous organisations in Gabon, could address this issue and provide opportunities for participation and partnership in the future.<sup>7</sup>

Regional preparations for delineating community forests are in process, notably in the North-East of Gabon. Nature Plus, a European NGO, continues its five-year program to establish community forestry. USAID/Central Africa Regional Program for the Environment (CARPE) is collecting strategic documentation for community forestry at Minkébé. A new project called Developing Community Alternatives to Illegal Forest Exploitation (DACEFI) is also underway in Minkébé (funded by the EU with technical support from the WWF Central Africa Regional Program Office (CARPO)).

In July 2006, the Baka organization Edzengui signed a grant contract with the regional representative of WWF - CARPO. Through funding from CARPE, Edzengui / WWF implemented the "Project for the conservation and respect of Minkébé National Park and its periphery, by the Baka of the Upper Ntem Region". The aims of this project include facilitating a role for Baka in the conservation process, capacity building at the local level, community management of natural resources and eco-tourism. The organization now owns an office and land to build an eco-museum in Minvoul. In April and August, Edzengui pro-

vided official guided tours for visiting tourists to Minkébé National Park.

UNESCO, assisted by the Bakoya organization MINAPYGA, has established a number of adult literacy centres in Pygmy communities around the Mekambo area. In March 2006, in collaboration with WWF, the US Ambassador and embassy officers traveled to a Bakoya village near Mekambo to make a small donation. The event made national headlines and, to follow-up, the Ambassador facilitated the USAID-funded Ambassador's Girl's Scholarship Program (through Winrock International) to fund 150 girls to attend primary school.

UNICEF has launched a nationwide outreach program called Integral Development for Pygmy Communities to establish birth certificates (0-18 years), basic vaccinations for children (0-5 years), and education in health, hygiene and sexually transmitted diseases. Indigenous organizations, local NGOs and the government have provided logistical support, demographic information and outreach participation. In Minvoul, the deputy Prime Minister, Louis Gaston Mazyila, honored indigenous leaders by officially opening the project.

## **Indigenous representation**

The three indigenous organisations have made independent strides in reinforcing leadership skills, grassroots structures and partners. These have been strengthened through collaboration and involvement in national and international human rights and conservation forums.

A key spokesperson for Gabonese indigenous peoples, Leonard Odambo (representing MINAPYGA) travelled frequently to major regional and international conferences throughout the year. In March 2006, two of the indigenous leaders, Helene Nze Andou (Edzengui) and Leonard Odambo (MINAPYGA), achieved regional positions in the Indigenous Peoples of Africa Co-ordinating Committee (IPACC)<sup>8</sup> and attended UN regional training programmes.

In Libreville, on August 10, the two leaders hosted an official Pygmy press conference. This was reported nationally, increasing dialogue on indigenous issues in mainstream media channels. As part of the

national independence celebrations (August 17), Edzengui launched a conservation campaign and marched through the streets of Minvoul.

Working closely with government agencies and the World Bank, Mr. Massandé (representing the Babongo organization ADCPPG) met with Ministers to discuss ways for the state to recognise traditional land tenure in the establishment of community forests for indigenous peoples, notably the Babongo in his home area of the Chaillu Massif - a mountainous eco-region that spans central-southern Gabon and into the Republic of Congo, and which includes Lopé, Waka and Birougou National Parks in the Gabonese section. The ADCPPG has continued its baseline survey of all current Pygmy populations in Gabon as a foundation for future integration/development projects.

MINAPYGA launched their second film *La Sentier de l'intégration* (The Path to Integration) at the French Cultural Centre, Libreville. Edzengui participated in a documentary film, funded by WWF and the European Union, on Baka forest lifestyle and natural resource management in Minkébé. The ACPHR facilitated a group of rural Babongo to visit Libreville for the purpose of building a hut exhibit at the national museum.

All three organisations have made progress in developing publications that promote the culture and cause of Pygmy communities. Due to an absence of funding, MINAPYGA suspended its monthly publication *Le Citoyen* (Citizen). Edzengui and WWF achieved the first edition of *Timao* (News - Baka translation). ADCPPG is preparing its own monthly newspaper on the indigenous peoples of Gabon, named *Gni-ma* (The Wise One - Babongo translation). □

## Notes

- 1 In 2005, based on existing research and the current national census, the Association for the Development Pygmy Peoples Culture in Gabon (ADCPPG) estimated the highest total to date for Gabonese Pygmy populations, at 20,005 out of a national population of approximately 1,400,000 (Massandé 2005).
- 2 *Movement Autochtones Pygmées au Gabon* (MINAPYGA - representing Bakoya and established in 1997), *Edzendgui* (representing Baka and established in 2002, in close collaboration with the World Wildlife Fund) and the *Association pour le Développement de la Culture des Peuples Pygmées du Gabon* (ADCPPG) - representing Babongo and established in 2003.

- 3 Despite Gabon's long-standing ratification of a number of international human rights conventions, the government has not endorsed legislation or measures (such as ILO 169) that specifically recognise or protect the rights of indigenous populations in the country's developments.
- 4 The Congo Basin Forest Partnership was formed in 2002 and now includes over 30 members and comprises governments, inter-governmental organisations and non-governmental organisations.
- 5 As part of the CARPE program, priority sites were identified and grouped into largely intact areas, termed "Landscapes" as basic units for conservation planning and implementation. These "Landscapes" form a vast network, embracing protected areas and crossing national borders.
- 6 Social indicators which provide a framework to monitor indigenous peoples' attainment of their rights were created for the Indigenous People's Plan (2005).
- 7 The work could also benefit from acknowledging a more current usage of the indigenous concept, in its modern analytical form, recognizing the international legal framework attached to it. For example, the definition adopted by the African Commission's Working Groups of Experts on Indigenous Populations and Communities (ADHPR), which does not merely focus on aboriginality but also and particularly the structurally subordinate position to the dominant groups and the state, leading to marginalisation and discrimination (ADHPR 2005).
- 8 Woman's Representative and Deputy Regional Representative.

## References

- Edzengui, 2006:** *Timao. Bulletin d'Information environnementale des Baka de Minkebe.* No. 1-September 2006. WWF/Edzengui, Libreville.
- Congo Basin Forest Partnership, 2006:** *The Forests of the Congo Basin. State of the Forest 2006. Report.* November 2006. Global Forest Watch/World Resources Institute, Washington DC. [www.carpe.umd.edu](http://www.carpe.umd.edu)
- Massandé, D., 2005:** *Organisation Territoriale du Gabon Demographie Chiffres des Peuples Autochtones Pygmées de Gabon.* ADCPPG report, 30 June 2005.
- Schmidt-Soltan, K., 2005:** *Programme Sectoriel Forêts et Environnement (PSFE) Plan de Développement des Peuples Autochtones. Rapport Final.* July 2005. World Bank, Washington.

## CAMEROON

Among Cameroon's more than 17 million inhabitants, some communities identify themselves as indigenous. These include the hunter/gatherer "Pygmies", the nomadic Mbororo pastoralists and the "Kirdi" communities. The indigenous "Pygmies" can be further divided into three sub-groups, namely, around 4,000 *Bagyeli* or *Bakola*, more than 40,000 *Baka* and around 300 *Bedzan*.<sup>1</sup> These communities live along the forested borders with Gabon, the Republic of Congo and the Central African Republic. The Mbororo living in Cameroon are estimated to number over 60,000, living primarily along the borders with Nigeria, Chad and the Central African Republic.<sup>2</sup> The "Kirdi" communities live high up in the Mandara Mountain range, in the north of Cameroon. Their precise number is not known.

The constitution of the Republic of Cameroon uses the word "indigenous".<sup>3</sup> The country has adopted a Plan for the Development of the "Pygmy" Peoples within the context of its Poverty Reduction Strategy Paper. A Plan for Indigenous and Vulnerable Peoples has also been developed in the context of the oil pipeline carrying Chadian oil to the Cameroonian port of Kribi.

### Overview of the current general situation of the rights of indigenous peoples

In addition to the Plan for the Development of the "Pygmy" Peoples (PDPP) and the Plan for Indigenous and Vulnerable Peoples (PPAV), other positive developments are the establishment of the Foundation for the Environment and Development of Cameroon (*Fondation pour l'environnement et le développement du Cameroun* - FEDEC), with a capi-

tal of US\$600,000 to be administered over 28 years, for the benefit primarily of the indigenous communities. Five years ago, all these developments generated hopes for the advancement of indigenous peoples' rights in Cameroon. Today, however, pessimism seems to be gaining ground, given the ever-widening chasm between legal frameworks and realities on ground.

The Republic of Cameroon can be criticised with regard to its 1978 land law, which does not recognise indigenous peoples' traditional occupation and use of lands as a source of legal rights. The same could be said about its 1994 forestry law, which contains a number of mechanisms (including for community forests) on redistribution of income from logging and local communities' usage rights which are out of the reach of indigenous peoples. The impossibility for many indigenous communities to enjoy the village status that would entail increased participation in public affairs must also be noted, along with their lack of access to official papers, including identity cards, essential for enjoying certain rights such as school enrolment.

A number of indigenous communities and individuals consider that there has been a loss of the momentum that was gained with the arrival of the World Bank-funded Chad-Cameroon pipeline project, officially launched in 2000, following which a development programme for indigenous peoples was produced, in accordance with the World Bank's Operational Directive 4.20 on indigenous peoples.

The lack of access of many indigenous people to health care, education, work, land and different public services remains worrying. These issues, along with the closure, for lack of funding, of non-governmental programmes on the education of Baka children, such as the project implemented by APPEC (the Association for the Self-Promotion of Populations of the East/Cameroon) are all signs of a lack of improvement in the general human rights situation of Cameroon's indigenous peoples. The spread of HIV/AIDS among indigenous peoples should also be underlined, along with the absence of a culturally appropriate approach to tackling this phenomenon more effectively. Land grabbing and other serious human rights violations also affect indigenous Mbororo people in the north-west province of Cameroon, where some members of this community are often arbitrarily arrested, detained and even tortured.



## Recent developments, opportunities and challenges

In Cameroon, 2006 was a year of both opportunities and challenges. The opportunities included the Cameroon government's decision to embark on the process of a Voluntary Partnership Agreement (VPA) with the European Union to combat illegal and unjust forest exploitation. Under the VPA, the Cameroon state and the European Union are expected to agree on, among other things, a list of the elements that constitute illegal timber. This process is turning out to be yet another opportunity for the indigenous forest peoples and Cameroon civil society to advocate for inclusion of the human rights violations committed against indigenous forest peoples' within the definition of illegal

timber. This is particularly relevant considering that the government's proposed definition of legal timber does not take account of the rights of indigenous forest communities such as the "Pygmies". This demand for a linkage between indigenous peoples' forest rights and legality in the forestry sector runs a chance of falling on fertile ground, given that the European Union has a policy on indigenous peoples.

The FSC (Forest Stewardship Council) certification process for forest concessions is another opportunity for promoting indigenous peoples' rights, given its principle no. 3 which stipulates that *"the legal and customary rights of indigenous populations to own, use and manage their lands, territories and resources must be recognised and respected"*. In December 2005, the first FSC certification was awarded to a logging company operating in Cameroon and, since then, numerous other companies are reported to have already engaged in the process. It is now up to the indigenous organisations and communities to take an active part in these processes such that their voices are heard.

A third phase of the ECOFAC (Forest Ecosystems of Central Africa) project, intended, among other things, to protect central African tropical rainforests and the people who live there, will soon commence, with more than 20 million EUR of funding entirely provided by the European Union. Once again, the indigenous movement in Cameroon, and throughout the whole of Central Africa, should seize this opportunity to call upon the EU to stand by its own policy on indigenous peoples and guarantee respect for and protection of indigenous rights in the context of this project, which in fact should have a whole "indigenous" component.

Implementation of the Forest Environment Sectoral Programme (PSFE) by the government is another opportunity for the promotion of "Pygmy" rights, given that the Plan for the Development of the "Pygmy" Peoples (PDPP) is an integral part of it. The PSFE is indeed intended to implement the Cameroonian Poverty Reduction Strategy Paper (PRSP) policies within the environment and forestry sectors. It specifies numerous benchmarks, autonomous funding mechanisms and a number of priority activities to be undertaken.

On the positive side, one could also mention Cameroon's "yes" vote during the adoption of the Declaration on the Rights of Indigenous Peoples by the Human Rights Council in June 2006 in Geneva, as

well as the Cameroon government's hosting of the first regional sensitisation seminar on the rights of indigenous populations/communities organised by the African Commission's Working Group of Experts on Indigenous Populations/Communities, in Yaoundé in September 2006.

However, indigenous issues in Cameroon have also had to face up to significant challenges over the year, for example, the commencement of work on the GEOVIC project to mine cobalt and nickel over vast forested areas in the East province inhabited by, among others, indigenous Baka "Pygmy" communities.<sup>4</sup>

Finally, the indigenous cause in Cameroon will, for the time being, continue to face problems arising from the creation and management of national parks, the Cameroonian model of which offers no room for indigenous peoples' land rights to coexist alongside wildlife protection. □

## Notes and references

- 1 **Barume, A.K., 2005:** *Etude sur le cadre légal pour la protection des droits des peuples indigènes et tribunaux au Cameroun*. International Labour Organisation, ILO, Geneva, p.24.
- 2 *Ibid*, p.25.
- 3 The preamble to the Cameroon Constitution stipulates: "the State shall ensure the protection of minorities and preserve the rights of indigenous populations, in accordance with the law" .
- 4 **Bertrand B. Ndongo, 2006:** *L'exploitation imminente de cobalt dans la périphérie de la réserve de biosphère du Dja, dans l'Est Cameroun suscite moult inquiétudes*. Centre pour l'Environnement et le Développement (CED), 2006. available at: [http://www.africa-environment.org/bubinga/contenu\\_article\\_bubinga.php?id=36](http://www.africa-environment.org/bubinga/contenu_article_bubinga.php?id=36)

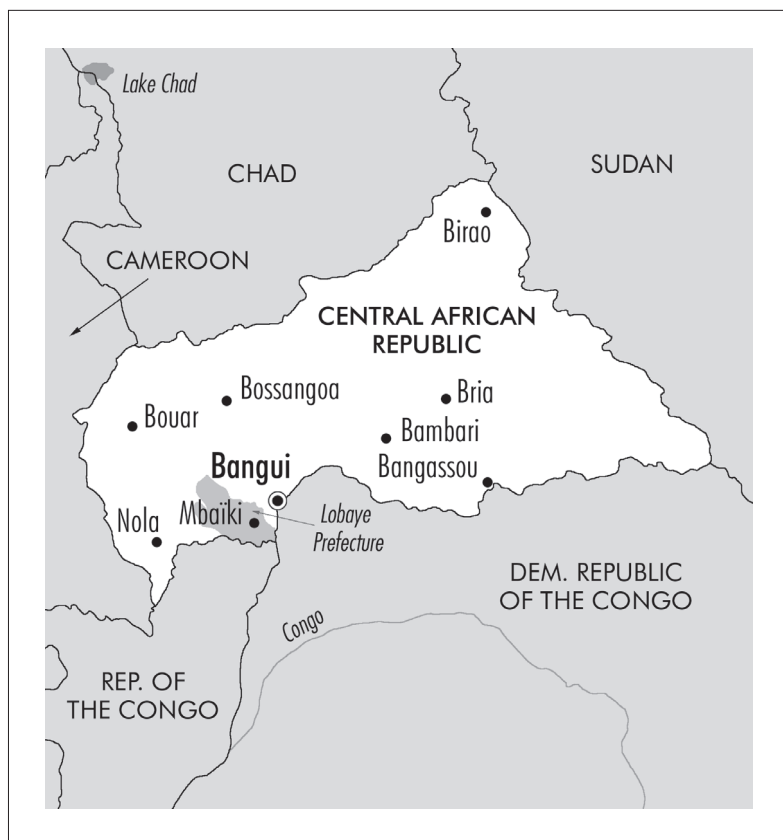
## CENTRAL AFRICAN REPUBLIC

The indigenous peoples in the Central African Republic (CAR) are primarily Mbororo pastoralists and Aka “Pygmies”.<sup>1</sup> The Mbororo are nomadic pastoralists with sections living also in other countries of North and West Africa. Their numbers are estimated at more than 26,000 families, forming approximately 7% of the 4.3 million national population.<sup>2</sup> The Aka form part of the “Pygmy” hunter-gatherer communities of the tropical rainforests of Central Africa.<sup>3</sup> There are no precise data on the number of Aka, but a census carried out by an Italian NGO in 2004 suggests that there were 15,880 Aka “pygmies” in Lobaye prefecture alone.<sup>4</sup> Given that such communities also exist in other prefectures, their number is likely to be well into the tens of thousands.

The preamble to the CAR Constitution specifies the country’s pride in its “ethnic and cultural diversity”, which is looked upon as an asset. Laws from 2003 and 2006 protect the oral tradition and cultural heritage of the indigenous peoples, and the CAR has embarked upon a process of ratifying ILO Convention 169 and may thus become the first African country to ratify this legal framework for the protection of indigenous rights.

### **The legal framework for indigenous peoples**

The Central African Republic has suffered more than 15 years of political instability due, essentially, to military and civilian regimes characterised by serious human rights violations. A new regime has been in place since 2003 and, in February 2006, a political agreement was signed in Libya between the main armed opposition groups and the



current government, emphasising a desire for political dialogue, economic revival, the opening up of the country to the international community and poverty reduction. The country's legal framework is gradually improving to the benefit of indigenous peoples.

The Central African Republic adopted a new Constitution in 2004.. The Constitution states the principle of the "rule of law, founded on pluralist democracy, guaranteeing the safety of people and goods, the protection of the weakest, particularly vulnerable people and minorities, and the full exercise of fundamental rights and freedoms".

One year prior to adoption of the new Constitution, a 2003 Ministerial Decree *"on prohibition of the exploitation and/or exportation of oral tra-*

*ditions of cultural minorities of the CAR for commercial purposes*" was issued with a view to curbing the commercial exploitation, without any corresponding compensation, of cultural knowledge of indigenous communities, such as the Aka 'pygmies'. This relates particularly to international tours or recordings of traditional indigenous Aka music undertaken in the sole interests of the organisers.

In addition, in May 2006, a law on "*a Cultural Charter for the Central African Republic*" was promulgated. This text, considered by a number of the country's indigenous communities as forming the basis for the development and protection of their cultural demands, gives a fairly wide definition of the term "cultural heritage", including burial and other spiritual sites. The text also protects their cultural heritage and spaces from all forms of unfair commercial or industrial exploitation. This government action is in line with the visit in January 2006 of UNESCO's Director-General to Aka sites in the context of an ongoing plan of action to safeguard and promote the oral traditions of the Aka "pygmies".<sup>5</sup> A cultural centre for indigenous Aka has recently been opened with support from local and international NGOs, namely the Central African Human Rights Observatory, *Cooperazione Internazionale* (COOPI), and CARITAS.

The CAR government has also embarked on the process of ratifying ILO Convention 169. Not only does there seem to be a political will to do so but a number of those involved, including Parliament, also now seem to have become more aware of the issue. The Central African Republic may thus become the first African country to ratify this legal framework for the protection of indigenous rights.

Finally, the interim Central African Poverty Reduction Strategy Paper (IPRSP) cites the Aka "pygmies" by name, along with the Mbororo Peuls, as one of the groups most affected by poverty and on whom the state's efforts should focus.

Alongside the CAR legal framework, the participation of indigenous peoples in the country's political affairs must also be mentioned. Before the last elections of 2005, for example, representatives of the Aka and Mbororo indigenous peoples were co-opted by the National Transition Council, which was then serving as a Parliament prior to elections. Similar representation is envisaged within the Social and

Economic Council, currently being established to oversee the elected government's social and economical policies.

In 2006, the first three Aka "Pygmy"-headed villages obtained their legal status. The Livestock Rearing Communes (*Communes d'élevages*) run by indigenous Mbororo must also be mentioned, along with the powerful National Federation of Central African Livestock Farmers (*Fédération Nationale des Eleveurs de Centrafrique* - FNEC). This latter is headed by indigenous Mbororo with the economic weight of around 3 million head of cattle behind them, or more than 80% of the country's livestock.

## Human rights

The general human rights situation of indigenous peoples in the CAR remains worrying with regard to their education and health care. Illiteracy and lack of access to education remain high among both the Aka and the Mbororo, due primarily to the prohibitive cost for the Aka<sup>a</sup> and the lack of adaptation of the educational system to the ways of life of these two communities. In terms of access to health care, the situation of the Aka is quite different from that of the Mbororo. While these latter are capable of paying for their medical care because of their livestock, the situation is not the same for the Aka due to their high level of poverty and their exclusion from traditional commercial networks. A resurgence of certain illnesses, such as leprosy and yaws, has also been observed among the Aka "pygmies". In addition, the two communities are now affected by HIV/AIDS, which seems to have links with natural resource exploitation (logging and minerals) taking place in Aka areas and armed conflicts in Mbororo regions.

Logging and diamond mining are particularly affecting the Aka "pygmies" in a number of regions of the CAR. Their habitats, crops, traditional lands and living spaces are being seriously disturbed by forest exploitation. The armed conflicts that have recently affected the country have had a particular impact on the Mbororo pastoralists. Not only do most of the conflicts take place on lands inhabited or used by large Mbororo communities but a number of armed attacks have also targeted these communities because of their wealth (livestock). Cases of taking Mbororo women and children hostage for ransom have be-

come common. Rapes of Mbororo women and girls are also becoming increasingly frequent.

The practice of "Pygmies' masters" still persists in the Central African Republic. It consists of a non-"Pygmy" individual considering one or more Aka "pygmies" as belonging to him or her. Although the government has made efforts to raise awareness around the wrongs of this practice, it still remains firmly anchored in the mentality of many Central Africans, for whom the Aka "pygmies" form a kind of second-class citizen to be used as anyone likes. Many still talk in terms of "my Pygmies", from whom they expect, among other things, free labour and an almost slave-like allegiance, failing which the "pygmies" suffer bullying that can extend to physical violence. A recent study by the NGO COOPI in Lobaye prefecture, where there are more than 16,000 Aka "pygmies", affirms that 59.7% of "pygmies" state that they still have masters.<sup>7</sup>

Although there are signs of hope within the Central African Republic in terms of further progress around the indigenous issue, the general human rights situation of these communities therefore remains worrying and will require sustained efforts on the part of different players, both national and international. □

## Notes and references

- 1 Other groups include: Baya 33%, Banda 27%, Mandjia 13%, Sara 10%, Mboum 7%, M'Baka 4% and Yakoma 4% plus others 2%. Source: CIA World Factbook, <https://www.cia.gov/cia/publications/factbook/geos/ct.html>
- 2 Mariage forcé en Centrafrique, Commission réfugiés, France: [http://209.85.165.104/search?q=cache:krcN2Pufm7IJ:www.commission-refugies.fr/IMG/pdf/Centrafrique-mariage\\_force.pdf+mbororo+en+centrafrique&hl=fr&ct=clnk&cd=8&gl=fr](http://209.85.165.104/search?q=cache:krcN2Pufm7IJ:www.commission-refugies.fr/IMG/pdf/Centrafrique-mariage_force.pdf+mbororo+en+centrafrique&hl=fr&ct=clnk&cd=8&gl=fr)
- 3 Whilst aware of the pejorative and derogatory nature of the word, this article uses the term "Pygmy" for lack of an alternative that can encompass the different groups that make up this community in the Central African Republic and neighboring countries.
- 4 **Anna Giolitto, 2006:** *Etude des cas de discrimination, abus et violations des droits de l'homme envers les pygmées Aka de la Lobaye République Centrafricaine*. Study conducted by COOPI, Caritas and OCDH, Bangui, 2006, p.17.
- 5 UNESCO : [http://portal.unesco.org/fr/ev.php-URL\\_ID%3D31498%26URL\\_DO%3DDO\\_TOPIC%26URL\\_SECTION%3D201.html](http://portal.unesco.org/fr/ev.php-URL_ID%3D31498%26URL_DO%3DDO_TOPIC%26URL_SECTION%3D201.html)
- 6 Anna Giolitto, op.cit, pp.22-23.
- 7 Ibid. , p.32.



SOUTHERN AFRICA

## ANGOLA

Angola, in south-west Africa, was originally populated by the San people (Bushmen), then by Bantu-speaking tribes. The country has a population of almost 15.5 million people and the San population constitutes around 0.0387 percent. The majority of the San reside in the Kunene and Kuando Kubango provinces, and probably also in Moxico province in south-western Angola. Since 2002, 4,209 San people belonging to the !Xun speaking group have been encountered in the three provinces. It is also likely that the San Khwe speaking group reside in very remote zones of Kuando Kubango and Moxico provinces. However, these have unfortunately not yet been contacted. Estimates indicate that there may be more than 2,000 San people still to be contacted in Kuando Kubango, Kunene, Huíla and Moxico provinces. The San were traditionally hunter-gatherers but today they have mixed production systems (farming, foraging, livestock raising and small-scale income-generating activities).

Angola has ratified ILO Convention 107 on indigenous and tribal groups in independent countries but there are no specific laws on indigenous peoples' rights in the country.

### Need for assistance

Most of the San in Angola do not possess ID cards. If they did, this would enable them to be identified as Angolan citizens and would also prove that the San do exist in the country.

Most of the San are still without land, decent shelter, food, health-care, jobs, education or identity documents. There is a long history of not only positive relationships but also of open exploitation and dis-



crimination against the San on the part of Bantu groups, who hold more socio-economic and political power.

In May 2005, with financial support from the UN Food and Agriculture Organisation and in collaboration with San community representatives from the Mupembati and Kipungo municipal authorities, MINADER-Huíla (Ministério de Agricultura e do Desenvolvimento Rural) and IGCA (Instituto de Geografia e Cartografia de Angola, a government institution), the NGO OCADEC (Christian Organization Supporting Community Development) demarcated the land belonging to

the San of Mupembati (Kipungo District, Huíla Province). Consequently, in October 2005, the Angolan government issued a Land Title Deed in the name of the San of Mupembati, which will be officially given to them during the "First Angolan San Conference", to be held in April 2007.

An intermediate project took place from October 2005 to February 2006. This project aimed to: assess the food security situation of the San following the implementation of two emergency projects; create a database of San communities in Angola; make San communities and local government aware of San land rights; and identify the traditional lands of the San people.

In 2006, with funding from its donor partner Trocaire Angola, OCADEC focussed its work with the San on agricultural production, seeking to promote self-reliance and self-determination among the San people. This programme also included the distribution of new breeds of goat in order to give the San more alternatives in their diet and offer children the opportunity of obtaining milk. It is hoped that 2007 will yield good results, especially with regard to crop production, so that the acute food shortages previously noted will be significantly reduced.

During 2006, some San members were trained in land rights issues, the new Angolan Land Law and how the San should claim their land rights and obtain title deeds. □

## BOTSWANA

Approximately 3.1 % of Botswana's 1.6 million population are indigenous, mainly San people (also known as Basarwa or Bushmen). The 50,000 or so San belong to a number of different groups: Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/wi, G//ana, Kua, Tshwa, Deti, Danisi, †Khomani, †Hoa, //Xau†esi, Balala, Shua, /Xaisa and Balala.<sup>1</sup> Another indigenous people, the Nama, number approximately 1,000 (July 2006).

The majority of the San and Nama reside in the Kalahari Desert region of Botswana, in seven of the country's 10 districts. The San were traditionally hunter-gatherers but today they have mixed production systems (farming, foraging, livestock raising and small-scale income-generating activities). The Nama were traditionally herders, especially of small livestock (sheep and goats).

There are no specific laws on indigenous peoples' rights in Botswana. Major legislation affecting indigenous populations in Botswana includes the Tribal Land Act (1968), the Wildlife Conservation Policy (1986), the Tourism Policy (1990) and the National Parks and Game Reserves Regulations (1992).

The San of Botswana have been affected by a number of issues in 2006. There were thus (1) continued efforts on the part of the San and other minorities to get the Government of Botswana to allow the teaching of mother tongue languages in schools, (2) work on the institutionalization of a Botswana San Council, (3) further efforts to promote community-based natural resource management in rural areas of the country, with an eye toward ensuring the equitable participation of San in the community trust boards, (4) expansion of income-generat-

ing activities, including the introduction of new kinds of projects, and (5) expanded work on preventative health programs and access to health care, with particular reference to HIV/AIDS and tuberculosis.

However, 2006 was clearly dominated by the long-running court case involving the removals of the residents of the Central Kalahari Game Reserve by the Government of Botswana, and the present report will therefore focus on this issue. As noted in previous issues of *The Indigenous World*, over 2,000 people were relocated out of the Central Kalahari Game Reserve, the largest protected area in Botswana, during the period 1997 to 2002, at which point the remaining 600 people were informed that the government would no longer provide essential services, including water, to them, and that they had to move out.

## **The court case in 2006**

The Central Kalahari Game Reserve legal case started in 2004 and revolved around whether or not it was legal for the government to cut off services in 2002. It also addressed the issue of whether or not the San and Bakgalagadi residents of the area were legally in possession of the land in the Central Kalahari Game Reserve at the time they were relocated.

On February 8, 2006, after several months' recess, the court case resumed, with government lawyer, Sidney Tshepiso Pilane, arguing that the government was within its right to remove people from the Central Kalahari Game Reserve in the interests of conservation, tourism and development. The Botswana government also maintained that the removals were voluntary, not forced. Lawyers for the San and Bakgalagadi residents of the reserve, Gordon Bennett and Duma Boko, on the other hand, argued that the residents of the reserve were legally in possession of the land and that they had the right to exploit resources there and had been forced out of the reserve and put in settlements on its periphery where they had to face problems ranging from poverty and lack of employment opportunities to hunger and high rates of HIV/AIDS.

In May 2006, it was estimated that 10% of the original applicants in the legal case had died since the case first began in 2004. Over the same period of time, more than 70 San had been arrested for hunting, even though a number of them were in possession of Special Game Licens-



es, the licenses issued by the government to subsistence hunters. In July, 135 additional people asked to be added to the list of the 189 surviving applicants seeking redress from the government of Botswana for removal from the reserve.

### National and international support

2006 also saw increasing support for the residents and their rights. In early spring, the UN Commission on the Elimination of Racial Discrimination noted its disagreement with the way the government had treated the Central Kalahari residents and called for 1) a rights-based approach to the issue, 2) the exploration of alternatives to relocation, 3)

attention to be paid to the close ties between the people and their ancestral land, 4) the protection of the economic activities that are essential elements of people's culture, including hunting and gathering rights, and 5) the seeking of the free and informed consent of the individuals and groups involved.<sup>2</sup> In September, the Botswana Congress Party (BCP) issued a "Position Paper on the Relocation of Communities: the Case of the Gana and Gwi of Central Kalahari Game Reserve (CKGR)", which took strong issue with the Government of Botswana's position on the Central Kalahari relocations.

On 17 October, the African Commission on Human and Peoples' Rights protested at the treatment of the people of the Central Kalahari. In November, Archbishop Desmond Tutu spoke out for the Bushmen, saying that "when a culture is destroyed in the name of progress, it is not progress, it is a loss for our world". And in December, a protest demonstration in favor of the residents was organized in Gaborone by the Botswana National Front (BNF) and the International Socialists Botswana (ISB), who handed in a petition to the President stating that, "Government must immediately allow Basarwa back in CKGR – their ancestral homeland, without preconditions and adopt affirmative action policies in the reserve, in consultation with them or taking into account the way these communities perceive and define themselves."

On the other hand, the Deputy Permanent Secretary in the Ministry of Communications, Science and Technology announced on 26 September 2006 that members of the media (both government-controlled and independent) had to ensure that all negative reports on the Central Kalahari Game Reserve issue were counterbalanced by statements from representatives of the Government of Botswana.<sup>3</sup> It was also maintained in the statement that the privately-owned media "were rallying behind the enemy". This position raised the issue of freedom of the press in Botswana.

## The judgment

When the final results of the case were read by the three High Court judges on December 13, 2006, 130 days had been spent in court since the case began, and there were 19,000 pages of trial transcript. The

three judges disagreed on a number of issues but there was unanimity on the issue of the land rights of Central Kalahari residents at the time of the relocation and that the government had acted wrongfully in stopping subsistence hunting licenses. Justice Maruping Dibotelo thus concluded that the termination of services in the Central Kalahari was lawful and that people had been consulted sufficiently prior to the termination of those services. Justice Unity Dow, the next High Court judge to speak, concluded that consultations had been inadequate, that the principles of compensation had not been explained to the residents of the Central Kalahari sufficiently, that the cessation of services to the residents was unlawful, that indigenous people had rights, the removals were unlawful, and so, too, was the halt in granting Special Game Licenses for the purposes of subsistence hunting.

The final High Court judge to speak, Justice Mphaphi Phumaphi, concluded that the government had tried to persuade people to relocate outside the reserve for a decade, that provision of services was expensive and that the restoration of services would cause problems. But he went on to say that the residents of the reserve had prior rights to occupy the land, that they were deprived of their rights "wrongly and without their consent", that the government had not acted legally in stopping the distribution of special game licenses, and that the residents of the reserve had the right to enter the reserve without having to seek permits from the Department of Wildlife and National Parks.

The final judgment of the High Court after the longest and most expensive court case in Botswana's legal history was that (1) the government was not required to restore services in the reserve, (2) the stopping of services was lawful, and (3) the removal of people and denial of their land and subsistence rights in the Central Kalahari was unlawful.

The day after the High Court ruling, December 14, the Attorney-General issued a statement outlining the position of the Botswana government in terms of how the court's decisions would be implemented.<sup>4</sup> The statement held that only the 189 surviving original applicants along with their children could return to the Central Kalahari, that services would not be restored, that residents would only be allowed to bring into the CKGR a reasonable amount of water, that domestic animals could not be brought into the Central Kalahari, and that peo-

ple choosing to return to the reserve would still need to apply to the Department of Wildlife and National Parks for Special Game Licenses. Subsequently, on December 19, the Botswana government announced that it would not appeal against the decision in the Central Kalahari case.

## Unsolved questions

Some media statements have argued that the judgment is a "landmark decision for the indigenous peoples of Africa". Yet many questions remain as a result of this case, and the First People of the Kalahari - the San organization that originally helped the applicants to go to court - has already challenged the position of the government as outlined by the Attorney-General.

One main question is whether people other than the 189 surviving applicants in the legal case will be allowed the right to return without having to seek special permission from the Government of Botswana. FPK pointed out in a press statement (19 December) that the former Attorney-General had formally admitted to the Court that the people on the list had brought their claim on behalf of themselves and also on behalf of all other "persons with the same interest". It adds: "The Court upheld our argument that Section 14 of the Constitution gives the right to us 'the Bushmen' to reside in the CKGR.... and th[is] right was given to all of us, not only some of us."

Another issue is whether the people who return to the Central Kalahari will be able to sustain themselves in the absence of services, including the provision of water, and if they are not allowed to hunt, practise small-scale agriculture or keep goats. FPK stresses that the authorities should not police the amount of water brought into the reserve by residents (this is not done in the case of tourists). Regarding goats, FPK points out that, in 1979, the government was encouraging goat breeding and that goats had never been used as an excuse to get people out of the reserve. Furthermore, "the Regulations of the Game Reserve do not stop us keeping goats: they prohibit the 'introduction' of goats, but we'll only have to 're-introduce' our goats because the Government forcibly removed them in the first place." FPK also stress-

es that goat breeding and small-scale agricultural activities were encouraged from the first day of the foundation of the CKGR in order to lessen dependence on the limited resources of the desert.

Finally, and most importantly, will the San and Bakgalagadi be able to freely exercise their basic human rights to self-determination, dignity and identity, both inside and outside of the Central Kalahari? High Court judge, Unity Dow, declared in an interview<sup>5</sup> that the case was “ultimately about a people demanding dignity and respect. It is a people saying in essence: ‘Our way of life may be different, but it is worthy of respect. We may be changing and getting closer to your way of life, but give us a chance to decide what we want to carry with us into the future’”. This chance now lies in the hands of the government and, as pointed out by DITSHWANELO,<sup>6</sup> the Botswana Center for Human Rights, can only be ensured through an inclusive, participatory negotiation process with the San and their representatives to determine the future use of the CKGR and the well-being of its residents. □

## Notes

- 1 The government of Botswana, on its home page, estimates that there are 60,000 Basarwa in Botswana ([www.gov.bw/index.php](http://www.gov.bw/index.php).)
- 2 *Report of the Committee on the Elimination of Racial Discrimination, 68th session (20 February-10 March, 2006)*. New York: General Assembly of the United Nations, p. 3.
- 3 **Tudetso Setsiba, 2006:** Government Instructed Media on CKGR, *Mmegi wa Dikang*, September 26, 2006, p. 1.
- 4 *Attorney-General's Statement on the Outcome of the Case of Roy Sesana and Others vs the Attorney-General*. Dr. Athaliah Molokomme, 14 December, 2006. Gaborone, Botswana: Attorney-General's Chambers.
- 5 *The Observer*, 2006: Judge Unity Dow on Botswana's most expensive trial. Accessed December 17, 2006 at: <http://observer.guardian.co.uk/world/story/0,,1973570,00.html>
- 6 DITSHWANELO restates its call for a return to negotiations. **Press Statement on CKGR court ruling, Gaborone, 15 December 2006.**

## SOUTH AFRICA

The various indigenous groups in South Africa are collectively known as Khoi-San. They comprise three main San peoples, various Nama communities, Griqua associations, Koranna and “revivalist Khoisan” people reclaiming their historical heritage. In addition, there are small pockets of family groups and small communities, such as the so-called “hidden San” in the KwaZulu-Natal and Mpumalanga provinces.

South Africa’s total population is 47 million, with the indigenous groups comprising less than 1%. The South African Census does not record indigenous groups separately, and they are probably subsumed under the “coloured” population total (4.2 million), comprising 8.9% of the total South African population.<sup>1</sup>

In South Africa today, the Khoi-San communities exhibit a range of socio-economic and cultural lifestyles and cultural practices. Among the San communities, members of the older generation have maintained strong links to some traditional cultural practices, although representations of the traditional hunter-gatherer lifestyle are largely practised in the context of cultural tourism and cultural revival.<sup>2</sup> The youth continue to grapple with the issues of identity and loss of cultural knowledge.<sup>3</sup>

### General developments

The South African government voted in support of the UN Declaration on the Rights of Indigenous Peoples at the first session of the newly-established UN Human Rights Council. This marked a clear statement of South Africa’s support for indigenous people. Despite the



establishment of an Interdepartmental Working Group on Khoé<sup>4</sup> and San Issues in 2004, however, no visible progress has been made at policy level. This interdepartmental body has met with the non-statutory advisory body, the National Khoi-San Council, comprising representatives of indigenous peoples' organizations, specifically the National Khoi-San Consultative Conference. The reasons for lack of progress can be attributed to a lack of political will on the part of the government. The government's working group is led by the Department of Provincial and Local Government (DPLG), and it appears to be a task this department does not relish. The Cabinet Memorandum intended to guide the work of the Interdepartmental Working Group has not been made public. It is therefore not clear whether the government and indigenous peoples' bodies are working according to an agreed agen-

da or not. Further reasons can be found in the lack of administrative and organizational capacity of the National Khoi-San Consultative Conference. This body has been accommodated by the University of the Free State, which provides office infrastructure and some secretarial support. Some members of the National Khoi-San Consultative Conference are seeking political accommodation in terms of the system of recognition of traditional leadership. However, the government has not yet finalized its policy on how to accommodate traditional leadership within the South African constitutional framework.

Unfortunately, South Africa voted with the African Group at the UN General Assembly in November 2006, when Namibia, as co-ordinator of the African Group, proposed that a decision on the Declaration be deferred to the end of the current session. This has been regarded as a setback by indigenous activists as it appears that South Africa has back-tracked on its earlier decision. Hopefully, the informal communication received from South Africa that it continues to support the Declaration will be confirmed by future actions.

The position that South Africa has taken towards indigenous peoples' issues contrasts dramatically with that of its neighbours, Botswana and Namibia. South Africa has chosen to play a "behind-the-scenes" role on this issue with its neighbours and has not publicly spoken out against the position taken by its Southern African Development Community (SADC) counterparts, in particular that of Botswana. South Africa will now be called upon to take a leadership role on the Declaration at international level, while maintaining good neighbourly relations within the SADC and the African Union.

The Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was tabled at the 2<sup>nd</sup> session of the UN Human Rights Council in September 2006. It provides a summary of the situation of indigenous groups in South Africa and recommendations to the South African government, civil society, the international community and academic institutions. The report has the potential to serve as a clear programme of action for the government. It remains for indigenous groups in South Africa and the government to follow up on the Special Rapporteur's recommendations.

## **Policies, programmes and projects**

The social, economic, language and cultural development of indigenous communities received more focused attention during 2006. The South African San Institute, an NGO that provides social and economic development facilitation services to San communities and organizations in South Africa, became a member of the regional development network, through its association with Letloa Development Trust, based in Botswana, in 2005. This network groups together the community development initiatives of the so-called Kuru Family of Organizations in southern Africa, providing a regional approach to San development challenges across all countries of the region and thus strengthening the position of San communities in each of the respective countries.

The community-based programmes of the South African San Institute endeavour to combine community initiatives with government programmes in the field of early childhood development, household food security, primary health care, education and livelihood activities. In these ventures, relationships have been built with provincial and local government departments, particularly in the Northern Cape Province.<sup>5</sup>

!Khwa ttu, the San Culture and Education Centre, situated approximately 70 kms outside of Cape Town, was officially launched in March 2006 after more than 10 years of development. !Khwa ttu is now the only San-owned and operated heritage centre in the Western Cape of South Africa. It is a joint venture owned by the San people in partnership with the Swiss UBUNTU Foundation. The purpose of the !Khwa ttu is to restore and display San heritage, culture, folklore, visual arts, cosmology and languages, educate the general public about the world of the San and provide training to the San in literacy, entrepreneurship, tourism, health issues, community development, craft production/marketing and gender awareness.<sup>6</sup>

## **Indigenous movement and institutional development**

The past 5 -10 years have seen the institutional development of indigenous organizations. In November 2006, a regional San consultation

meeting was held in Maun, Botswana between San community leaders, San service/development organizations and donor partners. The consultation took stock of what had been achieved in terms of San political, social and economic development over the past 10 years, identified the challenges facing the San and developed a shared vision for the future. The development of effective representative structures in all countries of southern Africa, financially sustainable community-based development organizations and the active participation of the San in the international indigenous movement were among the main goals agreed at the Maun consultation.<sup>7</sup>

In 2001, the South African San Council was established as a representative body of all San communities in South Africa. It has been actively engaged in the issues of intellectual property rights and was at the forefront of negotiations for the right to share in the benefits arising from the commercial exploitation of the Hoodia plant on behalf of the San of southern Africa. Hoodia is an indigenous plant traditionally used by the San to sustain them during hunting. The active ingredient in Hoodia was isolated and the rights to develop it as a slimming aid in the multi-million dollar global dieting industry was granted to international pharmaceutical companies by the South African Council for Scientific and Industrial Research (CSIR), the statutory research and development agency. The CSIR had asserted that there were no longer any San communities in South Africa. However, the South African San Council, acting on behalf of San communities throughout southern Africa, challenged the CSIR and the pharmaceutical companies with regard to ownership of this intellectual property. After intensive negotiations, a benefit-sharing agreement was concluded. A special purpose vehicle, the Hoodia Trust has been registered in South Africa to receive the payments from the benefit-sharing agreement and to make the resources available to San peoples in southern Africa and organizations for education, social and economic development and institutional support. The benefit-sharing agreement reached by the South African San Council, with legal support, represents a victory for indigenous peoples with regard to their intellectual property of plants and other natural resources.

In 2006, the South African San Council held elections for its executive committee to represent the San communities in South Africa. In

addition to its work on Hoodia, the South African San Council is represented on the National Khoi-San Consultative Conference and the Working Group of Indigenous Minorities of Southern Africa (WIMSA) and actively participates in the activities of these representative bodies.

In 2001, the National Khoi-San Consultative Conference (NKCC) was established by representatives of all Khoi and San communities and organizations in South Africa. Elections for the National Khoi-San Council were held in 2006. The Secretariat of the National Khoi-San Consultative Conference is housed at the Humanities Faculty of the University of the Free State in Bloemfontein, Free State Province.<sup>8</sup> The Griqua National Conference<sup>9</sup> and the Free State Koranna Culture and Heritage Council are among the organizations represented in the NKCC. Due to a lack of capacity and resources, the main activity of this body has been to dialogue with the government concerning the constitutional accommodation of indigenous communities in the National Khoi-San Council.

The Humanities Faculty of the University of the Free State has proposed establishing a Unit for Khoe and San Studies with the goal of establishing a focal point for research on Khoe and San issues.

Indigenous groups in South Africa participated in the Indigenous Peoples of Africa Coordinating Committee's (IPACC) southern African regional electronic elections, held in April 2006.<sup>10</sup> The southern African region is represented on the IPACC Executive Committee, the key decision-making body, by Moronga Tanago, a Khwe San from Botswana, as the southern African Regional Representative; Cgare Cgaase, a Naro San from Botswana, as the southern African Deputy Regional Representative and Aneta Bok, a #Khomani San from South Africa, as the southern African Women's Representative.<sup>11</sup>

Baba Festus and Tommy Busakhwe, both young #Khomani San, successfully participated in the UN Internship Programme for Indigenous Persons in Geneva during 2006. Both have returned to contribute to the development of their communities. Tommy Busakhwe is employed by the South African San Institute and is based in Upington serving the community in the Kalahari district. Baba Festus now forms part of the team at !Khoa ttu. She participated in the United Nations Permanent Forum session in May 2006.

## Notes

- 1 **Rodolfo Stavenhagen, 2005:** *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mission to South Africa*; [www.southafrica.info](http://www.southafrica.info); [www.san.org.za](http://www.san.org.za).
- 2 **Nigel Crawhall, 2001:** *Written in the Sand: Auditing and Managing Cultural Resources with Displaced Indigenous Peoples. A South African Case Study*. SASI (in co-operation with UNESCO).
- 3 However, many San youth have begun to grasp opportunities to work with their elders to record their stories, learning about their culture and using cultural reclamation to build livelihoods for themselves.
- 4 The terms "Khoe" and "Khoi" are used interchangeably in the literature and by institutions.
- 5 *SASI Nuus*, October 2006. Newsletter of South African San Institute.
- 6 [www.kwattu.org](http://www.kwattu.org)
- 7 *Maun Consultation Meeting Report*. Unpublished draft. November 2006.
- 8 [www.uovs.ac.za](http://www.uovs.ac.za)
- 9 [www.griqua.com](http://www.griqua.com); [www.ratelgat.co.za](http://www.ratelgat.co.za)
- 10 [www.ipacc.org](http://www.ipacc.org)
- 11 The IPACC Executive Committee is made up of three representatives from each of five regions in Africa, forming a 15-member Executive Committee. Representatives serve a three-year term and are elected by all IPACC member organizations on a regional basis.

# PART II

INTERNATIONAL  
PROCESSES

## THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

### REPORT FOR YEAR 2006

The UN Declaration on the Rights of Indigenous Peoples is a comprehensive international standard on human rights. It covers the full range of rights of indigenous Peoples. It is important to note that the Declaration does not create new rights. It elaborates upon existing international human rights, norms and principles as they apply to indigenous Peoples. It catalogues the kinds of violations that have historically plagued and, sadly, continue to plague indigenous Peoples such as attacks upon their culture, their land, their identity and their own voice. In short, the Declaration lays out minimum standards for the survival, dignity and well-being of indigenous Peoples.

Drafting the Declaration has been a long process, with the involvement of representatives of indigenous organisations, delegations of member states, legal experts and NGOs. No other United Nations document has ever been produced with such full and democratic participation on the part of all parties concerned.

Year 2006 must be remembered positively as the year the Declaration on the Rights of Indigenous Peoples was adopted by the United Nations Human Rights Council. While this is not the ultimate adoption, the negotiations over the text of the Declaration are now concluded and two decades of expectations have culminated in a proposition to the United Nations' General Assembly to adopt the Declaration.

The intent of the General Assembly remains unclear at the end of 2006. For many member states of the United Nations, and indigenous

Peoples' delegations, there is a determination that the Declaration will be successfully adopted in 2007. However, while there is a guarantee the Declaration will be considered by the General Assembly before the 61<sup>st</sup> Session ends in September 2007, a few powerful states are working hard behind the scene to discredit the Human Rights Council and its decision to adopt the Declaration.

The Human Rights Council is a new body formed by the United Nations with the objective of strengthening the human rights work of the United Nations, integrating human rights with the international roles of security and development, and emphasising the need to directly address human rights abuses. The Human Rights Council replaced the Commission for Human Rights and, in its first session in June 2006, created history by adopting the Declaration on the Rights of Indigenous Peoples.

## **The drafting process**

The final drafting stages of the Declaration began twelve years ago. In 1995, the Commission on Human Rights established an Inter-sessional Working Group with a mandate to elaborate the draft Declaration on the Rights of Indigenous Peoples, taking the draft prepared by the Working Group on Indigenous Populations and recommended by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities into consideration. The Commission wanted the draft Declaration to be available for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People (1995-2004).

In April 2005, the 61<sup>st</sup> session of the Commission on Human Rights considered the report of the Working Group on the draft Declaration on the Rights of Indigenous Peoples, noted that the work on the draft Declaration was not yet concluded, and approved another session of the Working Group for 2005. This resolution of the Commission on Human Rights invited the Chairperson of the Working Group to convene additional meetings and, if possible, make progress with the drafting of the Declaration. The resolution also urged all parties to do

their utmost to carry out the mandate of the Working Group and present the final draft Declaration for adoption as soon as possible.

Consequently, the Working Group convened three weeks of meetings in late 2005 and early 2006. During the first round of meetings, held for two weeks in December 2005, the participants engaged in discussions in both formal and informal groups which sought to bring all parties closer together on a text. Some group discussions concentrated upon less controversial articles where consensus was likely to be achieved while other groups focused on the resolution of key principles such as "self-determination" and "collective rights". In plenary, the Chairperson sought to address the most difficult paragraphs concerning "land and resources". Variations on the text were presented and debated during these processes, ensuring that all proposals by states were given exposure and the opportunity for support or opposition to be expressed.

The Working Group reconvened in February 2006 for one week to re-consider the various options that had been developed and to attempt to reach a consensus on each of the outstanding articles and paragraphs. During this week, participants were able to identify the text that had gained popular support, if not consensus. A few states continued to defy the trend towards consensus on key articles, especially "self-determination" and "lands and resources".

Of note was the agreement reached to include the article relating to "recognition of treaties" and the deletion of the article related to "indigenous identity" (formerly Article 8).

## **The Human Rights Council adopts the final draft**

On 22 March 2006, the Chairman of the Working Group, Mr. Luis-Enrique Chávez, published his report to the new Human Rights Council along with the conclusion that the Chairman's proposals for the text of the draft Declaration be presented and considered as a final compromise text. While the Chairman was not able to report that the proposal was adopted by a final consensus of all participants in the Working Group, his report made it clear that the proposed text, as a "compro-

mise text", was the text that had received majority support from indigenous peoples' delegations and states alike.

The Chairperson's text contained much language provided by facilitators of group discussions that formed the basis for consensus building. During the last session of the Working Group, the Chairperson also indicated that he was going to make proposals regarding articles that were still pending, based on discussions held during the sessions.

The Chairperson reported that some governmental representatives regretted that fundamental issues such as self-determination, lands and resources, the nature of collective rights, third party rights and the rights of all other citizens still lacked consensus after 11 years of negotiations, and called for clarity of meaning across the Declaration as a whole to ensure that it became a new standard of achievement rather than a source of dispute. These representatives expressed the view that a Declaration that did not enjoy consensus amongst states would not be of real and practical benefit to indigenous Peoples.

However, the indigenous Peoples' delegations were not sympathetic to these assessments by some government representatives, believing that a few governments had expressly worked to frustrate the drafting process and prevent consensus. In this context, the indigenous Peoples' delegations continued to oppose the introduction of a text which established a hierarchy of rights between indigenous peoples and "third parties" or otherwise established discriminatory provisions in the Declaration that were inconsistent with rights contained in other international human rights standards.

The Chairman of the Working Group emphasized in his report that the Declaration is a human rights instrument that will set the standard for the relationship that should exist between indigenous Peoples and states. The 59 paragraphs of the Declaration address the historical injustice and continuing discrimination of indigenous Peoples' rights to language, education, self-government, cultural expression, the collective right to use of lands, territories and resources, restitution of lands and territories, and treaty rights.

When the Human Rights Council discussed the Declaration on the Rights of Indigenous Peoples, it was clear that the majority of members on the new Council were in support of the adoption of the Decla-

ration. Two states, however, made it clear that they would not support the Declaration and intended to call a formal vote so that they could vote against it.

Canada, having a new administration in power since elections at the beginning of 2006, made it clear they would vote against adoption of the Declaration because the land provisions would cause problems for the Canadian land claims processes, "free, prior and informed consent" would give the power of veto over government and because the government had concerns about self-government provisions.

The Russian Federation said that it did not agree with the procedure and that the Human Rights Council should have allowed more time for states to consider the final document before its adoption.

Despite the opposition of these two states, the Human Rights Council adopted the Declaration with 32 votes in favour and 2 votes against. Twelve states abstained from the vote, including six states in Africa: Algeria, Ghana, Morocco, Nigeria, Senegal and Tunisia.

Another twenty states took the floor to explain their position, either before or after the vote was taken. In most cases, these states were expressing a view regarding self-determination and their view that the right of self-determination existed within the structure of the state.

Each of the seven regional caucuses of indigenous peoples presented statements in support of the Declaration. After the vote was taken, a global statement was issued by the indigenous caucus expressing support for the Declaration and emphasising that indigenous peoples had relied upon their ability to engage in substantive debate consistent with international law. The statement also pointed out that an important outcome of the debate had been to generate awareness and understanding of the situations of indigenous Peoples in all parts of the world.

## **Final adoption delayed**

Despite the overwhelming support given to the Declaration by the Human Rights Council, procedural problems were encountered in November 2006. On the one hand, the President of the Human Rights Council considered that the report of the Human Rights Council

should proceed direct to the General Assembly plenary for consideration and adoption. However, many states believed that the Third Committee, the sub-committee of the General Assembly dealing with social, humanitarian and cultural affairs, should preview and consider all matters from the Human Rights Council.

While problems regarding the procedure prevented the Declaration from being considered for almost four weeks, the real problems were substantive issues regarding support for, and opposition to, the Declaration.

The African group of states held closed-door meetings to discuss the Declaration and made requests to the Third Committee to delay consideration of the Declaration until their issues were resolved. This request was not unusual in itself as groups of states often ask for more time to consider matters on the agenda and such requests are entertained in good faith.

It soon emerged that some African states had serious difficulties with the text of the Declaration and were not prepared to accept the recommendation made by the Human Rights Council to adopt it. Namibia and Botswana made statements in the Third Committee which revealed these concerns.

Botswana, in particular, emphasised that the Declaration on the Rights of Indigenous Peoples would cause insurrection and division in Africa, where the majority of the population were "indigenous". The Declaration was considered by Botswana to be a threat because it did not define the term "indigenous Peoples" and because "self-determination" was seen to be a right to secession. Botswana also argued that "free, prior and informed consent" was a veto over governments and that tribal groups in Africa would use the "land and resources" provisions to control mining and other resource developments, against the interest of the state.

The indigenous Peoples' delegations present during these discussions in the Third Committee found it difficult to correct these views as there was only very restricted access to the states and the African group declined to discuss these issues with "non-state representatives".

Within the African group, there were some states that were strongly in support of the Declaration and they endeavoured to challenge the views of Botswana and other dissenting states. However, the African

states agreed to consider the Declaration in unity and to delay any voting on the Declaration until they had had an opportunity to resolve the issues. It was clear that many of the 54 African states were not well-informed about the Declaration and were becoming concerned about the interpretations of the Declaration that they were receiving.

When the resolution to adopt the Declaration was finally presented in the Third Committee, on 28 November 2006, Namibia introduced an amending resolution which called for the vote on the Declaration to be deferred to allow for more consideration. This amending resolution was upheld in the Third Committee by 82 votes in favour and 67 votes against. As a formality, this vote was repeated in the General Assembly on 23 December 2006, with 85 votes in favour and 89 abstentions.

While the results of this vote were a major surprise, and seen as a setback to the progress of the Declaration, the resolution of the General Assembly is not fatal to the adoption of the Declaration. The resolution does state that the Declaration must be considered before the end of the current session, the 61<sup>st</sup> session. This means that the Declaration must be voted upon before September 2007.

## **The final outcome remains uncertain**

The resolution of the General Assembly does not specifically talk of amendments to the Declaration but it is well known that a few states, including some African states, are working hard to achieve major amendments to the Declaration. Fortunately, many states have made it clear that they will not support any changes to the Declaration, accepting that the final text is a compromise for states and indigenous peoples alike and that the agreed text is the only text capable of being adopted and supported in the longer term.

The supporting states include all members of the European Union and almost all states of Latin America. If the African group dissolves its unified position and African states vote independently then the Declaration should be adopted. The Asian, Eastern Europe, Pacific and Caribbean states are expected to mostly support the Declaration if the African group no longer opposes it as a group, but this remains to be seen.

The efforts to amend the Declaration in the General Assembly are seen as being more fanciful than wise. It defies almost two decades of negotiations and proposes “magically” coming up with a text that has not already been considered and rejected. Ultimately, if amendments are not supported by the indigenous Peoples, the Declaration will be rejected and ridiculed. Those states seeking to amend the Declaration do not ultimately have the support of indigenous peoples and are facing hostility from them.

The provisions in the Declaration which are of recent concern to some African states are the same provisions aggressively opposed by “the CANZUS group” – Canada, Australia, USA and New Zealand.

While Canada has only sided with the views of this group since the beginning of 2006, Australia, New Zealand and the USA have been campaigning for many years against the rights articulated in the Declaration. At each session of the Working Group, these states continued to frustrate negotiations by opposing consensus on any of the paragraphs and consistently introducing amending text which was unacceptable to the majority of participants.

In a joint statement presented to the Third Committee on 16 October, the Ambassador of New Zealand, speaking on behalf of Australia, New Zealand and the USA, attacked the Declaration stating, *inter alia*, that:

- self-determination “could be misconstrued as conferring a unilateral right to secession”,
- “Indigenous Peoples appear to have a right of veto over enactment of laws by parliaments”,
- “Indigenous Peoples appear to have rights to land lawfully owned by other citizens”,
- “Indigenous Peoples’ rights to lands and resources are potentially discriminatory” and
- “separatist or minority groups, who are not Indigenous Peoples, can exploit this Declaration”.

These claims are without substance, rely upon ignorance of the Declaration and international law and are inciting opposition to the Decla-

tion. It is not credible that these concerns should arise from these states after so many years of extensive participation and discussion.

The difficulty for the African states arises in how to address their concerns without being aligned with the CANZUS group. The African group is having difficulty in proposing text amendments which will have popular support. Their situation is not helped by aggressive lobbying from New Zealand, for example, which wants to amend the majority of paragraphs in the Declaration.

Ironically, these dramatic concerns regarding the content of the Declaration are a valid reflection of the hard work and exchanges that have gone into constructing the final document. It was not a document arrived at easily and so it should not be a document easily changed.

The final outcome for the Declaration remains uncertain at the end of 2006. There is optimism and pessimism on all sides of the debate.□

## THE PERMANENT FORUM ON INDIGENOUS ISSUES – 5TH SESSION

The UN Permanent Forum on Indigenous Issues is a subsidiary body of the United Nations Economic and Social Council (ECOSOC). It is mandated to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

The Permanent Forum is made up of 16 independent experts. Governments nominate eight of the members, and the other eight members are indigenous experts to be appointed by the President of ECOSOC. The Permanent Forum on Indigenous Issues meets every year in a regular session in May for two weeks in New York. Over 1,000 delegates from states, UN agencies, indigenous organisations, NGOs and academic institutions participate.

The fifth session of the Permanent Forum on Indigenous Issues met from 15 to 26 May 2006 at the United Nations headquarters in New York. Around 1,000 participants from indigenous organisations, non-governmental organisations, intergovernmental organisations, states and UN specialised agencies attended. The central theme of the 5<sup>th</sup> session was *The Millennium Development Goals and Indigenous Peoples: redefining the goals*.

The wealth of information and exchanges that took place in the 5<sup>th</sup> session of the Permanent Forum was not limited to the official sessions. It began with the preparation of documents and reports, the holding of intersessional meetings and the activities of its members, and culminated in the coming together of hundreds of indigenous rep-

representatives who not only attended the sessions but also organised parallel events on issues of significant relevance to the PF agenda. Many UN agencies also explained their policies and programmes on indigenous issues in more detail in side events. More than 50 events were organised during the 5th Session of the Permanent Forum.

## Opening

The opening ceremony took place on Monday 15 May 2006 in the United Nations General Assembly Hall, and was chaired by José Antonio Ocampo (ECOSOC Deputy Secretary General and coordinator of the Second Decade of the World's Indigenous People, 2005-2014).

In her intervention on behalf of the indigenous caucus, Mililani Trask called on all governments present to approve the Declaration on the Rights of Indigenous Peoples.

The inaugural session ended with various performances by indigenous artists.

## Work sessions

In line with the agenda and the proposed organisation of work, work sessions commenced in the afternoon of Monday 15 May.<sup>1</sup> Victoria Tauli-Corpuz was elected Chairperson for this session, and Otilia de Lux (Guatemala), Aqqualuk Lynge (Greenland), Liliane Muzangi (Congo) and Ida Nicolaisen (Denmark) Vice-chairs. The rapporteur was Michael Dodson (Australia).

Throughout the whole of the first week, contributions on the main theme of the Millennium Development Goals and Indigenous Peoples were collected by means of dialogues between Forum members and the indigenous representatives, UN agencies and governments present. In addition to this long dialogue on the Millennium Development Goals, for the first time the Permanent Forum held a regional session devoted to Africa. This regional session took place on 18 May in the presence of the Chair of the African Commission's Working Group on Indigenous Populations/Communities, Mr. Kamel Rezag-Bara, who

presented the work of the Commission and the progress being made within the African Human Rights system in terms of recognising the rights of indigenous peoples in Africa. The African caucus presented a joint statement plus interventions and questions during the session.

## **Background dialogue on the Declaration**

Among the first week's statements was one presented by the United States, Australia and New Zealand in relation to the draft Declaration on the Rights of Indigenous Peoples, an issue that was to form the backdrop to the whole of this session. In this statement, the three countries in question expressed a totally contrasting position to that of the current Declaration's text, indicating that its adoption would be extremely negative for indigenous peoples and would, in addition, form an element that could lead to instability. Moreover, they felt that the current text recognised different rights to different population groups within a state which was, in their opinion, inadmissible and contrary to human rights.

This forceful statement was challenged by the Chairperson (Vicky Tauli-Corpuz) and other members of the Permanent Forum, who stated their support for adoption of the draft Declaration and criticised the intransigent position of these three countries. Other participants, various governments included, felt that this issue should not form the object of debate at this Forum session.

During the second week, Mexico responded to the statement by the United States, New Zealand and Australia, and declared its full support for the final draft of the Declaration. Mexico indicated that the text presented by the President contained the necessary safeguards in terms of self-determination, territorial integrity, lands and territories and the rights of third parties and was therefore acceptable, and that the extreme position of those rejecting it was a minority one.

According to Mexico, the declaration will form a framework for a "new intercultural relationship" and the country does not believe that the declaration implies the establishment of new rights above human rights. In its intervention, it called on the states to adopt the final draft at the next meeting of the Human Rights Council, for its subsequent

adoption and proclamation by the General Assembly before the end of 2006. A number of countries and indigenous organisations' statements supported this proposal.

During the two-week session, informal meetings were held between governments, indigenous peoples and the caucus to discuss the issue of the Declaration's future and indigenous issues in the context of the new human rights system after the 2005 reforms. A majority opinion seemed to exist among the indigenous organisations that the latest version of the Declaration, although not perfect in some areas such as lands, territories and resources, generally signified a great step forward in recognising the fundamental rights of indigenous peoples. A number of the Permanent Forum's recommendations refer to these issues.

## Human Rights

The second week of the session began on Monday 22 May with the agenda item devoted to *Human Rights, including an interactive dialogue with the Commission on Human Rights' special rapporteur on the situation of the human rights and fundamental freedoms of indigenous people*.

Dr. Rodolfo Stavenhagen, Special Rapporteur, presented his report to the Permanent Forum. In it, he made reference to his report for 2006 in which he noted the serious problem of what he calls an "implementation gap". By this he means that the progress made in recognising rights is not being reflected in their practical application. The Rapporteur added to this the problems of impunity, corruption and a lack of political will and called upon states to give priority to seeking effective monitoring and participation methods that can bridge this gap between recognition and application. The Rapporteur also referred to his visits to South Africa, New Zealand and Ecuador and his monitoring visit to Guatemala. Finally, he wished to highlight the serious problem of violations of indigenous rights caused by natural resource exploitation and the serious impact these activities have on indigenous peoples' environments and habitats.

The UN agencies also talked of their work in relation to human rights issues. The Office of the High Commissioner for Human Rights

referred to the programmes underway and the impact of the UN reforms.

The discussion on indigenous rights continued throughout Tuesday and Wednesday. There were many interventions from indigenous organisations denouncing the serious violations of their rights that are taking place in many countries. The Permanent Forum members emphasised how important it was that their recommendations should reflect not only the written interventions but also the developments and positions presented orally by the indigenous organisations in the hall.

### **Special issues: children, youth and indigenous women**

On Thursday, special themes from previous years such as indigenous children and youth, and indigenous women, were considered along with the importance of data collection and the issue of free, prior and informed consent. The governments of the United States, New Zealand and Australia again presented a joint statement in relation to this last point, declaring that it was not yet possible to move towards adopting this criterion, nor towards recognising it as a right, and that more discussion was needed. They claimed, for example, that it was not possible to give a certain group of the population the right to veto an initiative that would benefit the whole of a country's population.

### **Closing**

An analysis of the working sessions, and of application of the recommendations of the three first sessions, was presented.<sup>2</sup> On Friday, the provisional documents containing recommendations and decisions were distributed for revision and adoption. The Chair presented a draft recommendation on the theme and agenda for the next session (lands, territories and natural resources was to be the main theme for 2007), and advised the indigenous organisations, states and UN agencies on the preparatory work necessary to ensure effective contributions at the next meeting and on possible ways of approaching this is-

sue. In this regard, Ms Tauli- Corpuz indicated that it would be very interesting for the states and indigenous organisations to provide information on good practice in recognising the territorial rights of indigenous peoples, as this could encourage other states to adopt similar measures, in addition to considering obstacles and threats to indigenous control over and rights to their lands, territories and resources.

After the necessary revisions, additions and changes had been made to the draft recommendations, these were adopted in the afternoon session for their presentation to ECOSOC. The session, described by the Chair as "historic" in the context of the UN reform, was closed by Mr. Ocampo and the Chair.

## Recommendations and decisions

The Permanent Forum closed its session with the adoption of eight sets of draft Recommendations on the following issues: Millennium Development Goals, indigenous children and youth, indigenous women, human rights, data collection, Africa, the 2<sup>nd</sup> Decade, and on its future work. The Permanent Forum also approved the following five decisions:

- The date of the sixth session of the Permanent Forum: 14 to 21 May 2007.
- The venue for the 6th session.
- The holding of an international meeting of experts on the International System of Access and Benefit-Sharing of the CBD and the rights of indigenous peoples, the results of which will be presented to the Sixth Session of the Forum.
- The main theme for the next session: Lands, territories and natural resources, along with the draft agenda for the sixth session.
- That the coordination segment of the substantive session of 2007 of the ECOSOC should have indigenous affairs as an issue.

Both the recommendations and the five decisions approved were subsequently presented to ECOSOC for their adoption.<sup>3</sup> □

## Notes and references

- 1 The agenda and the proposed organisation of work can be found at: <http://daccessdds.un.org/doc/UNDOC/LTD/N06/251/33/PDF/N0625133.pdf?OpenElement>
- 2 The report on the *Analysis and state of implementation of recommendations of the Permanent Forum on Indigenous Issues at its first to third sessions* can be found at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/294/47/PDF/N0629447.pdf?OpenElement>
- 3 The official report of the Permanent Forum's 5th session can be found at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/384/35/PDF/N0638435.pdf?OpenElement>.

## THE UN WORKING GROUP ON INDIGENOUS POPULATIONS 24<sup>th</sup> SESSION

The UN Working Group on Indigenous Populations (WGIP) was established in 1982 as a subsidiary body of the UN Sub-Commission on the Protection and Promotion of Human Rights. Since then the WGIP has met annually in Geneva, usually during the last week of July.

The WGIP has a dual mandate. First, to consider developments that have taken place over the year in relation to indigenous issues and human rights. Second, so-called standard-setting activities, that is, the establishment of standards for indigenous rights. The WGIP has a number of permanent items on its agenda and chooses a main theme each year.

Following the establishment of the UN Human Rights Council, the Working Group is currently under review and is likely to be discontinued. Whether it will be replaced by another body or not is now subject to decision by the Human Rights Council.

The 24th session of the UN Working Group on Indigenous Populations (WGIP) was held in Geneva (Switzerland) from 31 July to 4 August 2006. The main topic for discussion this year was: *"Utilization of indigenous peoples' land by non-indigenous authorities, groups or individuals for military purposes"*. The indigenous caucus met during the weekend of 29-30 July to prepare joint statements on this session's agenda issues.

The session commenced on the morning of Monday 31 July. Mr. Yozo Yokota - one of the expert members of the WGIP - was elected

Chairperson/Rapporteur. Apart from a general discussion on the situation of indigenous peoples and the session's main theme, other issues were also on the agenda such as, for example, future standard setting and studies that could be undertaken and the Second International Decade of the World's Indigenous Peoples.

## **Discussion on the future of the Working Group**

Although statements were prepared on all these issues, it must be noted that - apart from the principal theme - the debates focused largely on the future of the WGIP. It should be recalled in this regard that the replacement of the Commission on Human Rights by the Human Rights Council has serious repercussions for the Sub-Commission on the Promotion and Protection of Human Rights and its subsidiary bodies, such as the WGIP. The Human Rights Council has decided to renew the mandate of all of the former Commission's mechanisms and procedures until June 2007, but with a mandate to review their work and rationalize it. For this, the Council has established a Working Group that is anticipated to present its results to the Council's March / April 2007 session. Until then, nobody knows if the Sub-Commission on the Promotion and Protection of Human Rights and its subsidiary bodies will be maintained or not and, if they are, whether they will be in their current form, or if changes or new subsidiary bodies will be introduced.

Given this situation of uncertainty, the indigenous caucus presented a joint statement on the indigenous organisations' position in relation to this. The indigenous statement offers a possible alternative to ensure that the Human Rights Council gives an important place to the issue of indigenous rights in the context of its discussions.

## **Discussions on the main theme**

With regard to the main issue "*Utilization of indigenous peoples' land by non-indigenous authorities, groups or individuals for military purposes*", many indigenous organisations presented statements on the terrible

impact that militarization of their territories has had on their own survival. On all continents, indigenous peoples have seen how, even in countries where there is no armed conflict, their territories are used for military purposes. In addition, indigenous representatives from Colombia presented a number of statements on the tremendous impact that the conflict between the army, the paramilitaries and guerrilla groups has had on their territories.

The impact that unfair peace agreements may have on indigenous peoples was also denounced by representatives of the Lumad people from Mindanao (Philippines). The use of indigenous territories for military manoeuvres was denounced by the Maasai of Kenya. For their part, representatives of the Negev Bedouins denounced the forced displacement they have suffered to make way for Israeli army installations on their territory. Representatives from north-eastern India, Nagaland, Burma and Bangladesh also denounced the serious human rights violations their peoples are suffering because of armed conflicts that lead to the militarization of their territories and the criminalization of their authorities and ways of life.

In addition to the statements presented to the Working Group's plenary session, the indigenous organisations and NGOs took the opportunity to hold a number of side events at which they were able to present and debate their specific cases in more depth.

## **Reports and pending issues**

Although, as has been noted, the WGIP discussions focused on the main issue and the future of the WGIP in the context of the reforms of the UN human rights system, a new report was also presented to the WGIP session on possible guidelines for the protection of the intellectual/cultural heritage of indigenous peoples, prepared by Mr. Yokota (Working Group member) and the Saami Council. Although the document recommended the adoption of these guidelines, uncertainties over the future of the WGIP and the Sub-Commission, to whom the recommendation will be presented, meant that the proposal was not debated or analysed in adequate depth. The same was the case for the issue of indigenous peoples in states and territories threatened with

extinction for environmental reasons. A questionnaire was presented to gather information on this issue but the future of this work is dependent upon the future of the WGIP. With regard to the Second International Decade of Indigenous Peoples, a report on the seminar on indigenous peoples' permanent sovereignty over natural resources and their relationship to land was presented.

As is usual during the WGIP session, the International Day of Indigenous Peoples was celebrated on Thursday 3 August, with the presence of representatives from the Office of the High Commissioner for Human Rights and other UN bodies.

The WGIP session came to an end on 4 August in the afternoon, without either the presentation or adoption of the final report nor the presentation of a possible agenda for the next session, which is dependent upon decisions to be taken by the Human Rights Council regarding the future of the UN Sub-Commission and its subsidiary bodies. □

## THE SPECIAL RAPPORTEUR

### OVERVIEW 2006

Professor Rodolfo Stavenhagen is the first United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples. He was appointed by the UN Commission on Human Rights in 2001 and his mandate is due to end in 2007. Undoubtedly, the Special Rapporteur's mandate has been a crucial instrument for making the situation of indigenous peoples more visible in the work of human rights bodies and international agencies, and has opened spaces for dialogue among indigenous peoples, states and international organizations.

Mr. Stavenhagen has concentrated the activities of his mandate around three main pillars:

**Thematic research** on issues that have an impact on the human rights situation and fundamental freedoms of indigenous peoples.

**Country visits.**

**Communications with governments** concerning allegations of violations of the human rights and fundamental freedoms of indigenous peoples worldwide.

### The thematic report

In his main report presented to the Human Rights Council, the UN Special Rapporteur drew the attention of the Council to several trends and challenges in the current situation of the human rights of indigenous peoples in different parts of the world.

In recent years, the international community has witnessed the adoption of new norms, the establishment of new institutions and the implementation of new policies, both at the national and international levels, regarding the rights of indigenous peoples. However, while the creation of this modern legal and institutional framework represents great progress in the protection of indigenous peoples' rights, there is still an "implementation gap" between the norms and practice, between the formal recognition and the actual situation of indigenous peoples, who continue to be the victims of serious violations of their individual and collective human rights, and who continue systematically to show lower indicators of human development. Even though numerous governments have adopted social policies with the objective of "closing the gap" between the indicators of human and social development of indigenous and non-indigenous people, the results obtained are still very limited. Over the last few years, the Special Rapporteur has observed a number of negative trends concerning the situation of indigenous peoples' rights. His thematic report highlights the following:

### **Loss of lands and traditional resources**

According to the Special Rapporteur, one of the trends that have become stronger in recent years is the decrease in indigenous territories, including the loss of control over their natural resources. This process has been intensified by the dynamics of the globalized economy and, in particular, by the increased exploitation of energy and water resources.

Examples of this are the environmental impact of extractive industries, for instance in North America and in Siberia; the extension of plantation economies, mainly in areas of South-east Asia and in the Amazon region; the destruction of the last native forests of the planet due to the unrestrained logging that is taking place in several countries of Equatorial Africa and Latin America. These processes particularly impact negatively on indigenous peoples, and pave the way for massive violations of their human rights. In his report, the Special Rapporteur analyzes the situation of specific communities affected by various processes leading to the loss of their lands and traditional resources.

### **Environmental degradation**

Extractive activities, large commercial plantations and non-sustainable consumption patterns have led to wide pollution and environmental degradation, processes that are now the object of major international concern. These processes have a particularly dramatic impact on indigenous peoples, whose ways of life are closely linked to their traditional relationship with their lands and natural resources.

### **Criminalization**

In order to defend their rights and give voice to their needs, indigenous peoples resort to different forms of social organization and mobilization, which frequently appear to be the only way for their demands to be heard. Too often, however, there are instances in which social protest is criminalized, generating new and sometimes serious violations of human rights. Many of these incidents take place in the context of the indigenous organizations' and communities' defense of their lands, natural resources and ancestral territories.

### **Migration**

Another expression of globalization and the inequalities and poverty it has generated is the increasing movement of indigenous people. Indigenous migrants are particularly exposed to violations of their human rights in agricultural and mining activities, in urban environments and at the international level. The desperate situation they experience in their places of origin often result in their forced displacement.

### **Country visits**

In 2006, the Special Rapporteur undertook two official visits with the aim of observing *in situ* the situation of the human rights of indigenous peoples.

## **Ecuador**

The Special Rapporteur visited Ecuador from 25 April to 4 May 2006, and in his country mission report to the Human Rights Council<sup>1</sup> he noted that:

- The Political Constitution of Ecuador affirms several collective rights that are specific to indigenous peoples and nationalities. However, these various rights have not yet been fully incorporated into the relevant secondary legislation, and this has limited their full implementation in practice.
- The absence of a law on indigenous justice creates conflicts of jurisdiction between indigenous traditional justice systems and the courts. The problems faced by indigenous people in relation to access to justice have been aggravated by the lack of an adequate public defense system, the absence of translators, and a lack of cultural sensitivity on the part of the different legal actors.
- Despite economic growth in recent years, the various indicators of social and human development of indigenous peoples in Ecuador remain below the national average, and the migration of members of indigenous communities has increased.
- The gradual deterioration of the indigenous habitat and the impact of extractive activities on the environment and on indigenous peoples' rights are objects of special concern, particularly in the Amazon, the northern border areas and the Pacific coast. Special attention should be given to the conditions of life of peoples living in isolation. These peoples are being affected by deforestation and other illegal activities in their territories which, in some cases, have put them in serious danger of extinction.

The Special Rapporteur concludes his country mission report to Ecuador by making a number of substantive recommendations on issues such as legislation, participation and recognition, security, social protest and justice-related activities, peoples in voluntarily isolation, etc. These recommendations are intended to contribute to the improvement of the human rights situation of the indigenous peoples in Ecuador.

## Kenya

From 4 to 14 December 2006, the UN Special Rapporteur undertook an official mission to Kenya<sup>2</sup> where he focused on the situation of hunter-gatherer and pastoralist communities, who are demographic minorities and live predominantly in arid and semi-arid areas. These groups have historically been subject to discrimination because of their culture and particular ways of life, and have suffered from social, political and economic marginalization. Their main problems, in terms of human rights, derive from the progressive loss and the environmental degradation of their lands, traditional forests and other natural resources as a result of both colonial and post-colonial dispossession.

In his country mission report to Kenya, the Special Rapporteur states that:

- In recent decades, various state policies, including several attempts to modernize and settle nomadic communities, and the privatization of communal ranches, have aggravated the situation of the economic, social and cultural rights of these communities.
- Some of the indigenous communities in Kenya are facing increasing difficulties caused by their forced displacement from their ancestral lands as a result of the establishment of protected areas. These communities have experienced a banning of their traditional hunting and herding activities in those areas and they have not been able to participate fully in their management nor benefit from their income.
- The social services and infrastructure in indigenous areas are inefficient and, in many cases, simply non-existent, placing them below national poverty indicators.
- The violence associated with social and ethnic conflicts of various kinds and the lack of transitional justice and redress have also impacted on the human rights of indigenous communities.
- The process of democratization in Kenya has allowed indigenous organizations to place their concerns on the national agenda, especially in the discussions regarding constitutional reform.

The Special Rapporteur concludes his report by making a number of recommendations intended to contribute to the improvement of the human rights situation of the indigenous peoples in Kenya.

### **Study on best practices in the implementation of the Special Rapporteur's recommendations**

Implementation of the recommendations made was an object of special concern for the Commission on Human Rights, which asked the Special Rapporteur to prepare a study on best practices in implementing the recommendations included in his thematic and country reports.<sup>3</sup> For the preparation of this study, the SR took into account the results of different national meetings on the follow-up to his previous visits to countries such as Guatemala, Mexico, Canada and the Philippines, the proceedings of the International Expert Seminar held in Montreal (read more about this below) as well as communications sent by several civic human rights watchdogs.

The study reflects a number of initiatives by governments, international agencies, civil society and indigenous peoples to follow-up on the recommendations in his reports. One of the main conclusions of this study is that implementation has been more effective in those cases where specific follow-up initiatives exist, as in the case of Mexico and Guatemala, and that this contributes to improved, coordinated and systematic action by the different actors concerned.

The second part of the study includes a review of "best practices" in implementing the recommendations made to specific states. The report provides examples of different initiatives regarding institutional or legislative reforms, as well as new public policies, put in place as a follow-up to his recommendations. Despite these important advances, the complete picture of the situation of the rights of indigenous peoples in these and other countries needs significant improvement, and requires increased state efforts to fully comply with their international human rights obligations.

## **The Human Rights Council and the protection of the rights of indigenous peoples**

### **The UN Declaration on the Rights of Indigenous Peoples**

In his presentations both to the Human Rights Council and also to the General Assembly in 2006, the UN Special Rapporteur stressed the importance of the UN Declaration for indigenous peoples and for the countries in which they live (read more about the Declaration in a separate article in this section of The Indigenous World). For the UN Special Rapporteur, the Declaration is an instrument to guide and frame best practices in favor of the human rights of indigenous peoples. The Declaration already represents a key reference for the Council, the Office of the High Commissioner and United Nations agencies, as well as for international human rights bodies.

### **The current review of the UN Human Rights Council's existing mechanisms and their working methods**

The Special Rapporteur has also recommended that the Council could include "indigenous issues" as a separate item on its agenda, as well as in the Universal Periodic Review currently under consideration. The Council should also take into account the important legacy of the Working Group on Indigenous Populations as a forum of discussion and technical expertise regarding indigenous peoples' rights, and consider the establishment of a new expert body in this area (read more about the Working Group in a separate article in this section of The Indigenous World).

### **International Expert Seminar on Best Practices for the Implementation of the Recommendations of the UN Special Rapporteur**

This seminar, held in Montreal from October 5 to 7, 2006, brought together representatives of indigenous peoples from all global regions, UN agencies, NGOs, governments and the Special Rapporteur for three days to discuss his work and the realities of implementation of his recommendations. The seminar addressed the implementation of

the Special Rapporteur's recommendations arising from his visits and missions in several countries and from thematic reports.

Among the most salient conclusions stemming from the seminar was the importance of these reports as benchmarking and lobbying tools for indigenous and human rights organizations. Visits by the Rapporteur also provide opportunities for indigenous organizations to coordinate their work so that they can build a common strategy to promote the implementation of his recommendations. Thematic recommendations are useful as reference tools and frameworks for thinking and discussion related to the programming of UN or regional agencies and institutions.

The recommendations of the Special Rapporteur constitute a framework, a roadmap or a tool, for benchmarking or discussion. Not all recommendations are alike, and not all of them can be part of an immediate implementation plan. However, they do have an impact on governments and on other national, regional, and international players and institutions. □

## Notes and references

- 1 **A/HRC/4/Add.2.** Available at:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/100/29/PDF/G0710029.pdf?OpenElement>
- 2 **A/HRC/4/Add.3.** Available at:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/43/PDF/G0711043.pdf?OpenElement>
- 3 **A/HRC/4/Add.4**

## THE ARCTIC COUNCIL

### 2006

The Arctic Council is an intergovernmental forum created in 1996. It includes Canada, Denmark (including Greenland and the Faeroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. The Arctic Council is unique in that it includes representatives of indigenous peoples. Six international organizations representing Arctic indigenous peoples have the status of Permanent Participants of the Arctic Council. These organizations are: the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North and the Saami Council.

2006 marked the end of the Russian chairmanship of the Arctic Council. In October 2006, the Arctic Council Ministerial meeting in Salekhard, Russia, reported on the Council's past achievements and future challenges.

The Arctic Council has, over time, gained significant attention for its scientific based circumpolar studies on contaminants, climate change and the Arctic Human Development Report (AHDR). The Arctic Climate Impact Assessment (ACIA) marked a shift in the global climate change debate with its findings on the rapid changes in the Arctic as well as its sound establishment of the driving forces behind the recent decade's climate change, including human activities through greenhouse gas emissions.

These big scientific assessments have been the result of a very unique and close cooperation between the eight Arctic governments, six indigenous peoples' organizations and the Arctic Scientific community. All assessments of the Arctic Council now successfully include indigenous traditional knowledge as an integral scientific part of their work, thereby strengthening the dialogue and relationship between important players in policy development and indigenous people. Although the players often conclude differently on the political consequences of the findings of these assessments, they agree on the scientific results of the assessments.

## Climate change

Climate change is still high on the agenda of the Arctic Council. Under the Russian Chair, the Council worked hard to craft follow-up strategies to the ground breaking ACIA report. The indigenous peoples' organizations had high expectations of new initiatives on adaptation and mitigation since the ACIA so firmly concluded that the Arctic climate was warming rapidly and most likely would continue to do so in the following decades, and that the cause of that was mainly human activity through greenhouse gas emissions.

Although the scientific basis for these conclusions has strengthened over the last two-year period, the Council did not agree to any common policy measures. The Inuit Circumpolar Council spokesperson, Carl Christian Olsen, stated the following at the Ministerial meeting in Salekhard:

*"You should use the ACIA and sponsor significant and far-reaching work on adaptation to climate change. States around this table disagree on timetables and targets for mitigation. But nobody disagrees about the need for adaptation now and in the future."*

The new Chair of the Arctic Council - Norway - stated that it would prioritize the climate change issue during its two-year chairmanship. Special attention will be given as to how to adapt.

## **A warmer Arctic – A more accessible Arctic**

One of the conclusions of the ACIA is that a warmer Arctic will also be a more accessible Arctic. As new areas are opened up for industrial development and resource extraction, the pressure on Arctic indigenous peoples will increase.

Indigenous peoples in the Arctic express strong concern at the industrialization of the region and increased pressure on natural resources in this extremely vulnerable environment. At the Ministerial meeting in Salekhard, this was expressed by most of the interventions from indigenous peoples. Chief Gary Harrison from the Arctic Athabaskan Council stated:

*"The impact of industrialization on the cultural integrity of indigenous communities - the changed economic base and its impact on cultural patterns and activities, and the problems of colonization, assimilation and issues relating to cultural identity will need to be addressed as resource extraction increases. We look forward to the Hydrocarbon Assessment and will pay special attention to the Socio-Economic Impacts chapter."*

Sergej Kharuchi from the Russian Association of Indigenous Peoples of the North (RAIPON) said:

*"We are not against economic development, but we are against development that threatens to wipe indigenous peoples off the map of Russia. Some parts of the Russian Federation, such as the Yamal Nenets Okrug, are managing development more wisely, and should be taken as a pattern for the rest of the country."*

And Aleksander Kobelev from the Saami Council stated that:

*"The Saami have watched states build a large part of their wealth on our rivers, fjords, mountains and forests. We will watch no longer. We have to enter a new phase where governments and multinational corporations stop doing the wrong things, and start doing the right. We have*

*never given up our inherent right to our territories, however, for large parts of the Saami area our land and governance rights are still not respected."*

## **Oil, Gas, Shipping and Resource Management**

Two major assessments are now underway, both focusing on the increased industrialization and increased accessibility of the region. One is the Arctic Oil and Gas Assessment and the other is the Arctic Marine Shipping Assessment. In addition, Norway has made resource management a focal issue of the Arctic Council's agenda for the next two-year period.

The recurring question will again be how indigenous peoples can adapt to the enormous challenges posed by climate change and increased pressure on natural resources. Maybe there is some comfort in the findings of the Arctic Human Development Report. One of its major findings was that societies with more control over their own destiny are less likely to suffer the adverse impacts of external stresses and pressures.

One of the follow-up initiatives to the AHDR is to develop a set of Arctic Social Indicators. These indicators are being developed to measure several key aspects of Arctic societies' development over time. Their purpose is to better indicate influential trends with a special focus on indigenous peoples. The academics behind the project have already identified the fact that control over your own future, both on an individual as well as a collective level, seems to be a core indicator for positive development. This work is currently being coordinated with similar projects on indigenous peoples' indicators under the Convention on Biological Diversity as well as within the Permanent Forum on Indigenous Issues, including indicators for the UN Millennium Goals. We may see the results of these efforts in the not too distant future. Although indicators in themselves do not shift policies, at least they can contribute to focussing the debate on key elements of progress in developing indigenous peoples' issues, both in the Arctic and also within the UN system. □

## THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

### 2006

The African Commission on Human and Peoples' Rights (ACHPR or African Commission) was officially inaugurated on November 2, 1987 as a sub-body of the then Organisation of African Unity. The OAU was disbanded in July 2002, and has since been replaced by the African Union. In 2000, the African Commission established its Working Group on Indigenous Populations/Communities in Africa, which was a remarkable step forward in the promotion and protection of the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the ACHPR as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2000, been on the agenda of the African Commission and henceforth has become a topic of debate between the ACHPR, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and the Working Group's continued activities – sensitisation seminars, country visits, information activities and research – all play a crucial role in ensuring this vital dialogue.

**D**uring 2006, the African Commission on Human and Peoples' Rights continued its work on protecting and promoting the human rights of indigenous peoples in Africa.

## **The Working Group's activities during 2006**

The Working Group met twice during 2006 and, at these two meetings, the Working Group planned its activities for the period ahead and evaluated activities already undertaken.

### **The key activities that were carried out during 2006 were:**

#### **Summary version of the Working Group's expert report**

The Working Group has published a summary version of its approx. 100-page long expert report on the situation of indigenous peoples in Africa. The summary version debates the criteria for identifying indigenous peoples in Africa, documents violations of indigenous peoples' human rights, analyses the extent to which the African Charter on Human and Peoples' Rights protects indigenous peoples' human rights and makes recommendations to the African Commission. The summary version is thus a more accessible version of the original report.

#### **Country visits and research & information visits**

During 2006, the Working Group undertook a country visit to Niger and a research & information visit to Uganda. During both of these visits, the Working Group held meetings with the respective governments, NGOs, academic institutions and other relevant stakeholders in order to gather information about the situation of indigenous peoples' human rights. The report from the visit to Niger has been adopted by the Working Group and by the African Commission itself, while the report from the Uganda visit is pending approval.

#### **Regional seminar**

In September 2006, the Working Group hosted a regional sensitisation seminar on indigenous issues in Cameroon. The seminar was the first of its kind and drew participation from eight Central African countries

- Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Gabon, Republic of Congo and Rwanda. The aim of the seminar was to provide information on the African Commission's work and policy on indigenous peoples' rights to its member states and affiliated national human rights institutions. The seminar successfully established a dialogue between the African Commission and its members, and participants generally found the seminar very enriching.

### **Research on African constitutions and legislation**

In cooperation with the International Labour Organisation (ILO), the Working Group has commenced a joint research project on the extent to which African constitutions and legislation protect the rights of indigenous populations. While the research will seek to cover most African countries, ten have been selected for in-depth research. During 2006, research was undertaken on South Africa, Namibia, Kenya and Ethiopia.

### **Cooperation with the UN**

As far as is possible, the Working Group seeks to cooperate and share information with relevant UN agencies. During 2006, the Chair of the ACHPR Working Group attended the 5<sup>th</sup> session of the UN Permanent Forum on Indigenous Issues, which was held in New York in May, and also the United Nations Institute for Training and Research's (UNITAR) training programme on indigenous issues. This has enabled the institutions involved to improve their mutual knowledge, while their presence at a "partner institution" contributes to strengthening the indigenous peoples' cause by confirming institutional interest and support.

In November 2006, at the UN General Assembly's Third Committee meeting in New York, many African states expressed their reluctance regarding the UN Declaration on the Rights of Indigenous Peoples (read more about this in the article on the Declaration in this volume). The Working Group therefore decided to send a letter to all African missions in New York to clarify the African Commission's position on indigenous issues. The letter explained the African Commission's position on indigenous peoples' human rights, and recommended that African states vote in favour of the Declaration.

## **Indigenous participation in the 2006 sessions**

In 2006, IWGIA facilitated the participation of 14 indigenous peoples' representatives from Africa in the 39<sup>th</sup> and 40<sup>th</sup> sessions of the African Commission. These bi-annual sessions of the African Commission took place in the Gambia in May and November 2006 respectively. One indigenous organisation from Burundi obtained observer status with the African Commission during 2006, and this will in turn enable it to communicate more directly with the Commission.

All of the indigenous representatives were involved in advocacy work during these sessions, either with regard to ACHPR commissioners, government delegates, national human rights institutions, NGOs or intergovernmental organisations. This indigenous presence at the sessions has proved central to maintaining the African Commission's focus on the human rights violations from which indigenous peoples suffer.

In cooperation with indigenous organisations, NGOs and/or consultants, IWGIA produced three shadow reports during 2006 which were used for the African Commission's periodic examination of states. These shadow reports dealt with the indigenous peoples' situation in Cameroon, the pastoralists' situation in Uganda and the Batwa's situation in Uganda.

On the basis of their participation at the sessions of the African Commission, indigenous organisations in Burundi, Cameroon and the Democratic Republic of Congo (DRC) have carried out advocacy activities in their respective countries. In Burundi, the Working Group's expert report has been distributed to government offices as well as local authorities, and the indigenous organisation simultaneously held meetings with relevant individuals to brief them on the African Commission's position regarding indigenous issues. In Cameroon, an extensive media project was carried out around indigenous peoples and the African Commission's approach to their human rights. This media project included approx. 15 articles in key Cameroonian newspapers, radio broadcasts and the production of a film on the indigenous Baka and Mbororo peoples of Cameroon. In the DRC, the Working Group's expert report has been distributed and the organisation has produced

radio programmes and newsletters on this report and the African Commission's stance. The reactions to these activities have generally been positive, and the organisations have reported that the authorities' currently seem to be taking a more positive approach to indigenous peoples' rights.

## **Concluding remarks**

The human rights situation of indigenous peoples remains an important issue within the African Commission, and it is a topic which is discussed at each of the ACHPR's bi-annual sessions. The Working Group's high level of activity, as well as the indigenous representatives' participation in the sessions, is central to maintaining the ACHPR's focus on indigenous peoples' rights. This level of activity and presence will hopefully serve to further raise awareness around indigenous peoples' rights, and will hopefully also strengthen constructive dialogue between all relevant stakeholders. □

# PART III

GENERAL INFORMATION

## ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' struggles for self-determination. Since its foundation in 1968, IWGIA's secretariat has been based in Copenhagen, Denmark.

IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and is an observer to the Arctic Council.

### **Aims and activities**

IWGIA supports indigenous peoples' struggles for human rights, self-determination, the right to territory, control of land and resources, cultural integrity, and the right to development on their own terms. In order to fulfil this mission, IWGIA works in a wide range of areas: documentation and publication, human rights advocacy and lobbying, plus direct support to indigenous organisations' programmes of work.

IWGIA works worldwide at local, regional and international level, in close cooperation with indigenous partner organizations.

## BECOMING A MEMBER

IWGIA welcomes new members. If you wish to apply for membership and become part of our dedicated network of concerned individuals, please consult our homepage at [www.iwgia.org](http://www.iwgia.org) for details and to download a membership form.

Membership fees for 2007 are:

US\$60 / EUR 50 (US\$35 / EUR 30 for students and senior citizens)  
for Europe, North America, Australia, New Zealand and Japan.  
US\$25 / EUR 20 for the rest of the world.

For IWGIA, membership provides an essential element of support to our work, both politically and economically.

All members receive IWGIA's journal *Indigenous Affairs* four times a year, IWGIA's Annual Report, and the yearbook *The Indigenous World*. In addition, members benefit from a 33% reduction on other IWGIA publications. If you want a support membership only and not receive our publications, the annual fee is US\$10 / EUR 8.

## SUBSCRIPTION RATES 2006

### **INDIGENOUS AFFAIRS / *ASUNTOS INDÍGENAS***

Individuals: US\$ 35 / EUR 27

Institutions: US\$ 45 / EUR 36

### **THE INDIGENOUS WORLD / *EL MUNDO INDIGENA***

Individuals: US\$ 30 / EUR 24

Institutions: US\$ 40 / EUR 32

### **BOOKS / *LIBROS***

Individuals: US\$ 60 / EUR 47

Institutions: US\$ 80 / EUR 63

### **INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD / *ASUNTOS INDÍGENAS & EL MUNDO INDÍGENA***

Individuals: US\$ 65 / EUR 51

Institutions: US\$ 85 / EUR 68

### **INDIGENOUS AFFAIRS, THE INDIGENOUS WORLD & BOOKS / *ASUNTOS INDÍGENAS, EL MUNDO INDÍGENA & LIBROS***

Individuals: US\$ 125 / EUR 98

Institutions: US\$ 165 / EUR 130

Read more on our homepage: [www.iwgia.org](http://www.iwgia.org)  
or send us an email: [iwgia@iwgia.org](mailto:iwgia@iwgia.org)  
or give us a call: +45 35 27 05 00